

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	HB 7051	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Clerks of the Circuit Court	80	Y's 33	N's
SPONSOR(S):	Civil Justice & Claims Subcommittee; Byrd	GOVERNOR'S ACTION:	Approved	
COMPANION BILLS:	SB 2506			

SUMMARY ANALYSIS

HB 7051 passed the House on May 8, 2017 as SB 2506. The bill impacts the budgeting and financing of the clerks of court.

The Florida Clerks of Court Operations Corporation ("Corporation") is currently responsible for preparing a proposed combined budget for the clerks of court and submitting it to the Legislative Budget Commission ("LBC") who has final authority with respect to reviewing, modifying, and approving the budget. Included in these budget requests, as court-related functions, are the cost of paying, processing, and providing meals and lodging for jurors.

The bill removes the LBC's power of reviewing, modifying, and approving budgets for the clerks of court. Instead, the Corporation will have this power and duty. The bill provides reporting requirements for the Corporation and provides that the total combined budgets of the 67 clerks may not exceed the revenue estimates for the clerks established by the Revenue Estimating Conference.

The bill transfers the responsibility for the costs of juror payments, juror meals and lodging, and related personnel costs back to the state. The bill provides that each clerk of court and the Corporation must prepare quarterly estimates of the needed funds for the Justice Administrative Commission and, based on these estimates, state funding will then be distributed to each clerk of court.

Lastly, the bill redirects certain filing fees and fines from the General Revenue Fund to the fine and forfeiture fund, which fund is used to support the clerks' budgets.

The estimated cost of juror payments, juror meals and lodging for Fiscal Year 2016-2017 is \$11.7 million. The fees and fines that will no longer be deposited in the General Revenue Fund are estimated at \$10.4 million for Fiscal Year 2017-18. As such, the state will see an increase in expenditures and a decrease in revenue in those respective amounts, and the clerks will see corresponding revenue and expenditure changes.

The bill was approved by the Governor on June 16, 2017, ch. 2017-126, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

History of Clerk of Courts Funding

Article V of the state Constitution establishes the judicial branch of state government, including the trial and appellate courts. The 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. It also provides the source of funding for the state court system.

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 paying for facilities, communications, and security for the court system entities. 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.

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.¹ 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.

Art. V, s. 14 of the state 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. Art. V, s. 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.

Since the approval of Revision 7 the funding for the clerks of court and the process of proposing budgets and having budgets approved has undergone multiple changes.

Clerk of Court Funding: 2004-2008

In 2004 legislation was passed to implement the changes to Art. V. From 2004-08, each county clerk was responsible for preparing a proposed budget which was then submitted to the Florida Clerks of

¹ s. 28.2401, F.S., prescribes the service charges and filing fees for specific services. The section also provides for exceptions and additional service charges.

Court Corporation (the "Corporation"), on or before August 15 of each fiscal year. The Legislature created the Corporation to provide accountability for the revenues collected by the clerks of the court. All clerks of the circuit court are members of the Corporation.²

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.³ Upon review and certification of the individual clerk of court budgets by the Corporation, revenues 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 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.⁴

Additionally, 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 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.⁵ The Department of Revenue would then transfer those excess funds, not needed to resolve clerk deficits, from the Clerks of the Court Trust Fund to the General Revenue Fund.

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 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 meeting performance standards.⁶

The Legislative Budget Commission ("LBC") had authority to approve increases to the maximum annual budget 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.⁷

The LBC is comprised of seven members appointed by the Senate President, and seven members appointed by the Speaker of the House.⁸ The LBC, among other things, approves budget amendments during the interim between sessions.

² s. 28.35, F.S.

³ s. 28.36(3), F.S. (2008)

⁴ s. 28.36(4), F.S. (2008)

⁵ s. 28.37(2), F.S. (2008)

⁶ s. 28.35(1)(f), F.S. (2008)

⁷ See s. 28.36(6), F.S. (2008)

⁸ See *generally* s. 11.90, F.S.

Clerk of Court Funding: 2009-2013

During the 2009 legislative session, the Legislature substantially amended the statutory budget process and procedures for these entities, most noticeably by bringing the clerks and the Corporation into the state budget and appropriating their funds in the annual General Appropriations Act. While employees of the individual clerk offices remained local government employees, staff with the Corporation became state employees.

Ch. 2009-204, L.O.F., provided 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).⁹ The Corporation, moreover, was housed within the JAC but was not subject to the control, supervision, or direction of the JAC.

The new budget procedure also provided that the Corporation was responsible for preparing budget requests for resources necessary to perform its duties and submitting the request pursuant to ch. 216, F.S., to be funded as a budget entity in the General Appropriations Act.¹⁰ Each clerk was required to submit in his or her budget request the number of personnel and the proposed budget for a specified list of core services, and include the unit cost for each service unit within each core services.¹¹ The Corporation was then 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 were higher than a clerk's peers, the clerk was required to justify the increased costs.

The Corporation had to recommend to the Legislature the unit costs for each clerk and a statewide budget amount for the clerks by December 1. Beginning in the Fiscal Year 2010-11, the Corporation was required to release appropriations to each clerk quarterly. If funds in the Clerks of Court Trust Fund were insufficient for the first quarter release, the Corporation could make a request to the Governor for a trust fund loan pursuant to ch. 215. The amount of the first three releases was based on one quarter of the estimated budget for each clerk as identified in the General Appropriations Act.¹²

The Chief Financial Officer (CFO) reviewed unit costs proposed by the Corporation and made recommendations to the Legislature and if necessary, could conduct an audit of a clerk or the Corporation. The Legislature could then reject or modify the proposed unit costs, and appropriate the total amount of the clerk budgets in the General Appropriations Act.

Current Law

In 2013, the Legislature reversed many of the changes made in 2009 legislative session and expanded the role of the LBC. Most notably, funding for the clerks is no longer appropriated in the General Appropriations Act.

Rather, the clerks of court work together with the Corporation, the Legislative Budget Commission, and the Judicial Administrative Commission in requesting, modifying, and finalizing a budget for the clerks of court.

⁹ s. 28.37(2), F.S.

¹⁰ Each year the General Appropriations Act is enacted during the annual 60-day session of the Legislature to cover state spending for the fiscal year that begins on July 1 and ends on June 30. Each budget request from each agency, as well as the request from the judicial branch, is required to be reviewed by the Legislature. This review may include a request for information or testimony from the agency, the Auditor General, the Office of Program Policy Analysis and Government Accountability, the Governor's Office of Planning and Budgeting, and the public regarding the proper level of funding for the agency to carry out its mission. See 216.023(8), F.S.

¹¹ Those core services included circuit criminal; county criminal; juvenile delinquency; criminal traffic; circuit civil; county civil; civil traffic; probate; family; and juvenile dependency. s. 28.36, F.S. (2011).

¹² s. 28.36(10), F.S. (2011).

Florida Clerks of Court Operations Corporation

All clerks of the circuit courts are still members of the Corporation and hold their position and authority in an ex officio capacity. The Corporation's current functions include:

- Adopting a plan of operations;
- Conducting an election of an executive council;
- Recommending to the Legislature changes in the amounts of various court-related fines, fees, service charges, and costs to ensure reasonable and adequate funding of the clerks of court;
- Developing and certifying a uniform system of performance measures and applicable performance standards for court-related functions as developed by the Corporation and clerk workload performance in meeting the workload 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;
- Developing and conducting clerk educational programs; and
- Submitting a proposed budget for the clerks of court to the LBC on or before August 1 of each year.¹³

Before October 1 of each year, the LBC must consider the submitted budgets and approve, disapprove, or amend 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 LBC fails to approve or amend and approve the Corporation's budget or the clerks' combined budgets before October 1, the clerks must continue to perform their court-related functions based upon their budget for the previous fiscal year.¹⁴

Clerks of Court Court-Related Functions

Pursuant to authority granted in Art. V, s. 14(b) of the state Constitution, the list of court-related functions clerks may perform is limited to those functions expressly authorized by statute or court rule. Presently, the court-related functions clerks may perform are:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Processing the assignment, reopening, and reassignment of cases;
- Processing 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 meal 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.¹⁵

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

- Those functions not listed above;

¹³ S. 28.35(2), F.S.

¹⁴ S. 28.35(2)(h), F.S.

¹⁵ S. 28.35(3)(a), F.S.

- 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.¹⁶

Juror Payments and Costs

The Justice Administrative Commission is created by s. 43.16, F.S. Its members are appointed and consist of two state attorneys and two public defenders.¹⁷ The JAC'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 Regional Counsel, the Office of Criminal Conflict and Civil Regional Counsel, and the Guardian Ad Litem Program.

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 each circuit court is delegated specific responsibilities regarding the processing of jurors, including qualifications, summons, selection lists, reporting, and compensation of jurors. A clerk 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 additional duties consistent with established uniform standards of jury management practices that the Supreme Court adopts by rule or issues through administrative order.¹⁸

Prior to 2008, state general revenue funds were used to pay juror and witness payments, as well as juror meals and lodging. Each clerk of court prepared quarterly estimates of the needed funds for the Office of State Courts Administrator. Based on these estimates, state funding was distributed to each clerk. In 2008, the Legislature amended the law to require the clerks of court to pay those costs from filing fees, service charges, court costs and fines.

Section 28.35, F.S., currently requires the clerks to pay for juror meals and lodging as well as juror and witness payments from filing fees, service charges, costs and fines. Chapter 40, F.S, provides for the management and operations of the state jury system. The chapter specifies that the clerk is responsible for paying for juror payments and meals and lodging. It also provides for the payment process for jury and due process related costs. Juror service is defined and an eligibility criterion for payment to jurors for service is provided. Such payments are to be made by the clerk.

The JAC must pay all due process service related invoices after review for compliance with applicable rates and requirements that were submitted by a state attorney, a private court-appointed counsel, a public defender, and the Office of Criminal Conflict and Civil Regional Counsel. 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, the state attorney, public defender, or the Office of 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.

The budget implementing bill for fiscal year 2016-2017 required the state, instead of the clerks of court, to pay the costs of juror payments, juror meals and lodging and juror related personnel expenditures for that fiscal year only.¹⁹

¹⁶ s. 28.35(3)(b), F.S.

¹⁷ s. 43.16(2), F.S.

¹⁸ s. 40.001, F.S.

¹⁹ See 2016-62, L.O.F., s. 66.

Effect of Bill

Florida Clerks of Court Operations Corporation

The bill removes the requirement that the LBC annually approve, disapprove, or amend the total combined budget of the clerks of court for court-related functions, and the budget of the Corporation. Instead, the Corporation is responsible for approving the proposed budget for each clerk of court. Moreover, the bill places a cap on combined budgets of the clerks of court; the total combined budgets are not allowed to exceed the revenue estimates established by the Revenue Estimating Conference.

The bill requires that the Corporation prepare and submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committee by January 1 of each year on the operations and activities of the Corporation. The report must also detail the budget development for the clerks of court and the end-of-year reconciliation of actual expenditures versus projected expenditures for each clerk.

Court-Related Functions: Juror Costs

The bill transfers the responsibility for the costs of juror payments, juror meals and lodging, and related personnel costs to the JAC.

This bill amends s. 28.35, F.S., to remove the authorization of the clerks to pay for juror payments and meals and lodging from filing fees, service charges, costs and fines. The bill amends s. 40.29, F.S., to require the Justice Administrative Commission to provide funds to the clerks of court to compensate jurors and to pay for jury-related personnel costs. It further provides that each clerk of court must prepare quarterly estimates of the funds needed to compensate jurors for payments and meals and lodging for the JAC. Based on these estimates, the JAC determines the necessary amount for the clerks of court and submits a request for payment to the CFO. The Corporation must also prepare quarterly estimates of the funds needed to compensate for jury related personnel costs.

Furthermore, if the JAC believes that the amount appropriated by the Legislature is insufficient to meet the clerks' costs during the remaining part of the fiscal year, the JAC may apportion the funds appropriated in the GAA for such purposes among the counties. At this time, the CFO is required to issue a warrant for such appropriated amount to each county.

Clerks of Court: Fees and Fines

The bill amends s. 28.241, F.S., to redirect a \$295 or \$395 fee paid by a party who files a pleading for affirmative relief by cross-claim, counterclaim, counter petition, or third-party complaint from the General Revenue Fund to the clerk's fine and forfeiture fund. The section is further amended to provide that the clerk is no longer required to remit \$80 to the Department of Revenue for filing fees when instituting an appellate proceeding. The bill also provides that 10% of all court-related fines collected by the clerk be deposited into the fine and forfeiture fund, as opposed to being deposited in the clerk's Public Records Modernization Trust fund.

Additionally, the bill 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.

Lastly, the bill amends s. 45.035, F.S., related to fees a clerk may impose. Currently, service charges in conjunction with judicial sales conducted by electronic means are required to be paid by the winning bidder following the sale. If a sale is cancelled, or if there is no winning bidder, then no service charge

is imposed. The bill requires the service charge to be assessed and paid at the time of filing for an electronic sale date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

As determined by the Article V Revenue Impact Conference, SB 2506 will reduce revenues deposited in the General Revenue Fund by \$10.4 million beginning in Fiscal Year 2017-18. Revenues deposited into the clerks fine and forfeiture fund will increase by a like amount.²⁰

2. Expenditures:

The budget implementing bill for Fiscal Year 2016-17, HB 5003, required the state, instead of the clerks of court, to pay the costs of juror payments, juror meals and lodging and juror related personnel expenditures for that fiscal year only.²¹ The Legislature included \$11.7 million of recurring general revenue for juror related costs in the FY 2016-17 General Appropriations Act (GAA).²² This bill codifies provisions included in HB 5003 requiring the state to continue to pay for juror costs

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²⁰ See SB 2506 Bill Analysis and Fiscal Impact Statement, Committee on Appropriations (April 6, 2017).

²¹ See 2016-62, L.O.F., s. 66.

²² See 2016-17 GAA, Ch. 2016-66, L.O.F., line 772A.