

**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.)

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Prepared By The Professional Staff of the Committee on Appropriations

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BILL: SB 2506

INTRODUCER: Committee on Appropriations

SUBJECT: Clerks of the Court

DATE: April 6, 2017

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

ANALYST

STAFF DIRECTOR

REFERENCE

ACTION

Harkness

Hansen

**AP Submitted as Comm. Bill/Fav**

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**I. Summary:**

SB 2506 redirects revenue from certain fines, filing fees, and penalties from the General Revenue Fund to the clerks of the court to address their revenue shortfalls. The bill also modifies the duties of the Florida Clerks of the Court Operations Corporation with respect to the budget process, removes the Legislative Budget Commission's limitation to consider only Article V revenue projections when approving clerk budgets, and clarifies the use of Public Records Modernization Trust Fund revenues. SPB 2506 also codifies current implementing bill language allowing the clerks to receive reimbursement for juror costs.

The Revenue Estimating Impact Conference estimates that this bill will have a \$24.9 million negative fiscal impact to the General Revenue Fund in Fiscal Year 2017-2018 and thereafter.

The bill takes effect upon becoming law.

**II. Present Situation:**

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

In 1998, voters approved a revision to Article V, referenced as Revision 7, which allocated more state court costs to the state. 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.

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;
- 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>1</sup>

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

Revision 7 required the 67 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. Clerks collected these revenues and deposited them into their local fine and forfeiture funds.<sup>2</sup> The clerks retained necessary revenues to fund their operations while other portions were distributed from the fine and forfeiture fund to the state General Revenue Fund and other state trust funds. For example, the 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 into the Clerk of the Court Trust Fund.<sup>3</sup>

Clerks had discretion to set their individual budgets based on anticipated revenues and expenditures; however, the legislature created the Florida Clerks of Court Corporation (corporation) to review and certify budgets to ensure completeness and compliance with budget procedures.<sup>4</sup> The clerks' proposed budgets were required to be balanced, with estimated revenues equaling or exceeding anticipated expenditures. Upon review and certification of the individual

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<sup>1</sup> Section 28.35(3)(a), F.S.

<sup>2</sup> Section 142.01, F.S.

<sup>3</sup> Section 28.37(2), F.S. (2008).

<sup>4</sup> Chapter 2003-402, L.O.F. created the corporation to provide accountability for the revenues collected by the clerks. All clerks of the court are members of the corporation and hold their position and authority in an ex officio capacity.

clerk of court budgets by the corporation, revenue in excess of the amount needed to fund each approved clerk of court budget was 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, statutory budget procedures allowed clerks to access revenues from the Clerks of the Court Trust Fund to address their deficits.<sup>5</sup>

The legislature's involvement in the clerks' budgets was limited prior to 2009. 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 or additional funding was necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the legislature.<sup>6</sup>

### **Clerks in the General Appropriations Act: 2009-2012**

In an effort to gain greater oversight and accountability for the operations and funding of the clerks, the legislature passed chapter 2009-204, L.O.F., during the 2009 Legislative Session. This bill substantially amended the clerks' statutory budget process and procedures, most noticeably by bringing the clerks into the state budget and appropriating their funding in the annual General Appropriations Act. The law provided that all revenues received by the clerks from court-related fees, fines, costs and service charges were considered state funds and were remitted to the Department of Revenue for deposit into the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).<sup>7</sup> The law permitted the clerks, however, to deposit ten percent of all court-related fines in the Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.<sup>8</sup>

In 2009, revenues accruing to the Clerks of Court Trust Fund began to decline due to the downturn in the economy and the reduction in foreclosure filings. As a result, the legislature reinforced the clerks' budgets with additional moneys from the General Revenue Fund. The 2011 Legislature appropriated \$44.2 million from the General Revenue Fund to address FY 2010-2011 revenue deficits and the 2012 Legislature appropriated \$57.6 million to address FY 2011-2012 deficits.

### **Return to Pre-2009 Funding Model: 2013-Present**

In 2013, the legislature reversed many of the funding model changes made in chapter 2009-204, L.O.F., related to the clerks' budgets but expanded the oversight and accountability in the clerks' budget process. Chapter 2013-44, L.O.F., required clerks to submit monthly all revenues collected in the prior month that were 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. The

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<sup>5</sup> Section 28.36(4), F.S. (2008).

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

<sup>7</sup> Section 43.16, F.S., authorizes the Justice Administrative Commission, which administratively serves 49 judicial-related entities, as well as provides compliance and financial review of billings for services provided by private court-appointed attorneys representing indigent citizens and associated due process vendors. The clerks' budgets were appropriated within the JAC budget from 2009-2012.

<sup>8</sup> Section 28.37(5), F.S.

law required that revenue in excess of that needed to fund the authorized budgets for the clerks had to be transferred from the Clerks of Court Trust Fund to the General Revenue Fund each January, unless the Revenue Estimating Conference's official estimate of the funds accruing to the trust fund prepared for the current fiscal year or the next fiscal year was less than the total budgeted amount from the trust fund for the current fiscal year.

The law also enhanced the responsibilities of, and oversight by, the corporation. The law directed the corporation to conduct annual base budget reviews, conduct cost-comparisons of similarly situated clerks, report pay and benefit issues, and provide explanation of any clerk expenditure increases over 3 percent.<sup>9</sup> The law also required the corporation to use the official Article V Revenue Estimating Conference revenue estimates for the clerks' budget process.<sup>10</sup>

Chapter 2013-44, L.O.F., also enhanced the role and responsibilities of the Legislative Budget Commission. The law directed the LBC to consider the budgets of the clerks and to approve, disapprove, or amend and approve the budgets by October 1 of each year.<sup>11</sup>

### **Current budget process**

In June of each year, each individual clerk must prepare, summarize and submit to the corporation his/her proposed budgets. The corporation undertakes an extensive review of the clerks' budgets using financial and performance information, such as cost comparisons with similarly situated clerks, a base budget review, and estimates of available revenues. These budgets must be balanced in such a way that aggregate estimated revenues equals or exceeds the total anticipated expenditures.<sup>12</sup> The official revenue estimate is determined by the Article V Revenue Estimating Conference projection of clerk revenues.<sup>13</sup> Clerks who estimate that projected revenues will be insufficient to meet the anticipated expenditures must report the revenue deficit to the corporation. The corporation verifies the deficit and notifies the Department of Revenue that the specific clerk is authorized to draw down revenues from the Clerk of the Court Trust Fund to cover the deficit. For County Fiscal Year 2016-17, 47 of the 67 clerks are "funded" clerks, meaning that they generate less revenue than they need to cover expenditures and must draw down excess funds deposited into the Clerk of the Court Trust Fund from the remaining clerks.

By August 1 of each year, the corporation must submit to the Legislative Budget Commission the proposed budgets of the clerks. While individual clerk budgets may have revenue deficits, the clerks' combined budgets must be balanced and may not exceed the Article V Revenue Estimating Conference projection of clerk revenues. The commission shall approve, disapprove, or amend and approve the total of the clerks' combined budgets or any individual clerk's budget. The budget procedures do not permit the commission to approve a budget in which the aggregate

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<sup>9</sup> Section 28.35(2)(f), F.S.

<sup>10</sup> Section 28.35(2)(f)6., F.S.

<sup>11</sup> Section 11.90(6)(d), F.S.

<sup>12</sup> Section 28.36(2)(b), F.S.

<sup>13</sup> Section 216.136(3), F.S. authorizes Revenue Estimating Conferences (REC) to develop official information on anticipated state and local government revenues for state budgeting purposes. The Article V Fees and Transfers REC is one of at least 17 RECs and generally meets three times a year to estimate revenues from court fines, fees, penalties, and service charges. The results of the July Article V REC are used to set the budget for the clerks.

expenditures exceed the Article V Revenue Estimating Conference revenue projection nor may the commission approve additional resources to address clerk deficits. The commission may only approve increases to budgets to pay the cost of new or additional functions required by law or court rule or to support increases in the number of judges or magistrates authorized by the legislature.

### **Current budget problems**

Since the passage of Chapter 2013-44, L.O.F., revenues to support the budgets of the clerks have not materialized as projected. As the housing market has improved, fewer foreclosure filings have resulted in reduced filing fee revenues accruing to the clerks. In addition, law enforcement officers have been issuing fewer traffic tickets resulting in declines in civil traffic revenues. The clerks reported 2,927,266 civil traffic cases in County Fiscal Year (CFY) 2015-16, which represents a 24 percent decline since CFY 2011-12. The clerks rely heavily on civil traffic revenues to sustain their budgets; these cases represented 27 percent of total clerk revenues in CFY 2015-16 but only represented a fraction of total workload. Revenues from civil traffic cases support other case types, like circuit criminal cases, that require more workload to complete than their revenues generate.

In September 2015, the commission approved a CFY 2015-16 clerk budget of \$447.9 million based on the July 2015 projected Article V revenues combined with the “ten percent” funds accruing to the Public Records Modernization Trust Fund.<sup>14</sup> However, for all of CFY 2015-16, the clerks reported the actual Article V revenues and all “ten percent” funds totaled \$419.3 million, a shortfall of \$28.6 million. The 2016 Legislature made a supplemental appropriation of \$12.9 million to help address the deficit, but the clerks were obligated to reduce their expenditures to address the remaining shortfall.<sup>15</sup>

The clerks’ revenue picture for CFY 2016-17 does not show signs of improvement. In September 2016, the commission approved a budget of \$422.1 million for the clerks, a \$27.8 million reduction from the prior year’s approved budget, which was based on the July 2016 Article V Revenue Estimating Conference showing continued declines in clerk revenues over the forecasted period. In February 2017, the Article V Revenue Estimating Conference revised downward its CFY 2016-17 estimate of projected revenues for the clerks by another \$10 million, observing continued weakness in traffic and foreclosure revenues.

### **Juror Cost Reimbursement**

Under Revision 7, juror compensation and related expenses were initially a state court system responsibility and paid for with state revenues appropriated by general law.<sup>16</sup> The 2004 Legislature amended s. 28.35, F.S., to require the clerks to pay the payment of jurors and witnesses as well as juror meals and lodging.<sup>17</sup> Each clerk prepared quarterly estimates of

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<sup>14</sup> Section 28.37(5) permits the clerk to deposit ten percent of all court-related fines, with two exceptions, into the Public Records Modernization Trust Fund for court-related operational needs and program enhancements. The commission counts these funds as clerk revenue when approving the clerks’ budgets.

<sup>15</sup> Ch. 2016-66, s. 62, Laws of Fla.

<sup>16</sup> Ch. 2003-402, s. 40, Laws of Fla.

<sup>17</sup> Ch. 2004-265, Laws of Fla.

needed funds for the Office of State Court Administrator (OSCA). Based on these estimates, OSCA endorsed the payment and approved funds for each clerk. In 2008, the legislature amended the law to clarify that the clerks were financially responsible for paying juror meals and lodging as well as juror and witness payments.<sup>18</sup> Section 28.35, F.S., currently authorizes the clerks to pay for juror meals and lodging as well as juror and witness payments from filing fees, service charges, costs, and fines.

In recognition of ongoing clerk revenue deficits, the 2016 Legislature passed a provision to reimburse the clerks for juror expenses and jury-related personnel costs during the 2016-2017 fiscal year.<sup>19</sup> The legislature also appropriated \$11.7 million in recurring general revenue in the General Appropriations Act to fund these expenses.

### III. Effect of Proposed Changes:

#### Fee Adjustments to Generate Additional Clerk Revenue (Sections 1, 6, 7, and 8)

Four sections of the bill redirect revenue from certain fines, filing fees, and penalties from the General Revenue Fund to the clerks of court to address revenue deficits.

- **Section 1** amends s. 28.241, F.S., to redirect the \$295 fee paid by a party who files a pleading for affirmative relief by cross-claim, counterclaim, counterpetition, or third-party complaint from the General Revenue Fund to the clerk's fine and forfeiture fund.
- **Section 6** amends s. 318.18, F.S., to redirect to the clerks' funds collected for certain civil violations. Persons who fail to pay required penalties pursuant to ss. 318.14 and s. 318.17, F.S., must pay an additional \$16 civil penalty specified in s. 318.18 (8)(a), F.S. The bill redirects \$6.50 of this \$16 penalty from the General Revenue Fund to the clerks' fine and forfeiture fund. In addition, drivers who commit civil traffic violations specified in s. 316.074(1), F.S., or s. 316.075(1)(c)1., F.S., must pay a \$60 fine, of which \$30 currently goes to the General Revenue Fund. This section redirects the \$30 to the clerks' fine and forfeiture fund.
- **Section 7** amends s. 318.21(2)(a) and (f), F.S., which distributes civil penalties for traffic infractions committed under chapter 318, F.S. Currently, 20.6 percent of the funds from the penalties goes to the General Revenue Fund and five-tenths percent (0.5%) goes to the clerk for administrative costs. The section redirects 10 percent of the funds from the General Revenue Fund to the clerks for deposit into the fine and forfeiture fund.
- **Section 8** amends s. 775.083(1), F.S., which sets fine limitations for certain designated crimes and for noncriminal violations. The revenues from fines imposed by this subsection currently are available to the clerks, except for fines imposed when adjudication is withheld, in which case the funds are deposited into the General Revenue Fund. The bill removes the exception for adjudication withheld thereby directing all revenue from the fines in this subsection to the clerks.

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<sup>18</sup> Ch. 2008-111, Laws of Fla.

<sup>19</sup> Ch. 2016-62, s. 66, Laws of Fla.

**Modification of Clerk Duties and Budget Procedures (Sections 2, 3 and 4)**

Collectively, these three sections of the bill modify the duties of the Florida Clerks of the Court Operations Corporation with respect to the budget process, remove the Legislative Budget Commission's limitation to consider only Article V revenue projections in approving clerk budgets, and clarifies the use of the Public Records Modernization Trust Fund revenues. These changes are intended to give the corporation and commission more budgetary flexibility within the existing clerk budget procedures.

**Section 2** amends s. 28.35, F.S., to add to the duties of the corporation. This section permits the corporation to recommend a budget in excess of the Article V Revenue Estimating Conference revenue estimate, with the caveat that the budget funds only its required court-related functions. Currently, the revenue in the proposed budget is limited to the Article V Revenue Estimating Conference estimate, typically established in July each year. In addition, this section directs the corporation to certify the amounts of additional revenues necessary to fund the clerks' budgets.

This section also moves paragraph (h) of s. 28.35, F.S., which describes the budget process, to s. 28.36, F.S., which relates directly to the clerks' budget procedures. The changes to this language are discussed below in Section 3 of the analysis.

**Section 3** amends s. 28.36, F.S., relating to the clerks' budget procedures. First, this section allows the corporation to certify the amount necessary to fund the clerks' expenditures if the corporation determines that total anticipated expenditures will exceed the Article V REC projection. This language mirrors language added in the section 2 of the bill.

Second, this section of the bill includes current provisions moved from s. 28.35(h), F.S., which directs the corporation to submit its budget and the clerks' budgets to the Legislative Budget Commission by August 1 of each year. Before October 1 each year, the commission shall approve, disapprove, or amend and approve the corporation's budget and the combined clerks' budgets or the budget of any individual clerk. If the commission fails to approve or amend and approve the budgets by October 1, the clerks continue to perform their court-related functions based on the budget from the previous county fiscal year.

Third, this section permits the commission to approve a budget that includes a deficit, meaning a budget in which the clerks' anticipated expenditures exceed the official Article V Revenue Estimating Conference revenue estimates and the corporation certifies that additional revenues are needed to perform court-related functions. The commission may approve a deficit budget if it determines that the budget is justified based on the budget information collected by the corporation under s. 28.35(2)(f), F.S. This includes information such as cost comparisons of similarly-situated counties, workload measure data, annual base budget information, and detailed explanations of expenditure increases that exceed 3% compared to the prior fiscal year.

Fourth, the section permits the corporation to request funds to address deficits. The corporation may request that the legislature approve an appropriation to the Clerks of the Court Trust Fund equal to the difference between the total clerk anticipated expenditures and total estimated revenues, not to exceed the budget approved by the commission. For example, at the time the clerks submit their budgets, the corporation certifies that the clerks' total expenditures are \$400

million and the Article V REC estimated revenues are \$380 million. The corporation may then certify that \$20 million in additional revenues are needed to fund the clerks' expenditures. If the commission agrees and approves a \$400 million budget, the corporation may request, during the next legislative session, an appropriation of \$20 million to address the deficit.

In addition, if the official revenue estimate is reduced from the estimate available when the commission approved the budget, the clerks may request that, during the next legislative session, the legislature approve general revenue to address the difference between the two revenue projections. For example, the official Article V REC estimate in July used to set the clerks' budget is \$400 million. A later Article V REC projection reduces that estimate to \$385 million. The bill language allows the corporation to submit a budget request, during the next session, for the \$15 million difference between the two estimates.

**Section 4** amends s. 28.37, F.S., to direct court-related fines collected in this section to the clerks' fine and forfeiture fund in a similar manner to other remittances of fines, fees, and service charges in statutes. Currently, these revenues are deposited in the Public Records Modernization Trust Fund. The language also clarifies that these revenues are to be used for court-related functions like the clerks' other fines, fees, and service charges.

#### **Codification of Juror Cost Reimbursement Language (Section 5)**

Section 5 creates s. 40.29(5), F.S., to allow the clerk to receive reimbursement for juror costs. The 2016 Legislature appropriated \$11.7 million in recurring general revenue funds in the General Appropriations Act reimbursing the clerks for juror costs and jury-related personnel costs. The 2016 Legislature also passed an implementing bill provision that set forth the process for clerk reimbursement of juror costs, which only lasts for one fiscal year.<sup>20</sup> The language requires the clerks to send a quarterly estimate of juror costs to the Justice Administrative Commission. The Justice Administrative Commission determines the amount deemed necessary for payment to the clerks during the upcoming quarter and submits a request for payment to the Chief Financial Officer.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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<sup>20</sup> Ch. 2016-62, s. 66, Laws of Fla.



**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

As determined by the Article V Revenue Impact Conference, SB 2506 will reduce revenues deposited into the General Revenue Fund by \$24.9 million beginning in Fiscal Year 2017-18. Revenues deposited into the clerks fine and forfeiture funds will increase by a like amount.

The following chart summarizes the impact of the bill on the General Revenue Fund, by bill section:

|   |                       |
|---|-----------------------|
| <b>Section 1</b> - Redirects the \$295 fee for cross-claim, counterclaim, counterpetition, or third-party complaint (s. 28.241, F.S.).            | \$6.1 million         |
| <b>Section 6</b> – Redirects funds collected for certain civil violations (s. 318.18 (8)(a), F.S.).   | \$6.8 million         |
| <b>Section 6</b> – Redirects fees paid for civil traffic violations specified in s. 316.074(1) or s. 316.075(1)(c)1. (s. 318.18 (15)(a)1., F.S.). | \$2.2 million         |
| <b>Section 7</b> – Redistributes civil penalties for traffic infractions committed under chapter 318, F.S. (s.318.21, F.S.)                       | \$5.6 million         |
| <b>Section 8</b> – Redirects fines imposed when adjudication is withheld (s. 775.083, F.S.).  | \$4.3 million         |
| <b>Total negative fiscal impact of the bill on the General Revenue Fund</b>   | <b>\$24.9 million</b> |

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 28.214, 28.35, 28.36, 28.37, 40.29, 318.18, 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.

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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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