

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 729 Hillsborough Co. Law Library
SPONSOR(S): Ambler
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government & Veterans' Affairs</u>	_____	<u>Nelson</u>	<u>Highsmith-Smith</u>
2) <u>Appropriations</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill authorizes the Hillsborough County Board of County Commissioners to implement by ordinance filing fees on cases initiated in the circuit court and the civil division of the county court in Hillsborough County to support the operation and maintenance of a public law library.

According to the Economic Impact Statement, this proposal would reduce or eliminate the county general revenue subsidy of the library. It will increase costs to individuals instituting proceedings in the Hillsborough County court system.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

This bill repeals ch. 75-400 and 79-479, Laws of Florida, and authorizes the Hillsborough County Board of County Commissioners to establish by ordinance filing fees on cases initiated in Hillsborough County circuit and county civil courts to support the operation and maintenance of a public law library. The proposed special act fees are capped at \$25 and would be established annually by the Board of County Commissioners. The bill further allows payments to the clerk of the court and the county for administrative costs for managing the fund and legal expenses, if authorized by the ordinance, and provides for the waiver of fees in cases of indigence.

Current Law

Special Acts

Chapter 75-400, Laws of Florida, provides for filing fees of \$ 3.50 in the civil division of the circuit court, and \$1.50 in the criminal, probate and guardianship divisions of the circuit court and the civil division of the county court. Effective October 1, 1975, these fees were to be paid by the Hillsborough County circuit court clerk to county commissioners of Hillsborough County to be kept in a "law library fund."

Chapter 79-479, Laws of Florida, amends ch. 75-479, Laws of Florida, to provide for an increase in these filing fees from \$ 3.50 to \$ 5.00 in the civil division of the circuit court, and from 1.50 to \$3.00 in the criminal, probate and guardianship divisions of the circuit court and the civil division of the county court.

General Law

General Law provides language permitting fees for certain court case filings pursuant to special act or ordinance.

Section 28.2401(3), F.S., relates to probate matters, and provides that service charges in excess of those fixed in this section may be imposed by the governing authority of the county by ordinance, or by special or local law to provide and maintain facilities, including a law library.

Section 28.241(1), F.S., pertains to civil actions, suits, or proceedings filed in circuit court and authorizes the governing authority of a county by ordinance or by special or local law to impose a service charge to provide and maintain a law library.

Section 28. 241(2), F.S., provides that the charges enumerated in the subsection may be increased by special or local law for criminal or juvenile actions or proceedings in any county where a law creates a library fund. The sum of all fees permitted by this subsection may not exceed \$200.

Section 34.041, F.S, provides for service charges imposed by the governing authority of the county by ordinance or by special or local law to provide or maintain a law library upon the institution of any civil action or proceeding in county court. The sum of all fees permitted under this subsection also may not exceed \$200.

Present Situation

The Hillsborough County Law Library originated in the late 1930s. A grassroots local library board began record-keeping in the late 1940s, largely basing its operations on various populations acts with the Hillsborough County government providing free space to the library. The library board also began submitting its annual budget to the Board of County Commissioners for review.

The primary funding source for the library is derived from a special act¹ that permits \$5.00 filing fees upon the initiation of cases in the civil division of circuit court of Hillsborough County, and \$3.00 fees upon the initiation of cases in the criminal and the probate and guardianship divisions of the circuit court and the civil division of the county court. These fees are “in addition to the statutory fee to be charged by the clerk.”

The library also is supported from a portion of the occupational tax collected from attorneys² to the “law library fund,” and self-generated fees to the “law library sales and services fund” which may be carried forward from year to year.

Hillsborough County budgetary records indicate that the law library began experiencing a deficit in 1997 which was covered by law library “reserves.” As self-generated revenues began to decline and personnel and benefits costs increased, the library again experienced deficits in 1999 and 2000, each of which were covered by the reserve fund. In 2001, the law library saw a deficit of \$52,043 with only \$27,209 remaining in its reserve fund. The Board of County Commissioners covered the balance that fiscal year as well as a projected deficit of \$111,556 for fiscal year 2003.

C. SECTION DIRECTORY:

Section 1: Provides definitions for various terms used in the act.

Section 2: Provides that the maintenance and operation of the law library is a public purpose.

Section 3: Provides that notwithstanding and in lieu of any other provision of law, the Board of County Commissioners may annually establish by ordinance a filing fee upon the institution of any action, suit, or proceeding in Hillsborough County circuit court and the civil division of county court for the purpose of maintaining and operating the James J. Lunsford library.

Provides that these fees may vary in each of the divisions of the courts, but shall not exceed \$25 per filing.

Provides that the fees collected and remitted in accordance with the act and any county ordinance adopted by the board shall be expended only for the purposes provided by the act.

Provides that, if authorized by the board by ordinance, funds may be expended for the following purposes ancillary to the maintenance and operation of the law library:

- payment to the clerk for services rendered;
- payment to the county for administrative costs; and

¹ Ch. 75-400, Laws of Florida, as amended by ch. 79-479, Laws of Florida.

² \$10 of the \$30 authorized by the Ordinances 95-4 and 01-16)

-payment for any legal expenses of the law library.

Provides that the party instituting an action shall pay the filing fee.

Provides that the board waive the filing fee by ordinance if a person is indigent or if the filing fee is otherwise waived in accordance with general law.

Provides that the clerk collect and maintain an accounting of subject fees and remitted funds derived from such fees in accordance with any county ordinance adopted by the board.

Provides that the clerk may accept payment for services rendered if authorized to do so by county ordinance and may expend any such funds for the purposes required by that office.

Section 4: Provides a severability clause.

Section 5: Repeals ch. 75-400 and ch. 79-479, Laws of Florida.

Section 6: Provides an effective date of October 1, 2003.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 19, 2003

WHERE? *The St. Petersburg Times*, a daily newspaper of general circulation in Hillsborough County.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

The impact of the July 1, 2004, implementation of Revision 7 (amending art. V of the Florida Constitution) on this proposal is unknown.³

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

³ According to the Staff Summary for Local Legislation provided by the Hillsborough County Legislative Delegation, the Clerk of the Court has expressed concerns about any legislation which may direct the use of filing fees inasmuch as s. 14 of art. 5, Florida Constitution, provides, in part, that: "all funding for the offices of the clerks...shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions...."

Section 3 of the bill serves as a supremacy clause. Many local bills contain language providing that in the event of a conflict of the provisions of the local bill with the provisions of any other general or local law, the provisions of the act being considered controls to the extent of the conflict(s). This is referred to as a "supremacy" clause. This language does not allow interested persons or Members of the Legislature knowledge of the specific laws containing potential conflicts. Unless those specific laws in conflict are identified, it is suggested that the "supremacy" clause be removed from the bill.

Other Comments

The Sponsor⁴ has indicated that this bill continues existing law allowing the Hillsborough County Commission to set filing fees for users of circuit and county courts by increasing the cap on the fees from \$3 for each county court case and \$5 for each circuit court case to \$25. The original cap established in 1979 has never been increased. A reasonable ceiling of \$25 was included to ensure that the fee did not unreasonably interfere with a litigant's access to Florida's courts. There are currently several other counties in Florida with fees of \$25 or more. County Commission projections estimate an increase of \$5 per filing in fiscal year 2008. The Sponsor states that by raising the cap, the Legislature is giving control to local elected officials to set fees for services they provide without having to ask the Legislature for permission. With the passage of this bill, Hillsborough County will be able to work over the next 12 months to identify funding in the event of an art. V impact.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

None.

⁴ The Honorable Kevin Ambler, Representative, District 47.