

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7235 CS PCB JA 06-01 Continuing Implementation of Constitutional Revision 7 to Article V  
**SPONSOR(S):** Judiciary Appropriations Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Appropriations Committee	4 Y, 0 N	Brazzell	DeBeaugrine
1) Fiscal Council	19 Y, 0 N, w/CS	Brazzell	Kelly
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

In November 1998, voters approved Revision 7 to Article V of the Florida Constitution. Article V establishes the judicial branch of government. According to the ballot summary, Revision 7 “allocates state court system funding among the state, counties, and users of courts.” Revision 7 was to be “fully effectuated” by July 1, 2004.

The bill addresses a variety of issues with budgetary impacts related to the implementation of Revision 7 to Article V of the state constitution. The bill:

- Facilitates appointment of a public defender under certain conditions;
- Provides for appointment of counsel for children when parents are the alleged victims;
- Clarifies that parents of juveniles involved in delinquency proceedings are responsible for payment of costs of prosecution and representation under certain circumstances;
- Revises the budgeting and reporting procedures for clerks of court;
- Amends the procedure for identifying counties which do not budget sufficient funds to fulfill their responsibilities for court funding under s. 29.008(1), F.S., and for rectifying such situations;
- Provides additional requirements for disclosure by clerks when individuals are posting bond monies that may be used to pay for the detainee’s other outstanding court obligations;
- Requires probation programs run by counties using their own employees to allocate insufficient payments by a misdemeanor probationer among all of that individual’s outstanding obligations;
- Redirects the \$2.00 court technology fee currently paid to counties for funding their court-related technology obligations to a trust fund for distribution to counties as grants-in-aid under certain conditions and revises the process for spending those funds;
- Revises procedures for conducting non-binding, court-ordered arbitration;
- Adjusts the formula for calculating distributions from the Revenue Sharing Trust Fund for Municipalities for the half-cent sales tax;
- Clarifies counties’ reporting responsibilities regarding their use of funds generated by surcharges imposed to fund state court facilities; and
- Moves certain provisions of law relating to court costs into chapter 938, F.S.

The bill appears to have a fiscal impact on state government and counties. See “Fiscal Analysis and Economic Impact Statement.”

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill reduces the duties of the Department of Revenue regarding the review of county budgets for funding court-related responsibilities and institutes a new process for this review involving the Administration Commission. The bill establishes new advisory boards in each judicial circuit.

#### B. EFFECT OF PROPOSED CHANGES:

##### Public Defender Representation

###### *Proposed Changes*

The bill amends s. 27.51, F.S., to facilitate appointment of a public defender by eliminating requirements to take affidavits of indigency from minors seeking public defenders and to take additional affidavits from certain persons who already have a public defender. The bill also amends s. 985.203, F.S., to provide for appointment of counsel for children when parents are the alleged victims.

##### Payment of Fees for Representation and Prosecution

###### *Present Situation*

Currently, certain sections of Florida law provide for the repayment of the costs of prosecution and representation by certain persons in certain proceedings; however, some have interpreted these sections as not applying to juveniles in certain delinquency proceedings.

###### *Proposed Changes*

The bill amends ss. 27.52 and 938.27, F.S., to clarify that parents of adjudicated juveniles are responsible for certain costs, including costs of representation and the costs of prosecution, respectively. It amends ss. 28.35 and 938.27, F.S., to allow enrollment of such parents in payment plans to repay these costs under certain conditions.

##### Clerks of Court Court-Related Budget Process

###### *Present Situation*

Currently, s. 28.35, F.S., establishes the Florida Clerks of Court Operations Corporation (corporation) and, among other provisions, assigns it various duties relating to reviewing and certifying clerks' proposed court-related budgets. Section 28.36, F.S., provides the process to be used in setting clerks' court-related budgets. This process uses formulae to determine the maximum annual budget amount allowed a clerk, though under certain conditions the Legislative Budget Commission may approve increases to individual clerks' budgets. Any unspent revenues are to be provided to the General Revenue Fund. Outside of these general limitations, however, each clerk has significant autonomy in how he or she expends state funds. This has allowed some clerks to make spending decisions that have been questioned and has resulted in less revenue being provided to the General Revenue Fund. The corporation did not respond to requests for information on one such incident because of the perception that providing this information was outside the scope of its duties and responsibilities.

###### *Proposed Changes*

The bill amends ss. 28.25 and 28.36, F.S to provide for more detailed reporting by clerks about their specific proposed and actual expenditures. The PCB also adds the responsibility of responding to Legislative inquiries regarding clerk budgets to the corporation's statutory duties and responsibilities and requires the contract between the corporation and the Department of Financial Services to provide a penalty for the corporation's noncompliance with that contractual provision.

#### Department of Revenue Oversight of County Article V Budgets

##### *Present Situation*

Currently s. 29.008(4), F.S., provides a process for the Department of Revenue (DOR) to review whether counties are budgeting sufficient funding for certain court-related responsibilities under s. 29.008(1), F.S. The statute provides a formula that dictates the minimum amount a county must budget, requires the submission of budget documents to the DOR, and, if the DOR finds that the county is not meeting its requirement to budget sufficient funds, requires the DOR to withhold other funds that would otherwise be remitted to a county and instead pay the county's unbudgeted court-related funding obligations. The DOR reviewed this process, and in its report *Reporting and Oversight of County Court-Related Funding Obligations: Review and Recommendations* (November 15, 2005), highlighted problems with the current process. Among other recommended changes, DOR suggests that the agency be relieved of its obligation to determine county compliance with their budgeting responsibilities, in part because the agency believes the review duplicates another required to be conducted by the Chief Financial Officer (CFO) and that the duty falls within the core competency of the Department of Financial Services.

##### *Proposed Changes*

The bill adopts the DOR's recommendation to end the DOR's responsibility to determine county compliance with their budgeting responsibilities by replacing DOR review of county budgets with a process similar to that provided in s. 30.49, F.S., for sheriffs to appeal what they believe to be inadequate county funding. The new process provides for the evaluation of both budgeting and actual expenditures of funds. It requires the chief judge of the circuit to detail the deficiencies expected to result from the lack of funding and the funding required to correct them and provide this to the board of county commissioners (board). If the board does not respond to the chief judge's satisfaction, the chief judge may appeal to the Administration Commission, whose decision is final. The bill revises the calculations for determining whether a county has met its funding obligations to exclude certain non-recurring expenditures. The bill also forgives the total amounts to be withheld for FY 2004-05 and 2005-06 if the circuit judge does not certify that deficiencies exist due to insufficient county budgets. Finally, the bill provides a similar process for the Administration Commission to review county expenditure of the state financial assistance provided to assist it in meeting its court-related technology funding obligations.

#### Payment of Outstanding Obligations from Posted Bond

##### *Present Situation*

Currently s. 903.286, F.S., requires the clerk of court to withhold outstanding court fees, court costs, and criminal penalties from a cash bond posted by someone other than a bail bond agent. Thus the person posting bond may not be returned the full amount of the bond if outstanding court fees, court costs, and criminal penalties exist. However, the section does not require the clerk to provide notice to the person posting the bond that such obligations may be withheld.

##### *Proposed Changes*

The bill requires clerks of court to inform persons posting bond prior to the posting that outstanding court fees, court costs, and criminal penalties may be withheld; however, the bill provides that these

funds may not be withheld from a bond posted prior to July 1, 2005, by a person other than the defendant.

## Article V Technology Funding

### *Present Situation*

Section 29.008(1), F.S., provides that "Counties are required by s. 14, Art. V of the State Constitution to fund the cost of communications services, existing radio systems, existing multiagency criminal justice information systems . . ." Section 29.008(f)2., F.S., defines "communication services" to include "all computer networks, systems and equipment, including computer hardware and software, modems, printers, wiring, network connections, maintenance, support staff or services. . . training, supplies, and line charges necessary for an integrated computer system to support the operations and management of the state courts system, the offices of the public defenders, the offices of the state attorneys, and the offices of the clerks of the circuit and county courts and the capability to connect those entities . . ." Section 29.008(h), F.S., defines "existing multiagency criminal justice information systems."

Section 28.24(12)(e)1., F.S., provides for \$2.00 of a \$4.00 per page service charge for certain documents filed with the clerk of court to be distributed to the board of county commissioners to be used for court-related technology and court technology needs as defined in s. 29.008(1)(f)2. and (h), F.S. According to the Florida Association of Court Clerks and Comptrollers, in calendar year 2005, this fee generated \$85.4 million for counties.

Section 29.0086, F.S., establishes the Article V Technology Board. Section 29.0086(5)(c), F.S., required the Article V Technology Board to issue a report by January 15, 2006, which, among other requirements, was to "propose an operational governance structure to achieve and maintain the necessary level of integration among system users at both the state and judicial circuit levels . . ." Accordingly, the Article V Technology Board's report recommended the establishment of a statewide governing board and judicial circuit governing boards. The report also recommended that the \$2.00 fee administered at the county level be administered on a judicial circuit level by a joint committee composed of the chief judge, state attorney, and public defender.

### *Proposed Changes*

The bill extends the term of the Article V Technology Board through December 31, 2006. The PCB also requires the establishment of Judicial Circuit Article V Technology Advisory Councils (advisory councils) in each circuit chaired by the chief judge or his or her designee and including as members the public defender, state attorney, a Florida Bar representative, sheriff, clerk, and a county representative. The primary responsibilities of the advisory councils are to develop an initial judicial circuit technology strategic plan and subsequent updated judicial circuit technology strategic plans to address court-related technology and court technology needs as defined in s. 29.008(1)(f)2 and (h), F.S., and to promote data integration and access among the stakeholders in the court system. The bill increases and redirects the \$2.00 per page fee currently provided to the boards of county commissioners to the Court Technology Trust Fund and provides that, beginning April 1, 2007, the fee may be disbursed as grants-in-aid to counties which agree to use these funds to implement the judicial circuit technology strategic plan developed by the advisory councils and approved by the chief judge.

To protect the state's investment in the Clerks of Courts' Comprehensive Case Information System, the bill makes receipt of state funding for that system contingent on the Florida Association of Court Clerks and Comptroller, Inc., agreeing to transfer ownership to the state if the clerks cease to provide the system. The bill also requires an annual audit of the state funding for the system.

## Court-ordered, Non-binding Arbitration

### *Proposed Changes*

The bill revised procedures for conducting court-ordered, non-binding arbitration by amending s. 44.103, F.S., to require hearings to be conducted informally, allow the court to authorize the issuance of subpoenas, and provides more detailed procedures for the assessment of costs against a party requesting a trial de novo under certain conditions.

#### Revenue Sharing under the Revenue Sharing Trust Fund for Municipalities

##### *Proposed Changes*

The bill provides that a consolidated local government under s. 9, Article VIII of the state constitution of 1885 as amended (Duval) will have its share of municipal revenue sharing funds which would be generated by the distribution formula that applies to all municipalities reduced by 42%. Current law reduces Duval County's share by 50%.

#### Reporting on County-Imposed Surcharges

##### *Present Situation*

Currently, the clerks of court are required to report quarterly on the amount of funds collected by counties pursuant to s. 318.18(13)(a) and (b), F.S.

##### *Proposed Changes*

The bill amends s. 318.18(13), F.S., to provide that the county, rather than the clerk of court, report on the funds collected by the county. The PCB also requires additional reporting by the county on the amount of funds expended and the uses of the funds.

#### Payment of Obligations by Misdemeanor Probationers

##### *Present Situation*

Currently, counties handle in a variety of ways the collection of certain court-related obligations from the misdemeanor probationers they supervise either using county staff or via a contract with another entity. These obligations include fees for supervision as well as restitution, fines, fees, and court costs. In at least one county, during the period of supervision only the supervision fee is being collected, delaying the collection of payments for the probationer's other obligations.

##### *Proposed Changes*

The bill amends s. 948.15, F.S., to provide that entities providing probation services for offenders sentenced by the county court shall establish a process to collect outstanding obligations, including fines, fees, and court costs, restitution, and the cost of supervision. It also provides that if any payment made by a misdemeanor probationer is insufficient to cover the amount of the obligations then due, a probation program run by a county with its own employees must allocate the funds proportionally among the probationer's total obligations for that installment.

#### Transfer and Renumbering of Court Cost-related Statutory Provisions

The bill also transfers and renumbers s. 775.083(2), F.S., relating to court costs collected to fund county crime prevention programs, to chapter 938, F.S., and renumbers s. 939.185, F.S., regarding county-authorized court costs to fund various court-related programs, also to place it in chapter 938, F.S. Chapter 938, F.S., addresses court costs.

#### C. SECTION DIRECTORY:

Section 1 amends s. 27.51, F.S., regarding public defender representation of minors.

Section 2 amends s. 27.52, F.S., regarding determination of indigent status and providing for liability for fees, costs, and charges of representation in delinquency proceedings.

Section 3 amends s. 27.561, F.S., to require defendant-recipients or parents defaulting on payment of attorney's fees or costs to enroll in a payment plan under certain circumstances

Section 4 amends s. 28.24, F.S., regarding the distribution and use of the \$2.00 fee directed to counties for funding court-related technology and court technology needs and the \$0.10 fee for funding the Comprehensive Case Information System operated by Florida Association of Court Clerks and Comptroller, Inc.

Section 5 amends s. 28.35, F.S., creating additional duties of the Florida Clerks of Court Operations Corporation.

Section 6 amends s. 28.36, F.S., regarding the clerks of court budget process.

Section 7 amends s. 29.008, F.S., to revise the process for determining and compelling county compliance with their Article V funding responsibilities.

Section 8 amends s. 29.0081, F.S., regarding county funding of additional court personnel.

Section 9 amends s. 29.0086, F.S., repealing the Article V Technology Board effective January 1, 2007.

Section 10 creates s. 29.0087, F.S., to establish in each judicial circuit a Judicial Circuit Article V Technology Advisory Council and provide for membership, purposes, and duties.

Section 11 amends s. 44.103, F.S., regarding court-ordered, nonbinding arbitration.

Section 12 amends s. 218.245, F.S., regarding revenue sharing under the Revenue Sharing Trust Fund for Municipalities.

Section 13 amends s. 318.18, F.S., to require counties rather than clerks of court to report information regarding their collection and use of surcharges to fund court facilities.

Section 14 amends s. 903.286, F.S., to provide additional notice requirements for persons posting cash bonds.

Section 15 amends s. 938.27, F.S., to require parents of adjudicated juveniles to enroll in payment plans to pay certain costs of prosecution.

Section 16 amends s. 938.29, F.S., to require defendants found to have committed a delinquent act who have received the assistance of the public defender's office or a court-appointed attorney to be liable for payment of attorney's fees and costs.

Section 17 amends s. 948.15, F.S., regarding the collection of obligations from misdemeanor county probationers.

Section 18 renumbers s. 939.185, F.S., as s. 938.195, F.S.

Section 19 transfers, renumbers, and amends s. 775.083 (2), F.S., as s. 938.065, F.S.

Sections 20, 21, 22, 23, and 25 amend ss. 938.17, 938.19, 948.08, 948.16, and 985.306, F.S., respectively, to conform cross-references.

Section 24 amends s. 985.203, F.S., providing for the appointment of a public defender for a child whose parent or legal guardian is the alleged victim.

Section 26 provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The state may realize additional revenue from payments by certain parents of juveniles involved in delinquency proceedings for costs of prosecution and representation.

The state will also receive proceeds from the \$2.05 recording fee which will be deposited into the Court Technology Trust Fund. In calendar year 2005, when set at \$2.00, this fee generated \$85.4 million.

Collection of court costs and fines may increase due to the change in procedures for collecting from misdemeanor probationers in county-run programs.

By deleting the requirement for children and individuals who already have a public defender to complete an affidavit of indigency, the \$40 application fee will not be paid by these individuals. According to the Florida Public Defender Association, in calendar year 2005 there were 63,350 new juvenile cases.

#### 2. Expenditures:

The extension of the Article V Technology Board through December 31, 2006, is estimated to require \$250,000 in General Revenue.

The bill also provides for state financial assistance to counties from the Court Technology Trust Fund. At current levels of collections, expenditures from the trust fund would be approximately \$85 million per year.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill changes the distribution of the \$2.00 technology fee that is currently provided directly to counties to a grant-in-aid to be paid upon the counties' compliance with certain requirements. If counties choose not to comply with these requirements, they could experience a reduction in revenues.

The bill modifies the process for finding that counties are not in compliance with their responsibilities for funding certain court-related items such that counties may be less vulnerable to withholding of other revenues by the Department of Revenue to pay for funding such items, since a more detailed process would need to be followed before any withholdings occurred.

Counties providing misdemeanor probation services may experience delays in receiving the fees for this service from their clients due to the allocation of insufficient payments by their clients among all of their court-related obligations.

#### 2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A larger number of parents of juveniles involved in certain delinquency proceedings may be required to pay for costs of prosecution and representation.

The Florida Association of Court Clerks' CCIS system will receive \$0.05 less in recording fees per page. In calendar year 2005, when set at \$0.10, this fee generated \$4.27 million.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its April 21, 2006, meeting, the Fiscal Council adopted a strike-all amendment and two amendments to the strike-all amendment. The major changes made by the strike-all amendment include:

- Requiring clerks of court to report budget detail using the uniform accounting system chart of accounts promulgated by the Department of Financial Services, which they already use, rather than according to the state budgeting system.
- Protects county probation programs run by contractors like the Salvation Army from losing fee revenue.
- Provides that when county budgets are reviewed to see if the counties are fulfilling their Article V funding responsibilities, nonrecurring funds are not considered. This is retroactive. The amendment also provides for forgiveness of the total amounts to be withheld for FY 2004-05 and 2005-06 if the circuit judge does not certify that deficiencies exist due to insufficient county budgets.
- Provides that the \$2 recording fee is to assist counties in funding their court technology obligations and addresses problems in transitioning to the new funding system.
- To protect the state's investment in the Clerks of Courts' Comprehensive Case Information System, makes receipt of state funding for that system contingent on their agreeing to transfer ownership to the state if the clerks cease to provide the system. The amendment also requires an annual audit of the state funding for the system.

The amendments to the strike-all amendment addressed public defender representation. The amendments:



- Facilitate appointment of a public defender by eliminating requirements to take affidavits of indigency from minors seeking public defenders and to take additional affidavits from certain persons who already have a public defender.
- Provide for appointment of counsel for children when parents are the alleged victims.

The bill was reported favorably with a committee substitute.