

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 Judiciary

BILL: SB 1080

INTRODUCER: Senator Dean

SUBJECT: Clerks of the Circuit Court

DATE: March 23, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Cibula	JU	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 1080 makes changes to the process for remitting funds received from court fees and payment of certain court related costs by the clerks of the circuit court. More specifically, the bill:

- Redirects revenue from the filing fee for pleadings in certain civil actions in circuit court from the General Revenue Fund to the fine and forfeiture fund.
- Revises the list of court-related functions that clerks may fund from filing fees, service charges, costs, and fines.
- Reduces the amount of transfer of excess funds from the Clerks of the Court Trust fund to the General Revenue fund if certain deficits are estimated.
- Restricts excess fund transfers to costs submitted for the previous county fiscal year.
- Transfers responsibility for payment of jury-related costs from the clerk of court to the state.
- Requires each clerk of court to forward quarterly estimates on jury-related costs to the Justice Administrative Commission and authorizes the commission to issue a certificate to the clerk of the court if apportioned funds are insufficient to cover such costs.
- Authorizes a clerk of court to request additional funds from the Justice Administrative Commission to pay due-process costs in the event of a deficiency.
- Requires a clerk of court to meet the triplicate payroll requirements for the payment of jurors.
- Redirects a portion of the revenue from the civil penalty for certain traffic infractions from the General Revenue Fund to the fine and forfeiture fund.
- Revises the distribution and payment of certain civil penalties received by a county court.
- Retroactively redirects revenue from fines when adjudication is withheld from the General Revenue fund to the fine and forfeiture fund.
- Requires clerks to submit jury-related cost estimates to the Justice Administrative Commission for the 2014-2015 county fiscal year.

In addition, the bill specifies the authorized budget for clerks of the circuit court for the 2015-2016 county fiscal year.

II. Present Situation:

Court-Related Functions

Pursuant to authority granted in Article V, s. 14(b) of the Florida Constitution, the list of court-related functions clerks may fund from filing fees, service charges, court costs, and fines 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;
- 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.¹

The list of functions clerks may not fund from filing fees, service charges, court costs, and fines includes:

- 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.²

Section 28.2401, F.S., prescribes the service charges and filing fees for specific services. The section also provides for exceptions, additional service charges, and when recording of certain are required.

Pursuant to Article V, s. 14(b) of the State Constitution, selected salaries, costs, and expenses of the state courts system and court-related functions are funded from a portion of the revenues derived from statutory fines, fees, service charges, and costs collected by the clerks of the court. Consistent with the constitutional mandate, a portion of all fines, fees, service charges, and costs collected for the previous month which is in excess of one-twelfth of the clerks' total budget for the performance of court-related functions must be remitted to the department for deposit into the Clerks of the Court Trust Fund. The collections do not include funding received for the operation

¹ Section 28.35(3)(a), F.S.

² Section 28.35(3)(b), F.S.

of the Title IV-D child support collections and disbursement program. The clerk of the court must remit the revenues collected during the previous month due to the state on or before the 10th day of each month.³

By January 25 of each year, for the previous county fiscal year, the clerks of court, in consultation with the Florida Clerks of Court Operations Corporation (corporation), must remit to the Department of Revenue (department) for deposit in the General Revenue Fund the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of the court, plus any funds received by the clerks of the court from the Clerks of the Court Trust Fund,⁴ which exceed the amount needed to meet their authorized budget amounts established under s. 28.35, F.S. The department must transfer from the Clerks of Court Trust Fund to the General Revenue Fund the cumulative excess of all fines, fees, service charges, and costs submitted by the clerks of court. However, if the official estimate for funds accruing to the clerks of court made by the Revenue Estimating Conference for the current fiscal year or the next fiscal year is less than the cumulative amount of authorized budgets for the clerks of court for the current fiscal year, the department must retain in the Clerks of the Court Trust Fund the estimated amount needed to fully fund the clerks of court for the current and next fiscal year based upon the current established budget.⁵

The department must collect any funds that the corporation determines upon investigation were due but not remitted to the department. The corporation must notify the clerk of the court and the department of the amount due to the department. The clerk of court must remit the amount due no later than the 10th day of the month following the month in which notice is provided by the corporation to the clerk of court.⁶

Florida Clerks of Court Operations Corporation

To provide accountability for the revenues collected by the clerks of the court, the Legislature created the corporation.⁷ The corporation is considered a political subdivision of the state and is exempt from corporate income tax.⁸ All clerks of the circuit court are members of the corporation and hold their position and authority in an ex officio capacity.⁹ The corporation's duties include:

- Adopting a plan of operation.
- Conducting the election of an executive council.
- Recommending to the Legislature changes in the amounts of the various court-related fines, fees, service charges, and costs established by law to ensure reasonable and adequate funding of the clerks of the court in the performance of their court-related functions.
- Developing and certifying a uniform system of performance measures and applicable performance standards.

³ Section 28.37(1) and (2), F.S.

⁴ See, s. 28.36(3), F.S.

⁵ Section 28.37(3), F.S.

⁶ Section 28.37(4), F.S.

⁷ Section 28.35, F.S.

⁸ Section 28.35(1)(c), F.S. The corporation is funded pursuant to contract with the Chief Financial Officer. Funds are provided to the Chief Financial Officer for this purpose as appropriated by general law. Section 28.35(5), F.S.

⁹ Section 28.35(1)(a), F.S.

- Identifying deficiencies and corrective action plans when clerks fail to meet performance standards.
- Entering into a contract with the Department of Financial Services for the department to audit the court-related expenditures of individual clerks.
- Reviewing, certifying, and recommending proposed budgets submitted by clerks of the court. As part of this process, the corporation must:
 - Calculate the minimum amount of revenue necessary for each clerk of the court to efficiently perform the list of court-related functions. The corporation must apply the workload measures appropriate for determining the individual level of review required to fund the clerk's budget.
 - Prepare a cost comparison of similarly situated clerks of the court, based on county population and numbers of filings, using the standard list of court-related functions.
 - Conduct an annual base budget review and an annual budget exercise examining the total budget of each clerk of the court.
 - Identify those proposed budgets containing funding for items not included on the standard list of court-related functions.
 - Identify those clerks projected to have court-related revenues insufficient to fund their anticipated court-related expenditures.
 - Use revenue estimates based on the official estimate for funds accruing to the clerks of the court made by the Revenue Estimating Conference.
 - Identify and report pay and benefit increases in any proposed clerk budget, including, but not limited to, cost of living increases, merit increases, and bonuses.
 - Provide detailed explanation for increases in anticipated expenditures in any clerk budget that exceeds the current year budget by more than 3 percent.
 - Identify and report the budget of any clerk which exceeds the average budget of similarly situated clerks by more than 10 percent.¹⁰
- Developing and conducting clerk education programs.
- Submitting to the Legislative Budget Commission on or before August 1 of each year its proposed budget and the required information as well as the proposed budgets for each clerk of the court. Before October 1 of each year, the Legislative Budget Commission must consider the submitted budgets and approve, disapprove, or amend and approve the corporation's budget and approve, disapprove, or amend and approve the total of the clerks' combined budgets or any individual clerk's budget. If the Legislative Budget Commission fails to approve or amend and approve the corporation's budget or the clerks' combined budgets before October 1, the clerk must continue to perform the court-related functions based upon the clerk's budget for the previous county fiscal year.¹¹

Payment for Juries and Due Process Costs

The Justice Administrative Commission (JAC or commission) is created under s. 43.16, F.S. Its members are appointed and consist of two state attorneys and two public defenders.¹² The commission's duties include maintaining a central state office for administrative services and assistance to and on behalf of the state attorneys and public defenders, the capital collateral

¹⁰ Section 28.35(2)(f)1.-9., F.S.

¹¹ Section 28.35,(2)(a)-(h)

¹² Section 43.16(2), F.S.

regional counsel, the criminal conflict and civil regional counsel, and the Guardian Ad Litem Program.¹³

Chapter 40, F.S. provides for juries, their payment, and due process costs. The chief judge of each judicial circuit is authorized and responsible for the management, operation, and oversight of the jury system. The clerk of the circuit court is delegated specific responsibilities regarding the processing of jurors, including qualifications, summons, selection lists, reporting, and compensation of jurors. The clerk of the circuit court may contract with the chief judge for the court's assistance in the provision of services to process jurors. The chief judge may also designate to the clerk of the circuit court additional duties consistent with established uniform standards of jury management practices that the Supreme Court adopts by rule or issues through administrative order.¹⁴ The chapter provides for the compensation and reimbursement of jurors from the clerk of the circuit court,¹⁵ the payment for meals and lodging of jurors when ordered by the court,¹⁶ and the payment of due process costs which includes payments for witnesses used in specified proceedings.¹⁷

Chapter 40, F.S., also provides for the payment process for jury and due process related costs. Juror service is defined and eligibility criteria for payment to jurors for service is provided. Such payments are to be made by the clerk of the circuit court.¹⁸ In addition, expenses for meals and lodging provided to juries when required by order of the court must be paid by the clerk of the circuit court.¹⁹

Each clerk of the circuit court is required to forward to the JAC a quarterly estimate of funds necessary to pay for ordinary witnesses, including witnesses in civil traffic cases and witnesses for the state attorney, the public defender, criminal conflict and civil regional counsel, private court-appointed counsel, and persons determined to be indigent for costs. The estimates must be by county and on behalf of the state attorney, private court-appointed counsel, the public defender, and the criminal conflict and civil regional counsel. The commission must advance funds to each clerk to pay for the ordinary witnesses from state funds specifically appropriated for such payment. The funds must be advanced each quarter of the state fiscal year and be based upon the estimates. When the JAC receives the estimate, it must endorse the amount deemed necessary for payment by the clerk of the court during the quarterly fiscal period and must submit a request for payment to the Chief Financial Officer (CFO). The clerk of the court must pay all invoices approved and submitted by each state attorney, private court-appointed counsel, the public defender, and the criminal conflict and civil regional counsel upon receipt of the funds from the CFO. The JAC must pay all due process service related invoices after review for compliance with applicable rates and requirements,²⁰ that were submitted by the state attorney, private court-appointed counsel, the public defender, and the criminal conflict and civil regional

¹³ Section 43.16(5)(b), F.S.

¹⁴ Section 40.001, F.S.

¹⁵ Section 40.24, F.S.

¹⁶ Section 40.26, F.S.

¹⁷ Section 40.29, F.S.

¹⁸ Section 40.24, F.S.

¹⁹ Section 40.26, F.S.

²⁰ *See*, ss. 29.005, 29.006, and 29.007, F.S.

counsel.²¹ If the funds required for payment of witnesses in civil traffic cases and witnesses of the state attorney, the public defender, criminal conflict and civil regional counsel, private court-appointed counsel, and persons determined to be indigent for costs in any county during a quarterly fiscal period exceeds the amount of the funds received from the CFO,²² the state attorney, public defender, or criminal conflict and civil regional counsel, as applicable, must make a further request upon the JAC for the amount necessary to allow for full payment.²³

If the JAC has reason to believe that the amount appropriated by the Legislature is insufficient to meet the expenses of witnesses during the remaining part of the state fiscal year, the commission may apportion the money in the treasury for that purpose among the several counties, basing the apportionment upon the amount expended for the payment of witnesses in each county during the prior fiscal year. In such case, each county is paid by warrant, issued by the CFO, only the amount so apportioned to each county. If the amount apportioned is insufficient to pay in full all the witnesses during a quarterly fiscal period, the clerk of the court must apportion the money received pro rata among the witnesses entitled to pay and give to each witness a certificate of the amount of compensation still due. The commission must hold the certificate as it holds other demands against the state.²⁴

All moneys drawn from the treasury by the clerk of the court must be disbursed by the clerk of the court as far as needed in payment of witnesses, except for expert witnesses paid under a contract or other professional services agreement,²⁵ for the legal compensation for service during the quarterly fiscal period for which the moneys were drawn and for no other purposes. The payment of jurors and the payment of expenses for meals and lodging for jurors are court-related functions that the clerk of the court must fund from filing fees, service charges, court costs, and fines as part of the maximum annual budget under ss. 28.35 and 28.36, F.S.²⁶

All moneys drawn from the treasury by the clerk of the court must be disbursed by the clerk of the court as far as needed in payment of witnesses, except for expert witnesses paid under a contract or other professional services agreement,²⁷ for the legal compensation for service during the quarterly fiscal period for which the moneys were drawn and for no other purposes.²⁸ The clerk of the court must pay jurors and witnesses in cash, by check, or by warrant within 20 days after completion of jury service or completion of service as a witness. If the clerk of the court pays a juror or witness by cash, the juror or witness must sign the payroll in the presence of the clerk, a deputy clerk, or some other person designated by the clerk. If the clerk pays a juror or witness by warrant, he or she must endorse on the payroll opposite the juror's or witness's name the words "paid by warrant," giving the number and date of the warrant.²⁹ Clerks of the court are required to make out a payroll in triplicate for the payment of witnesses. The payroll is required to contain the name of the witness, the number of days for which the witnesses are entitled to be

²¹ Section 40.29, F.S.

²² *See*, s. 40.29(3), F.S.

²³ Section 40.33, F.S.

²⁴ Section 40.31, F.S.

²⁵ *See*, ss. 29.004, 29.005, 29.006, and 29.007, F.S.

²⁶ Section 40.32(1) and (2), F.S.

²⁷ Sections. 29.004, 29.005, 29.006, and 29.007, F.S.

²⁸ Section 40.32(1), F.S.

²⁹ Section 40.32(3), F.S.

paid, the number of miles traveled by each, and the total compensation each witness is entitled to receive. Compensation paid a witness must be attested as provided in s. 40.32, F.S. The payroll must be approved by the signature of the clerk, or his or her deputy, except for the payroll as to witnesses appearing before the state attorney, which payroll must be approved by the signature of the state attorney or an assistant state attorney.³⁰

Fine and Forfeiture Fund

The clerk of the circuit court in each county of this state is required to establish a separate fund known as the fine and forfeiture fund for use by the clerk of the circuit court in performing court-related functions. The fund consists of the following:

- Fines and penalties pursuant to ss. 28.2402(2), 34.045(2), 316.193, 327.35, 327.72, 379.2203(1), and 775.083(1), F.S.
- That portion of civil penalties directed to this fund pursuant to s. 318.21, F.S.
- Court costs pursuant to ss. 28.2402(1)(b), 34.045(1)(b), 318.14(10)(b), 318.18(11)(a), 327.73(9)(a) and (11)(a), and 938.05(3), F.S.
- Proceeds from forfeited bail bonds, unclaimed bonds, unclaimed moneys, or recognizances pursuant to ss. 321.05(4)(a), 379.2203(1), and 903.26(3)(a), F.S.
- Fines and forfeitures pursuant to s. 34.191, F.S.
- Filing fees received pursuant to ss. 28.241 and 34.041, F.S., unless the disposition of such fees is otherwise required by law.
- All other revenues received by the clerk as revenue authorized by law to be retained by the clerk.

Notwithstanding the foregoing, all fines and forfeitures arising from operation of s. 318.1215, F.S., must be disbursed in accordance with that section.

III. Effect of Proposed Changes:

Section 1 amends s. 28.241, F.S., to require the clerk to deposit fees from certain parties who file a pleading in an original civil action in circuit court for affirmative relief by cross-claim, counterclaim, counterpetition, or third-party complaint into the fine and forfeiture fund established pursuant to s. 142.01, F.S., instead of remitting the fee to the department for deposit into the General Revenue Fund.

Section 2 amends s. 28.35, F.S., to remove payment of jurors and witnesses, payment of expenses for meals or lodging provided to jurors, and processing of jurors, from the list of court-related functions that clerks may fund from filing fees, services, charges, costs, and fines.

Section 3 amends s. 28.37, F.S., to require the clerks of court, each year, no later than January 25, for the previous county fiscal year, in consultation with the Florida Clerks of Court Operations Corporation, to remit to the Department of Revenue for deposit into the Clerks of the Court Trust fund (instead of the General Revenue Fund) the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of the court. In addition, the clerks of the court must remit any funds received by the clerks of the court from the Clerks of the Court Trust fund under s. 28.36(3), F.S., which exceed the amount needed under s. 28.35, F.S. The department is

³⁰ Section 40.34, F.S.

required to transfer from the Clerks of the Court Trust Fund to the General Revenue Fund the cumulative excess of all fines, fees, service charges and costs submitted by the clerks of court for the previous fiscal year. Current law requires only the portion of all fines, fees, service charges, and costs collected by the clerks of the court for the previous month which is in excess of one-twelfth of the clerks' total budget for the performance of court-related functions. Collections received for the operation of Title IV-D child support collections and disbursement program are not included in the remittance to the department for deposit into the Clerks of the Court Trust Fund. Changes by the bill do not appear to include this exclusion. The bill provides that if the official estimate for funds accruing to the clerks of court made by the Revenue Estimating Conference for the current fiscal year or the next 2 fiscal years, instead of the next year, is less than the cumulative amount of authorized budgets for the clerks of court for the current fiscal year, the department is required to retain the estimated amount needed to fully fund the clerks of court for the current and next 2 fiscal years based upon the current budget.

Sections 4 and 5 amend ss. 40.24 and s. 40.26, F.S., to make the state, instead of the clerk of the circuit court, responsible for the compensation and of jurors and the payments for their meals and lodging expenses, which are required by court order.

Section 6 amends s. 40.29, F.S., to require each clerk of the circuit court to also forward to the Justice Administrative Commission a quarterly estimate of funds necessary to pay jury-related costs, including juror compensation and personnel and operational costs of the clerk directly related to jury management. The clerk of the circuit court is added to the list of entities that the Justice Administrative Commission must pay who submit invoices related to due process services and juries that have been reviewed and comply with applicable rates and requirements.

Section 7 amends s. 40.31, F.S., to require the commission to give each clerk a certificate of the amount still due for jury-related costs when the amount apportioned is insufficient to pay for those costs in full. The bill requires the certificate to be held by the commission as other demands against the state.

Section 8 amends s. 40.32, F.S., to conform this section to the changes in the bill relating to payment of jurors. Clerks of the court may use moneys drawn from the treasury under the provisions of ch. 40, F.S., for payment of jurors. The requirement that clerks of the court pay jurors and expenses for meals and lodging from filing fees, service charges, court costs, and fines is deleted.

Section 9 amends s. 40.32, F.S., to include clerks of the circuit court to the list of entities that may make a further request of the Justice Administrative Commission for funds necessary to make full payment of certain items if there is a deficiency in the funds required during a quarterly fiscal period.

Section 10 amends s. 40.34, F.S., to allow the clerk of the court to also make payments to jurors. When making these payments the clerk of the court must follow the requirements prescribed in the section.

Section 11 amends s. 318.18, F.S., relating to penalties required for certain noncriminal and criminal dispositions to revise the depository into which certain additional civil penalty payments

and \$30 of a fine when a driver has failed to stop at a traffic signal and when enforced by a law enforcement officer must be made to the fine and forfeiture fund established pursuant to s. 142.01, F.S., from the General Revenue fund. In addition, the provision declaring that of the \$16 civil penalty, \$4 is not revenue for purposes of s. 28.26, F.S., and may not be used in establishing the budget of the clerk of court is removed.

Section 12 amends s. 318.21, F.S., which provides for the disposition of civil penalties by county courts by revising the percentages of certain traffic infraction remittances. After \$2 of each civil penalty is remitted to the department for the Child Welfare Training and the Juvenile Justice Training Trust Funds, of the remainder 20.6 percent must be remitted to the Department of Revenue for deposition into the General Revenue Fund with the exception that the first \$300,000 be deposited into the Grants and Donations Trust Fund for specified purposes. The bill reduces the 20.6 percent to 0.6 percent. In addition, the 0.5 percent to be paid to the clerk of the court for administrative costs is increased to 20.5 percent and must be deposited into the fine and forfeiture fund established pursuant to s. 142.01, F.S.

Section 13 amends s. 775.083, F.S., that requires a person who has been convicted of an offense other than a capital felony to pay a fine in addition to any punishment, to delete the requirement that the clerk shall remit fines imposed when adjudication is withheld to the department for deposit into the General Revenue Fund.

Section 14 provides that the amendments to ss. 40.24, 40.26, 40.29, 40.31, 40.32, 40.33, and 40.34, F.S., apply retroactively to October 1, 2014.

Section 15 provides that for the 2015-2016 county fiscal year beginning October 1, 2015, and ending September 30, 2016, the total approved budgets for the clerks of the circuit court shall be \$460 million of their total collected revenues for the 2015-2016 county fiscal year. The Florida Clerks of Court Operations Corporation shall determine budget allocations for individual clerks of the circuit court for that fiscal year.

Section 16 provides that in order to implement the amendments made by the act to ss. 40.24, 40.26, 40.29, 40.31, 40.32, 40.33, and 40.34, FS., for the entire 2014-15 county fiscal year, notwithstanding any provision of law related to quarterly submissions, clerks of the circuit court must submit estimates of jury-related costs for the first two quarters of the 2014-2015 county fiscal year to the Justice Administrative Commission as soon as practicable after the effective date of this act.

Section 17 provides that the act takes effect upon becoming a law.

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:

The bill provides that the total approved budgets for the clerks of the circuit court will be \$460 million of their total collected revenues for the 2015-2016 county fiscal year for the 2015-2016 county fiscal year beginning October 1, 2015, and ending September 30, 2016.

Clerks of the court are relieved of certain juror related costs that will be paid by the state under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.241, 28.35, 28.37, 40.24, 40.26, 40.29, 40.31, 40.32, 40.33, 40.34, 318.18, 318.21, and 775.083

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.