

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7235      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, w/CS	Brazzell	DeBeaugrine
1) Judiciary Appropriations Committee	_____	_____	_____
2) Fiscal Council	_____	_____	_____
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.

PCB 01 addresses a variety of issues with budgetary impacts related to the implementation of Revision 7 to Article V of the state constitution. The PCB:

- 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 the allocation of a payment by a misdemeanor probationer among 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;
- 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 PCB appears to have a fiscal impact on state government and counties. See “Fiscal Analysis and Economic Impact Statement.”

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The PCB 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 PCB establishes new advisory boards in each judicial circuit.

#### B. EFFECT OF PROPOSED CHANGES:

##### 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 PCB 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 PCB amends ss. 28.25 and 28.36, F.S. to provide for more detailed reporting by clerks about their specific proposed and actual expenditures and requires the corporation's approval for a clerk's certified budget to be amended except in those situations when the Legislative Budget Commission's approval is required. The PCB also adds the responsibility of responding to Legislative inquiries regarding clerk budgets to the corporation's statutory duties and responsibilities.

## 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 PCB 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 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.

## 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 PCB requires clerks of court to inform persons posting bond that outstanding court fees, court costs, and criminal penalties may be withheld and to provide an itemized listing of these amounts so that persons posting bond are aware of the total that would be withheld from the posted bond. The PCB also specifies that the clerk may only withhold these monies from bonds posted after June 30, 2005, as July 1, 2005, was the effective date of the statute allowing the withholding of these monies.

## 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 PCB 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, Florida Bar representative, sheriff, clerk, and a county representative. The primary responsibilities of the advisory councils are to develop an initial strategic plan and subsequent updated 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 PCB 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 the fee may be disbursed as grants-in-aid to counties which agree to use these funds to implement the strategic plan developed by the advisory councils and approved by the chief judge.

### 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 PCB 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 Misdemeanant 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 PCB 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, the payment will be allocated proportionally among the probationer's obligations.

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

The PCB 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. 27.52, F.S., providing for liability for fees, costs, and charges of representation in delinquency proceedings.

Section 2 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 3 amends s. 28.35, F.S., creating additional duties of the Florida Clerks of Court Operations Corporation.

Section 4 amends s. 28.36, F.S., regarding the clerks of court budget process.

Section 5 amends s. 29.008, F.S., to revise the process for determining and compelling county compliance with their Article V funding responsibilities.

Section 6 amends s. 903.286, F.S., to provide additional notice requirements for persons posting cash bonds.

Section 7 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.

Section 8 amends s. 29.0086, F.S., repealing the Article V Technology Board effective January 1, 2007.

Section 9 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 10 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 11 amends s. 938.27, F.S., to require parents of adjudicated juveniles to enroll in payment plans to pay certain costs of prosecution.

Section 12 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 13 amends s. 948.15, F.S., regarding the collection of obligations from misdemeanor county probationers.

Section 14 renumbers s. 939.185, F.S., as s. 938.195, F.S.

Section 15 transfers, renumbers, and amends s. 775.083 (2), F.S., as s. 938.065, F.S.

Section 16 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 the collections procedure.

#### 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 PCB 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 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.

Private providers of misdemeanor probation services may experience delays in receiving the fees for this service due to the allocation of payments by their clients among all of the individual client's court-related obligations.

**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 March 24, 2006, meeting, the Judiciary Appropriations Committee adopted three amendments. These amendments:

- Correct an inadvertent drafting error which would have eliminated certain state attorney trust funds by restoring the current statutory language in the portion of the PCB amending s. 938.27(7), F.S.
- Revise the process for conducting court-ordered, nonbinding arbitration.
- Change the formula used to calculate distributions from the Revenue Sharing Trust Fund for Municipalities for the half-cent sales tax for consolidated local governments.