

**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 Committee on Appropriations

BILL: SPB 7052

INTRODUCER: For consideration by the Appropriations Committee

SUBJECT: Clerks of the Court

DATE: April 2, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkness	Hansen		<b>Pre-meeting</b>
2.				
3.				
4.				
5.				
6.				

**I. Summary:**

SPB 7052 makes substantial changes to the clerks of court funding and operations by removing the clerk from the state budget process while restoring some budgetary functions and procedures in place in the statutes prior to the enactment of chapter 2009-06, Laws of Florida.

This bill has a negative \$46.4 million impact to general revenue and redirects those revenues to the Clerks of the Court Trust Fund (COCTF).

This bill has an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 11.90, 28.241, , 28.246, 28.35, 28.36, 28.37, 34.041, 43.16, 142.01, 213.131, and 215.22.

The bill creates section 28.365, Florida Statutes.

The bill repeals section 28.2455, Florida Statutes.

**II. Present Situation:**

**Revision 7 to Article V of the Florida Constitution**

Article V of the Florida Constitution establishes the judicial branch of state government, including the trial and appellate courts. The constitution also describes the responsibilities and functions of officials involved in the courts system, including judges, state attorneys, public

defenders, and the clerks of the court. To that end, “[t]hese elected independent officials interact as part of a complex interdependent system.”<sup>1</sup>

In 1998, voters approved a revision to Article V, referenced as Revision 7, which allocated more state court costs to the state.<sup>2</sup> Subsequent to that revision, Article V, section 14 of the Florida Constitution specifies the state and county responsibilities for funding the state courts system by providing that the Supreme Court and the District Courts of Appeal must be fully funded by the state, and the trial courts (the circuit and county courts) are jointly funded by the state and counties. Article V, section 14(b) provides that:

All 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:

No county or municipality, except as provided in this subsection, shall be required to provide any funding for . . . the offices of clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, . . . the cost of construction or lease, . . . and security of facilities for . . . the offices of the clerks of the circuit and county courts performing court-related functions.

#### *Clerks’ Court-Related Functions*

Pursuant to authority granted in Article V, section 14(b) of the Florida Constitution, the list of court-related functions clerks may perform is limited to those functions expressly authorized by statute or court rule and must include the following:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Processing the assignment, reopening, and reassignment of cases;
- Processing of appeals;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing of bond forfeiture payments;
- Payment of jurors and witnesses;
- Payment of expenses for meals or lodging provided to jurors;
- Data collection and reporting;

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<sup>1</sup> Office of Program Policy Analysis and Government Accountability, *Many Article V Trial Courts Funding Issues Still Need to Be Resolved*, Report No. 01-54, 1 (Nov. 2001).

<sup>2</sup> *Id.* at 2.

- Processing of jurors;
- Determinations of indigent status; and
- Reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.<sup>3</sup>

The list of functions clerks may not fund from state appropriations include:

- Those functions not listed above;
- Functions assigned by administrative orders which are not required for the clerk to perform the functions listed above;
- Enhanced levels of service which are not required for the clerk to perform the functions listed above; and
- Functions identified as local requirements in law or local optional programs.<sup>4</sup>

### **Post-Article V: 2004-2008**

This section describes the law relating to the clerks of court after legislation was passed to implement the changes to Article V and prior to the 2009 legislation.

On or before August 15 of each fiscal year, each county clerk prepared a proposed budget which was submitted to the Florida Clerks of Court Corporation (Corporation). The budget provided detailed information on the anticipated revenues and expenditures necessary for the performance of their court-related functions. The proposed budget was to be balanced, with estimated revenues equaling or exceeding anticipated expenditures.<sup>5</sup> Upon review and certification of the individual clerk of court budgets by the Clerks of Court Operations Corporation, revenue in excess of the amount needed to fund each approved clerk of court budget was to be deposited in the General Revenue Fund.

If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, the clerk was to report a revenue deficit to the Corporation. If the Corporation verified that the proposed budget exceeded anticipated revenues and a deficit was projected, a clerk was to increase all fees, service charges, and any other court-related clerk fees and charges to the maximum amounts specified by law to resolve the deficit. If the clerk raised fees, services charges, and any other court-related clerk fees to the maximum amounts but still had a deficit, the Corporation would notify the Department of Revenue (DOR) that the clerk was authorized to retain revenues in an amount necessary to fully fund the projected deficit. If a deficit still existed after retaining all of the projected collections from court-related fines, fees, service charges, and costs, the Department of Revenue would certify the amount of the deficit to the Executive Office of the Governor and request the release of funds from the Department of Revenue Clerks of the Court Trust Fund.<sup>6</sup>

Prior to the passage of SB 2108 in the 2009 Legislative Session, the clerks of court were allowed to retain portions of the moneys collected from filing fees, service charges, court costs, and fines, while other portions were distributed to the General Revenue Fund or other trust funds. The

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<sup>3</sup> Section 28.35(3)(a), F.S.

<sup>4</sup> Section 28.35(3)(b), F.S.

<sup>5</sup> Section 28.36(3), F.S. (2008).

<sup>6</sup> Section 28.36(4), F.S. (2008).

clerks were required to remit one-third of all fines, fees, service charges, and costs collected for court-related functions to the Department of Revenue for deposit in the Department of Revenue Clerks of the Court Trust Fund.<sup>7</sup> The Department of Revenue would then transfer funds in the Clerks of the Court Trust Fund not needed to resolve clerk deficits to the General Revenue Fund.

### *Florida Clerks of Court Operations Corporation*

The Corporation had responsibility for the certification of the clerks' budget. Specific tasks included:

- Calculating the maximum authorized annual budget;
- Identifying those proposed budgets exceeding the maximum annual budget for the standard list of court-related functions;
- Identifying those proposed budgets containing funding for items not included on the standard list of court-related functions; and
- Identifying those clerks projected to have court-related revenue insufficient to fund their anticipated court-related expenditures.<sup>8</sup>

The Corporation, by October of each year, certified to the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Department of Revenue, the amount of the proposed budget for each clerk; the revenue projection supporting each clerk's budget; each clerk's eligibility to retain some or all of the state's share of fines, fees, service charges, and costs; the amount to be paid to each clerk from the Clerks of the Court Trust Fund within the Department of Revenue; the performance measures and standards approved by the Corporation for each clerk; and the results of each clerk's performance on the performance measures and standards.

### *Legislative Budget Commission*<sup>9</sup>

The Legislative Budget Commission (LBC) had authority to approve increases to the maximum annual budgets approved for individual clerks if:

- The additional funding was necessary to pay the cost of performing new or additional functions required by changes in law or court rule.
- The additional funding was necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature.<sup>10</sup>

## **Chapter 2009-204, Laws of Florida**

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court and the Corporation, the Legislature passed SB 2108 during the 2009 legislative session. This bill substantially amended the statutory budget process and procedures for these

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<sup>7</sup> Section 28.37(2), F.S. (2008).

<sup>8</sup> See s. 28.35(1)(f), F.S. (2008).

<sup>9</sup> The Legislative Budget Commission (LBC) is comprised of seven members appointed by the Senate President, and seven members appointed by the Speaker of the House. The LBC, among other things, approves budget amendments during the interim between sessions. See generally Section 11.90, F.S.

<sup>10</sup> See s. 28.36(6), F.S. (2008).

entities, most noticeably by bringing the clerks and the Corporation into the state budget and appropriating their funding in the annual General Appropriations Act. While employees of the individual clerk offices remained local government employees, staff with the Corporation became state full-time equivalent employees.

Chapter 2009-204, Laws of Fla., provides that all revenues received by the clerk in the fine and forfeiture fund from court-related fees, fines, costs and service charges are considered state funds and are remitted to the Department of Revenue for deposit in to the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).<sup>11</sup> The clerk is, however, allowed to deposit ten percent of all court-related fines in his or her Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.<sup>12</sup>

### *Florida Clerks of Court Operations Corporation*

Under the 2009 legislation, the Corporation is considered a political subdivision of the state and is exempt from corporate income tax.<sup>13</sup> The Corporation is administratively housed within the Justice Administrative Commission and its employees are considered state employees. Additionally, the Corporation is not subject to control, supervision, or direction by the JAC in the performance of its duties, but the employees of the Corporation are governed by the classification plan and salary and benefits plan of the JAC. All clerks of the circuit court are members of the Corporation and hold their position and authority in an ex officio capacity.<sup>14</sup> The Corporation's functions include:

- Developing and certifying a uniform system of performance measures and applicable performance standards and the service unit cost;
- Identifying deficiencies and corrective action plans when clerks fail to meet performance standards;
- Notifying the Legislature and the Supreme Court of any clerk not meeting performance standards and providing a copy of any correction action plan to the Legislature and Supreme Court;
- Recommending to the Legislature changes in the various court-related fines, fees, service charges, and court costs established by law to ensure reasonable and adequate funding of the clerks of court in the performance of their court-related functions;
- Developing the performance measures and performance standards in consultation with Legislature and the Supreme Court; and
- Reviewing proposed budgets submitted by the clerks of the court.<sup>15</sup>

The Corporation prepares a legislative budget request for the resources necessary to perform its duties and submits the request pursuant to chapter 216, and is funded as a budget entity each year in the General Appropriations Act.<sup>16</sup>

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<sup>11</sup> Section 28.37(2), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 28.35(1)(c), F.S.

<sup>14</sup> Section 28.35(1)(a), F.S.

<sup>15</sup> Section 28.35(2), F.S.

<sup>16</sup> Section 28.35(4), F.S.

### *Budget procedure*

Under the statutory changes made in 2009, by October 1 of each fiscal year, each county clerk prepares a budget request for the last quarter of the county fiscal year (July 1 – September 30) and the first three quarters of the next county fiscal year (October 1 – June 30) and submits it to the Corporation and provides a copy of the budget request to the Supreme Court.<sup>17</sup>

Each clerk is required to submit in his or her budget request the number of personnel and the proposed budget for each of the following core services:<sup>18</sup>

- Circuit criminal;
- County criminal;
- Juvenile delinquency;
- Criminal traffic;
- Circuit civil;
- County civil;
- Civil traffic;
- Probate;
- Family; and
- Juvenile dependency.

The budget request must identify the service units to be provided within each core service and must propose a unit cost for each service unit.<sup>19</sup>

The Corporation is required to compare the proposed unit costs for a given clerk to that of a peer group based on counties with similar sized population and case filings. If the proposed unit costs are higher than for a clerk's peers, the clerk must justify the increased costs. Justification may include collective bargaining agreements, county civil service agreements, and the number and distribution of court houses. If the Corporation finds that the increased costs are not justified, the Corporation reduces the unit cost to the average of its peers.<sup>20</sup> The Corporation recommends to the Legislature the unit costs for each clerk and a statewide budget amount for the clerks by December 1. The Chief Financial Officer (CFO) is required to review unit costs proposed by the Corporation and make recommendations to the Legislature and, if necessary, may conduct an audit of a clerk or the Corporation.<sup>21</sup> The Legislature may reject or modify the proposed unit costs, and appropriates the total amount of the clerk budgets in the General Appropriations Act.<sup>22</sup>

In the 2010 session, legislation was passed which adjusted the way that the clerk's budget was released. Beginning in the 2010-2011 fiscal year, the Corporation was required to release appropriations to each clerk quarterly. If funds in the Clerks of Court Trust Fund are insufficient to provide a release in a quarter in a single release, the Corporation may release partial amounts for that quarter so long as the total of those partial amounts does not exceed that quarter's

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<sup>17</sup> Section 28.36(1), F.S.

<sup>18</sup> The core services listed in statute were changed during the 2010 session. (ch. 2010-162, s. 14) Prior to this change, the following core services were listed: case processing; financial processing; jury management; information and reporting.

<sup>19</sup> Section 28.36(4) and (5), F.S.

<sup>20</sup> Section 28.36(6), F.S.

<sup>21</sup> Section 28.36(8), F.S.

<sup>22</sup> Section 28.36(9), F.S.

release. If funds in the Clerks of Court Trust Fund are insufficient for the first quarter release, the Corporation may make a request to the Governor for a trust fund loan pursuant to chapter 215. The amount of the first three releases shall be based on one quarter of the estimated budget for each clerk as identified in the General Appropriations Act.<sup>23</sup>

The Corporation is required to estimate the fourth quarter's number of units to be performed by each clerk. The amount of the fourth-quarter release is to be adjusted downward if the clerk has performed fewer service units in the first three quarters of the year compared to three quarters of the estimated number of service units in the General Appropriations Act.

### **III. Effect of Proposed Changes:**

Generally, this bill reverses many of the changes made in SB 2108 during the 2009 legislative session relating to the budgets of the clerks of court, but expands the role of the LBC by creating oversight and accountability in the clerks' budget process. Specifically, this bill:

- Transfers the Clerks of the Court Trust Fund (COCTF) to the Department of Revenue, and transfers the balances.
- Redirects \$65 of the Circuit Other, Circuit Foreclosure, and County Civil filing fees from General Revenue to the COCTF.
- Redirects \$5.00 of the filing fee currently collected for trial and appellate proceedings so that \$1 is remitted to the Department of Financial Services for performing clerk audits and the \$4 is remitted to the Corporation for operations funding.
- Provides that each month a clerk must submit a portion of filing fees collected in the prior month that is in excess of one-twelfth of the clerk's total budget to Department of Revenue for deposit into the department's Clerks of the Court Trust Fund.
- Changes references for deposits from the Justice Administrative Commission to the Department of Revenue.
- Provides that the revenue in excess of that needed to fund the authorized budgets for the clerks be transferred from the COCTF to the General Revenue Fund each January, unless the Revenue Estimating Conference's official estimate of the funds accruing to the COCTF prepared for the current fiscal year or the next fiscal year is less than the total budgeted amount from the COCTF for the current fiscal year.
- Requires the clerks of court to submit annual budget requests to the Corporation.
- Requires the Corporation to submit each of the clerks' annual budget requests to the Legislative Budget Commission.
- Authorizes the LBC to review, approve, disapprove or amend and approve the clerks of courts' budgets by October 1 of each year.
- Defines workload measures and workload performance standards.
- Requires the Corporation to contract with DFS for audits of the court-related budgets of individual clerks.
- Requires the Corporation to base its revenue estimates on the official Revenue Estimating Conference estimate.
- Outlines the budget procedures for calculating the clerks' budget, and the mechanism for counties with projected revenue deficits to request for additional funds from the COCTF.

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<sup>23</sup> Section 28.36(10), F.S.

- Repeals the provisions requiring the clerks to submit a budget based on core services and unit costs.
- Repeals the provisions requiring the Corporation to develop performance measures and standards in consultation with the Supreme Court.
- Requires the clerks of court and the Corporation to adhere to the procurement provisions of chapter 287, F.S.
- Provides an authorized budget amount for the clerks and the Corporation for the period beginning July 1, 2013 and ending September 30, 2013.
- Provides an authorized budget amount for the clerks and the Corporation for the county fiscal year beginning October 1, 2013 and ending September 30, 2014.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

This bill will have an estimated net negative impact to the General Revenue Fund of \$46.4 million in Fiscal Year 2013-2014.

Additionally, the bill removes the funding for the clerks of court from the General Appropriations Act and transfers the COCTF in the Justice Administrative Commission to the Department of Revenue. Removing the clerks from the budget will reduce state trust fund expenditures by \$443 million in Fiscal Year 2013-2014.

The bill redirects \$65 of Other Circuit, Circuit Foreclosure and County Civil filing fees from the General Revenue Fund to the COCTF. In addition, the COCTF is exempted from the eight percent service charge payable to the General Revenue Fund. The loss of the service charge from the COCTF will reduce general revenue by \$32.8 million in Fiscal Year 2013-2014.



For the 2012-2013 Fiscal Year, the Legislature appropriated \$25 million in recurring general revenue directly to the clerks of the court. Eliminating this appropriation will offset the reductions to general revenue.

The following chart summarizes the impact of the bill to the General Revenue Fund (GR):

Redirection of \$65 of filing fees to COCTF	\$38.6 million loss to GR
Elimination of 8% GR service charge	\$32.8 million loss to GR
Elimination of current recurring GR funding	\$25.0 million gain to GR
<b>Total General Revenue impact for FY 2013-2014</b>	<b>\$46.4 million loss to GR</b>

Based on the redirect of filing fees and the Revenue Estimating Conference's February 6, 2013 projections, the COCTF will receive a total of \$459.0 million in Fiscal Year 2013-2014, which will adequately fund the clerks of court to carry out their duties as required by law.<sup>24</sup>

**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.

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

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<sup>24</sup> The bill's funding plan provides for a three-month funding appropriation for the first quarter of state fiscal year 2013-2014 and funds the clerks on a county fiscal year beginning October 1, 2013. The anticipated revenues for July-Sept. 2013 will be \$111.7 million, enough to support the authorized budget of \$110.8 million in section 10 of the bill. The anticipated revenues for county fiscal year 2013-2014 will be \$455.1 million, enough to support the authorized budget of \$443.8 million in section 10 of the bill.