

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: SB 2062

INTRODUCER: Senator Baker

SUBJECT: Court Costs

DATE: March 26, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Luczynski	Maclure	JU	Pre-meeting
2.			CA	
3.			JA	
4.				
5.				
6.				

I. Summary:

In November 1998, voters approved Revision 7 to article V of the Florida Constitution. Article V establishes the judicial branch of government. Revision 7 allocated state courts system funding among the state, counties, and users of courts. This bill makes refinements to several statutory provisions affecting state courts system funding.

The bill affects state courts system funding as follows:

- Requires the clerk of court to deposit certain funds for court-related technology needs in a county fund as designated by the chief judge of the circuit. Directs the principal county in the circuit to use the funds in accordance with a strategic plan approved by the chief judge which is designed to address the court-related technology needs of each county.
- Requires that certain county-funded employees supporting court-related functions be under the supervision and control of the chief judge.
- Requires the county to provide certain benefits to county-funded court employees. Provides that county-funded court employees and other county employees may be aggregated for purposes of a flexible benefits plan.
- The bill changes the responsibility for reporting the amount of funds collected for certain surcharges from the clerk of the court to the county. The bill also requires that in addition to the amount of funds collected, the county shall report the amount of funds expended, and the use of those funds.
- Relocates certain provisions related to court costs to chapters that address the similar subject matter.

This bill substantially amends the following sections of the Florida Statutes: 28.24, 29.008, 29.0081, 318.18, and 775.083. This bill amends the following sections of the Florida Statutes: 938.17 and 938.19. This bill creates section 938.065, Florida Statutes. This bill transfers, renumbers (938.195), and amends section 939.185, Florida Statutes. This bill reenacts the following sections of the Florida Statutes: 55.141 and 712.06.

II. Present Situation:

Revision 7 to Article V Overview

Article V, section 14 of the Florida Constitution specifies the state and county responsibilities for funding the state courts system. Article V, section 14(c) provides that the Supreme Court and the District Courts of Appeal are fully funded by the state. The trial courts, the circuit and county courts, are jointly funded by the state and counties. Article V, section 14(b) provides that:

[a]ll funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided ..., shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law.

Article V, section 14(c) provides that:

Counties shall be required to fund the cost of communications services, ... the cost of construction or lease, ... and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

County Funding of Court-Related Functions

Section 28.24, F.S., prescribes the fees that the clerk of the court shall charge for services in recording documents and instruments and in performing the duties enumerated therein. This section also provides for a service charge of \$4 per page, in addition to what is otherwise prescribed, for each instrument listed in s. 28.222, F.S., with certain exceptions, recorded in the official records. The \$4 service charge is divided as follows:

- 10 cents goes to Florida Association of Court Clerks and Comptroller, Inc., for the cost of the clerk's Comprehensive Case Information System;
- \$1.90 is retained by the clerk and goes to the funding of court-related technology needs of the clerk; and

- \$2.00 goes to the board of county commissioners to be used exclusively for the funding of court-related technology, and court technology needs.

Section 29.008, F.S., codifies the requirements of article V, section 14(c) of the Florida Constitution. Section 29.008(1), F.S., provides the definitions of terms for purposes of implementing the constitutional requirements. Section 29.008(2)-(3) F.S., codifies counties' constitutional funding responsibility for local requirements. Section 29.008(4)(a), F.S., provides that the "Department of Financial Services shall review county expenditure reports required under s. 29.0085 for the purpose of ensuring that counties fulfill the responsibilities of this section." In general, counties will have met their obligations if expenditures for the items specified in s. 29.008(1)(a)-(h), F.S., have increased by 1.5 percent or more over the prior county fiscal year. The initial review, comparing county fiscal year 2005-2006 to county fiscal year 2004-2005 was recently completed.

The \$2 designated, under s. 28.24(12)(e)1., F.S., for the funding of court-related technology and technology needs as defined in s. 29.008(1)(f)2. and (h), F.S., of the state trial courts, state attorney, and public defender generated \$78,968,943 for the fiscal year ended September 30, 2006. The following tables detail the county-funded expenditures on court-related technology and technology needs as defined in s. 29.008(1)(f)2. and (h), F.S., as required to be reported by the counties to the Department of Financial Services under s. 29.0085, F.S.

Total County Expenditures on Court-Related Technology & Court Technology Needs As Defined in s. 29.008(1)(f)2. and (h)

Statute	Expenditure	Amount
s. 29.008(1)(f)2.	Computer Equipment/Networks	30,050,877
	Other Communications Systems & Services	2,616,565
	Subtotal ->	\$32,667,442
s. 29.008(1)(h)	Existing Multi-Agency Criminal Justice Information Systems	15,745,853
	Total ->	\$48,413,295

Allocation of Expenditures

Expenditure	State Attorney	Public Defender	State Courts	Guardian Ad Litem
Computer Equipment/Networks	26.3%	13.5%	59.9%	0.3%
Other Communications Systems & Services	16.5%	28.3%	53.0%	2.2%
Existing Multi-Agency Criminal Justice Information Systems	6.2%	4.7%	88.9%	0.2%

The Department of Financial Services review showed that, in total, the counties increased their spending by substantially more than 1.5 percent over the prior fiscal year for court-related technology needs as defined in s. 29.008(1)(f)2. and (h), F.S.¹

County Funding of Court-Related Functions to Meet Local Requirements and Additional Court Personnel

Section 29.008(2), F.S., provides that counties shall pay reasonable and necessary salaries, costs, and expenses of the state court systems, including associated staff and expenses, to meet local requirements.

Many counties have had special funding agreements, formally or informally, with the courts that predated Revision 7. Arguably, statutory authority was unnecessary for a county to continue funding court personnel beyond the constitutional requirements. Nevertheless, s. 29.0081, F.S., codified the existing practice by providing authority for a county and the chief judge of a circuit to enter into an agreement for the county to fund personnel positions to assist in the operation of the circuit. The agreement must provide for the funding of these positions on at least a court fiscal-year basis. The personnel employed under such an agreement are employees of the judicial circuit and are hired, managed, and fired by the circuit. The existing law addresses county funding of court personnel in broad terms. The law does not specifically address the funding of benefits, the level of benefits, or the treatment of personnel as court or county employees for purposes of benefits.

Surcharges Related to Civil Penalties

Section 318.18, F.S., provides civil penalties for noncriminal disposition of traffic infractions. Section 318.18(13), F.S., provides that in addition to any penalties imposed for noncriminal traffic infractions under ch. 318, F.S., or imposed for criminal violations listed in s. 318.17, F.S., a board of county commissioners or, in certain circumstances, any unit of local government may impose an additional surcharge as specified. The clerk of court is required to report at the end of the quarter the amount of funds collected under s. 318.18(13), F.S., during each quarter of the year.

III. Effect of Proposed Changes:

This bill makes refinements to several statutory provisions affecting state courts system funding.

County Funding of Court-Related Functions

The bill changes the distribution of the \$2 portion of a \$4 per page recording charge designated for court-related and court technology needs from the board of county commissioners to a fund established in the principal county of the circuit as designated by the chief judge of the circuit.² The bill further directs the principal county in the circuit to use the funds in accordance with the

¹ Most of the counties reporting court technology expenditures as defined in s. 29.008(1)(f)2. and (h), F.S., that were less than a 1.5-percent increase over the prior fiscal year also provided explanations that might support a determination by the Legislature, under s. 29.008(4)(a), F.S., that the county has met its obligations.

² Section 28.24(12)(e), F.S.

judicial circuit's technology strategic plan approved by the chief judge which is designed to address the court-related technology needs of each county.

Representatives of the state courts system indicated that this change is needed to address the inter-county technology issues in multi-county circuits. Most of the 20 judicial circuits are comprised of more than one county. However, the statute currently provides that the funds generated by the \$2 designated for court-related and court technology needs is administered at the county level. The Florida Association of Counties and the Florida Prosecuting Attorneys Association have indicated that they find that in general the current approach to administering the funds works adequately.

There are a number of potential issues with the bill's revisions to s. 28.24, F.S. The term "principal county" is not defined in the bill or in statute. Additionally, the bill's requirement that the funds be used in accordance with the "judicial circuit's technology strategic plan" seems to create potential statutory and constitutional issues. First, each judicial circuit is required by administrative order, not by the bill or statute, to develop a strategic plan for local implementation of technology in accordance with the Florida Courts Technology Commission Functional Requirements Document, Technical Standards, and Strategic Plan.³ However, there is nothing to indicate that the strategic technology plan must conform to the existing statutory requirement that the \$2 shall be used exclusively to fund court-related technology and court technology needs as defined in s. 29.008(1)(f)2. and (h). Because the purpose of s. 29.008, F.S., is to implement the counties' funding requirements under article V, section 14 of the Florida Constitution, if the statutory purpose is thwarted, then arguably, so is the constitutional purpose. Moreover, although the bill seems to effectively give control of this source of funding for court-related and court technology needs to the chief judge of the circuit, the county remains responsible for the funding requirements under article V, section 14. Second, because the scope of the administratively ordered strategic plan is limited to the courts, the bill seems to conflict with the existing statutory requirement that the \$2 is to be used for the state trial courts, state attorney, and public defender.

To the extent that the judicial circuit's technology strategic plan dictates to the county how county funds must be spent, there may be a separation of powers issue in violation of article II, section 3 of the Florida Constitution or an issue that the judiciary is fixing appropriations in violation of article V, section 14(d) of the Florida Constitution. Furthermore, because the judicial circuit's technology strategic plan arguably does not include the input of the state attorneys or the public defenders, there could also be a separations of power issue to the extent that the chief judge's determination of the technology requirements and expenditures for the state attorneys and the public defenders could be said to be an exercise of the powers of another branch of government by the judiciary.

³ *In re: Adoption of Functional Requirements, Technical Standards & Strategic Plan*, Fla. Admin. Order No. AOSC03-16 (Apr. 8, 2003), <http://www.floridasupremecourt.org/clerk/adminorders/2003/sc03-16.pdf>.

County Funding of Court-Related Functions to Meet Local Requirements and Additional Court Personnel

The bill amends s. 29.008(2), F.S., to specify that the counties' requirement to pay reasonable and necessary costs of personnel to meet local requirements includes "benefits." The bill provides that personnel funded by a county for court-related functions under ss. 29.008 and 29.0081, F.S., shall be under the direction, control, and supervision of the chief judge. Finally, the bill requires the county to provide benefits to personnel under ss. 29.008 and 29.0081, F.S., in the same manner as other county employees and provides that they will be aggregated with other county employees for purposes of a flexible benefits plan pursuant to the Internal Revenue Code. This amendment addresses the concern that if these employees are not considered county personnel for the purposes of a flexible benefit plan, they could potentially jeopardize the tax-exempt status of the flexible benefits plan for all county employees.

Surcharges Related to Civil Penalties

The bill changes the responsibility for reporting the amount of funds collected for certain surcharges authorized under s. 318.18(13), F.S., from the clerk of the court to the county. The bill also requires that in addition to the amount of funds collected, the county shall report the amount of funds expended, and the use of those funds.

Other

Finally, the bill relocates certain provisions related to court costs to chapters that address the similar subject matter and reenacts certain statutory provisions for the purpose of incorporating amendments made by this bill.

The bill provides that it takes effect on July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent that counties do not currently provide benefits to county-funded personnel under ss. 29.008(2) and 29.0081, F.S., in the same manner as benefits are provided to other county employees, the counties may have an unfunded, indeterminate additional cost. However, s. 29.008(2), F.S., is simply a codification of article V, section 14 of the Florida Constitution. Furthermore, because s. 29.0081, F.S., only authorizes but does not require a county and the chief judge of a judicial circuit to enter into an agreement for the county to fund personnel positions to assist in the operation of the circuit, it does not mandate the county to spend funds.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

See the discussion of constitutional issues in “County Funding of Court-Related Functions,” Section III, Effect of Proposed Changes.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The amendments to s. 29.0081, F.S., conflict with the amendments to that section under Committee Substitute for Senate Bill 448.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
