

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal and Civil Justice Appropriations Committee

BILL: PCS/SB 1790

INTRODUCER: For consideration by the Criminal and Civil Justice Appropriations Committee

SUBJECT: State Judicial System

DATE: March 31, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Sadberry	JA	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill increases certain service charges, court costs, and fees. The bill reassigns the funding responsibility for court juror payments from the State Court System to the clerk of the courts.

Among the other principal changes in the bill are:

- Providing that the public defender shall provide appellate representation in criminal cases handled at trial by the criminal conflict and civil regional counsel, unless the case presents a conflict for the public defender, in which case the regional counsel or private court-appointed counsel shall handle the appeal;
- Reducing the amount – to 25 percent from 40 percent – that may be added to the amount owed, when the clerk of court pursues collection of fees, service charges, fines, court costs, and liens through a private collection attorney or collection agent;
- Requiring the clerks to report to the Office of the State Court Administrator on a quarterly basis on moneys collected and remitted to the Mediation and Arbitration Trust Fund;
- Requiring a person who seeks a determination of indigent status in order to receive court-appointed counsel in a dependency proceeding to pay a \$50 application fee;
- Creating a \$10 administrative fee to be paid for all noncriminal moving and nonmoving traffic violations under ch. 316, F.S.;
- Mandating costs of prosecution in all criminal, juvenile, and violation-of-probation or community-control case convictions; and
- Clarifying that a person is liable for the application fee for a determination of indigent status in a criminal case and that the fee may be collected through the use of a lien.

The bill substantially amends the following sections of the Florida Statutes: 27.511, 27.52, 27.562, 28.24, 28.2401, 28.241, 28.246, 28.35, 34.041, 40.24, 40.26, 40.29, 40.31, 40.32, 40.33, 40.34, 40.355, 40.361, 44.108, 45.035, 55.505, 57.082, 61.14, 318.121, 318.14, 318.15, 318.18, 322.245, 327.73, 372.83, 713.24, 721.83, 744.365, 744.3678, 766.104, 938.05, 938.27, and 938.29. The bill reenacts section 28.36 and repeals section 40.35, Florida Statutes.

II. Present Situation:

Service Charges, Court Costs, and Fees

In 1998, Florida voters approved Revision 7 to Article V of the State Constitution, which required the state to pay certain costs in the judicial system that had previously been county responsibilities. These changes were effective July 1, 2004. To that end, the Legislature defined the elements of the state courts system and assigned funding responsibilities to the state and local governments. State government began paying additional operational costs such as due process and court appointed counsel. County governments continued pay for facilities, communications, and security for the court system entities. The constitutional amendment also required the 67 county clerks of court to fund their offices using revenues derived from service charges, court costs, filing fees and fines assessed in civil and criminal proceedings. The Legislature set the amount of some service charges, court costs, and filing fees. In other cases, the Legislature set a cap on the amounts. All 67 clerks have set the maximum amounts allowed by law. To assist in collecting owed service charges, court costs, filing fees and fines, the clerks of court are authorized to use collection agents if necessary.

The Legislature established the Clerk of Courts Operations Corporation to review and approve individual clerk of court budgets. Revenues in excess of the amount needed to fund the approved clerk of court budgets are deposited in the General Revenue Fund to support the associated state costs of the judicial branch. The most recent estimate of the excess fee revenue of the clerk of courts to be deposited in the General Revenue Fund in state fiscal year 2007-08 is \$105.3 million (March 11, 2008 General Revenue Estimating Conference). State appropriations to the entities within the State Court System and the Justice Administrative Commission total \$1.26 billion in the 2007-08 fiscal year. This includes \$1.146 billion in general revenue and \$114 million in trust funds.

In addition to reviewing and approving the clerks budgets, section 28.35 (2)(c), F.S., requires the Clerk of Courts Operations Corporation to make recommendations to the Legislature on the amounts of the various court-related service charges, court costs, and fees. On January 12, 2007 and again on January 25, 2008, the Clerk of Courts Operations Corporation recommended that the legislature increase the court-related fees, service charges, and court costs. The Clerk of Courts Operations Corporation's most recent recommendation is to increase such fees by approximately 10%. With a few exceptions, the legislature has not increased court-related fees, service charges, and court costs since July 1, 2004.

To reimburse the state for the cost of prosecuting criminal cases, Florida law allows the court to order those convicted to pay such costs. The amount is determined by the court and any moneys collected are deposited in the state attorney's Grants and Donations Trust Fund. The Florida

Prosecuting Attorneys Association have recommended changes to Section 938.27, F.S., to mandate cost of prosecution in all criminal, juvenile and violation-of-probation or community-control case convictions and to set an amount of \$50 for misdemeanor, criminal traffic, or juvenile offenses and \$100 for felonies.

To reimburse the state for the cost of providing court appointed counsel, such as the public defenders, to indigent persons in criminal cases, the indigent person must pay a \$40 application fee. The clerk of court collects these fees, and the revenue is deposited in the public defenders' Indigent Criminal Defense Trust Fund. The Florida Public Defenders Association has recommended that the application fee be increased from \$40 to \$50. The fee has not been raised since 1996.

Juror and Ordinary Witness Payments

State general revenue funds to pay juror and witness payments, as well as juror meals and lodging, are appropriated to the Circuit Courts budget entity. Each clerk of court prepares quarterly estimates of the needed funds for the Office of State Courts Administrator. Based on these estimates, state funding is distributed to each clerk of courts.

Financing of Mediation Services

State funds are appropriated to the Office of State Courts Administrator and the Circuit Courts budget entity to fund court-ordered mediation. A sliding fee scale is authorized in statute to defray the cost as well as a \$1 from most county and circuit filing fees. Fees relating to mediation are deposited in the Mediation and Arbitration Trust Fund. Appropriations from the Mediation and Arbitration Trust Fund to the State Court System total \$6.5 million in the current year. The trust fund appropriations are not sufficient to pay for mediation services. To fully fund mediation, the legislature has appropriated general revenue to the State Court System.

III. Effect of Proposed Changes:

Section 1. Amends section 27.511, F.S., to clarify that the public defender appellate offices are to handle indigent criminal appeals unless there is a conflict of interest. If there is a conflict, the regional conflict counsel shall take the case. If the regional conflict counsel has a conflict of interest, the court shall appoint private counsel.

Sections 2 and 3. Amends section 27.52, F.S., to increase the application fee for a determination of whether a person is indigent and thereby entitled to court-appointed counsel in a criminal case from \$40 to \$50 and Section 3 amends section 27.562, F.S., to clarify that the fee may be collected if unpaid through the satisfaction of a lien imposed under section 938.29, F.S., and that the first \$50 collected through the lien process shall be put toward payment of this fee if it remains unpaid. See also section 40 of the bill.

Sections 4 through 6. The bill also increases multiple service charges, court costs, and fees applicable to users of the state judicial system. The table below highlights those changes.

Service Charges	Current Fee	Proposed Fee
Section 4.		
Chapter 28		
Examine	\$4.50	\$5.00
Prepare	\$3.00	\$3.50
Certify	\$1.50	\$2.00
Verify	\$3.00	\$3.50
Microfilm 16mm 100 ft roll	\$37.50	\$42.00
Microfilm 35 mm 100 ft. roll	\$52.50	\$60.00
Microfiche	\$3.00	\$3.50
Writing paper	\$6.00	\$7.00
Eminent Domain per deposit	\$150.00	\$170.00
Oaths	\$3.00	\$3.50
Validate Certificates	\$3.00	\$3.50
Exemplified Certificates	\$6.00	\$7.00
Authenticate Certificates	\$6.00	\$7.00
Issue Subpoena	\$6.00	\$7.00
Sign and Seal	\$1.50	\$2.00
Approve Bond	\$7.50	\$8.50
Search Records	\$1.50	\$2.00
Seal and Expunge Records	\$37.50	\$42.00
Receive/Distribute Restitution	\$3.00	\$3.50
Section 22.		
Chapter 45		
Foreclosure Sales	\$60.00	\$70.00
Surplus sale	\$25.00	\$28.00
Notifying surplus trustee	\$10.00	\$15.00
Disbursement of surplus proceeds	\$10.00	\$15.00
Appointing surplus trustee	\$10.00	\$15.00
Section 23.		
Chapter 55		
Foreign judgment	\$37.50	\$42.00
Section 25.		
Chapter 61		
Delinquent child support	\$7.50	\$25.00
Sections 28 and 29.		
Chapter 318		
Driver's license processing fee	\$15.00	\$18.00
Dismissal fees	\$7.50	\$10.00
Registration affidavit	\$7.50	\$10.00

Traffic administrative fee	\$0.00	\$10.00
Section 30.		
Chapter 322		
Reinstatement of drivers license	\$25.00	\$15.00
Section 33.		
Chapter 713		
Mechanics Lien	\$15.00	\$20.00
Multiple Liens	\$7.50	\$10.00
Sections 35 and 36.		
Chapter 744		
Verified inventory	\$75.00	\$85.00
Guardianship audit fees		
\$25,000 or less	\$15.00	\$20.00
\$25,000 to \$100,000	\$75.00	\$85.00
\$100,000 to \$500,000	\$150.00	\$170.00
Greater than \$500,000	\$225.00	\$250.00
Court Costs	Current Fee	Proposed Fee
Sections 27 and 29.		
Chapter 318		
Proof of compliance	\$22.00	\$25.00
Pedestrian infractions	\$3.00	\$4.00
Non-moving traffic infractions	\$16.00	\$18.00
Moving traffic infractions	\$30.00	\$35.00
Section 31.		
Chapter 327		
Dismissal	\$7.50	\$10.00
Delinquency	\$18.00	\$20.00
Swimming or diving infractions	\$3.00	\$4.00
Non-moving boating infractions	\$6.00	\$18.00
Boating infractions	\$10.00	\$35.00
Section 32.		
Chapter 372		
Dismissal cost for game, freshwater, saltwater fish license violations	\$5.00	\$10.00
Section 38.		
Chapter 938.05		
Felony	\$200.00	\$225.00

Misdemeanors	\$50.00	\$60.00
Criminal traffic	\$50.00	\$60.00
Filing Fees	Current Fee	Proposed Fee
Section 5.		
Chapter 28 Probate		
Opening estate	\$100.00	\$115.00
Caveat	\$35.00	\$40.00
Disposition of Personal Property without Admin	\$100.00	\$115.00
Summary Administration \$1,000 or more	\$200.00	\$225.00
Summary Administration less than \$1,000	\$100.00	\$115.00
Formal Admin. Guardianship, etc.	\$250.00	\$280.00
Guardianship person only	\$100.00	\$115.00
VA guardianship	\$100.00	\$115.00
Determination of Incompetency	\$100.00	\$115.00
Section 6.		
Chapter 28 Circuit Civil		
All case types	\$250.00	\$295.00
Section 10.		
Chapter 34 County Civil/Small Claims		
Claims more than \$500 to \$2,500	\$150.00	\$170.00
Claims more than \$2,500	\$250.00	\$295.00
Tenant Evictions	\$75.00	\$265.00
Section 34.		
Chapter 721.83		
Consolidation of foreclosures	\$5.00	\$10.00
Section 37.		
Chapter 766.104		
Extension in medical negligence	\$37.50	\$42.00

Section 7. Amends section 28.246, F.S., relating to the amount of the collection fee allowed to be added to balance owed in court-related fees, charges, and costs. The amount is reduced from 40 percent to 25 percent.

Section 8. Amends section 28.35, F.S., relating to the list of court related functions specified in section 28.36, F.S., that can be funded through the court of clerk budgets. Conforming changes are made to account for the payment of jurors and juror expenses by the clerks of court.

Section 9. Reenacts section 28.36, F.S., to incorporate the revisions to section 28.35, F.S. that are cross referenced.

Section 10. (see table above).

Section 11. Amends section 40.24, F.S., to require the clerk of the court to pay jurors entitled payment.

Section 12. Amends section 40.26, F.S., to require the clerk of the court to pay for juror meals and lodging when ordered by the court.

Section 13. Amends section 40.29, F.S., to delete a requirement for the clerk of the court to forward an estimate of juror-compensation costs to the Office of the State Courts Administrator to reflect the bill's transfer of the responsibility for juror payment to the clerks.

Section 14. Amends section 40.31, F.S., relating to payments to jurors and witnesses, to remove references of the Office of State Courts Administrator.

Section 15. Amends section 40.32, F.S., to state that the payment of jurors payments and expenses are court-related functions and are funded from filing fees, service charges, court costs and fines.

Section 16. Amends section 40.33, F.S., to remove the requirement that the clerk of court notify the Office of State Courts Administrator of the need for funds to pay ordinary witnesses. The section is further amended to allow the clerk of court to request funds for ordinary witnesses from the Justice Administrative Commission on behalf of the regional conflict counsels.

Section 17. Amends section 40.34, F.S., to modify the requirement that the clerk develop a payroll for payment of jurors and witnesses. Such payrolls are no longer sent to the Office of State Courts Administrator.

Section 18. Repeals section 40.35, F.S., requiring the clerk of court to account for payments of jurors and witnesses to the Office of State Courts Administrator.

Section 19. Amends section 40.355, F.S., to expand the requirement of the clerk to provide information on the state payments to witnesses to the entities under the Justice Administrative Commission to include the regional conflict counsels.

Section 20. Amends section 40.361, F.S., to conform to the bill's statutory revisions related to the payment of jurors and juror expenses.

Section 21. Amends section 44.108, F.S., to increase mediation fees. Fees for family mediation to persons with incomes greater than \$50,000, but less than \$100,000 per year are increased from \$80 to \$120. Fees for family mediation to persons with incomes less than \$50,000 are increased from \$40 to \$60. Fees for county mediation are increased from \$40 to \$60. The amendments to this section also modify the requirements that the clerk report financial information on mediation fees to the court.

Sections 22 and 23. (see table above).

Section 24. Section 57.082, F.S., is amended to require indigent persons receiving legal representation in dependency proceedings (chapter 39) to pay a \$50 application fee to the clerk. Such fees are to be sent to the Department of Revenue for deposit in the Indigent Civil Defense Trust Fund.

Section 25. (see table above).

Section 26. Section 318.121, F.S., is amended to allow the civil traffic administrative fee established by this bill in section 318.18, F.S.

Sections 27 through 38. (see table above).

Section 39. Section 938.27, F.S., is amended to mandate cost of prosecution in all criminal, juvenile and violation-of-probation or community-control case convictions. Cost of prosecution is set at no less than \$50 for misdemeanor, criminal traffic, or juvenile offenses and no less than \$100 for felonies.

Section 40. Section 938.29, F.S., is amended to clarify that the application fee assessed pursuant to section 27.52, F.S., can be paid through the collection of a lien.

Section 41. Section 28.36, F.S., is notwithstanding and the Clerk of Court Operations Corporation is prohibited from approving increases to clerk budgets based on the increased revenue generated under the bill. In addition, clerk of court budgets are authorized to increase by \$4,752,735 beginning July 1, 2008 to fund the new requirement of the clerk of court to pay jurors and ordinary witnesses.

Section 42. This act shall take effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The clerk of the court is required to pay juror payments, meals and lodging. Funding is provided for this new duty.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See table in the Effect of Proposed Changes section for increases to individual fees, service charges and costs.

Below is the estimated fiscal impact of the bill based on the increased service charges, court costs, and fees. The estimate for general revenue is based on the March 28, 2008, General Revenue Impact Conference.

Service Charges, Court Costs, and Fees	State General Revenue	State Trust Funds
Service Charges	\$41,649,275	
Court Costs	\$10,988,250	
Filing Fees	\$42,399,625	
Mediation Fees		\$8,879,319
Cost of Prosecution		\$3,613,019
Indigent Criminal Application Fee		\$1,502,100
Indigent Civil Application Fee (Ch. 39)		\$871,975
Clerk of Court Funding for Juror/Witness Payments	-\$4,752,735	
Total	\$90,284,415	\$14,886,413

B. Private Sector Impact:

The private sector will pay additional court-related service charges, court costs, and fees.

C. Government Sector Impact:

State Government:

The bill increases general revenues and certain state trust funds in the amounts listed in the table in the Tax/Fee Issues section. The 2008-09 Senate General Appropriations bill spends these increased revenues in the Criminal Justice and Judicial Branch sections by the amount listed in the table in the Tax/Fee Issues section.

Local Government:

The clerk of the court in each of the 67 counties will now pay juror payments, meals and lodging. The budgets for the clerks of court are authorized to be increased by the Clerk of Court Operations Corporation by \$4,752,735 beginning July 1, 2008.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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