

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 590

INTRODUCER: Senator Hooper

SUBJECT: Clerks of the Court

DATE: February 12, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 590 revises the procedure for clerks of the circuit court to receive payments for management of the jury process for the court system. The current procedure provides for *pre-imburement* in which clerks send a quarterly funding estimate of their costs to the Clerks of Court Operations Corporation (CCOC) for review. The CCOC completes its review, and submits the estimate to the Justice Administrative Commission (JAC) for review, verification that the funds are available, and processing the quarterly payment.

The bill removes the responsibility of paying jury management costs from the JAC and assigns that responsibility to the Department of Revenue (DOR). The bill also changes the payment process to a *reimbursement* process for actual costs incurred in the previous quarter. The JAC will no longer provide oversight and management of the funds to the clerks. The CCOC will assume the responsibility to review the reimbursement requests and submit to the Department of Revenue the amounts necessary to reimburse each clerk.

Additionally, the bill specifies a purpose for the use of the Clerks of the Courts Trust Fund. The Trust Fund will be a depository for excess revenue collected monthly by the clerks that exceed one-twelfth of the clerks' total budget. The trust fund would also be used for general revenue appropriated by the legislature, and grants from public or private entities. Excess revenues in the trust fund must be used to provide funds to clerks who project a revenue deficit. The CCOC will conduct an end-of-year reconciliation of the excess funds deposited in the Trust Fund to make certain that clerks receive their approved budget amounts as required by statute.

Transferring responsibility for reimbursement of juror costs from the JAC to the DOR will have a negligible net fiscal impact to the State. See Section V.

The bill takes effect July 1, 2020.

II. Present Situation:

Clerks of the Court

The State Constitution establishes the office of clerk of the circuit court in each of the state's 67 counties. Each clerk is elected by the voters to a 4-year term. The State Constitution further provides that the clerk's duties may be divided by special or general law between two officers. Under that arrangement, one serves as clerk of the court and one serves as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds.¹

Florida Clerks of Court Operations Corporation

The Legislature created the Florida Clerks of Court Operations Corporation (CCOC) in 2003. It is a public corporation organized to perform the specific functions assigned in ss. 28.35, 28.36, and 28.37, F.S., which outline the CCOC's duties, the clerks' budget procedure for court-related functions, and how fines, fees, service charges, and costs are to be remitted to the state. All clerks of the circuit court are members and hold their position and authority as ex officio members. The responsibilities assigned to the corporation are performed by an executive council composed of eight clerks from various size populations and three ex officio members designated by the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.²

In general terms, the CCOC was created to provide professional budget support to the 67 clerks of court and ensure that resources are fairly and equitably distributed for the operation of the courts.³ The CCOC's duties include, but are not limited to:

- Recommending to the Legislature changes in the amounts of various court-related fines, fees, service charges, and costs that are established in law to ensure that the clerks have reasonable and adequate funding to perform their court-related functions.
- Developing and certifying a uniform system of workload measures and workload standards for court-related functions.
- Entering into a contract with the Department of Financial Services for the department to audit the court-related expenditures of individual clerks.
- Approving the proposed budgets submitted by clerks.⁴

When approving the clerks' proposed budgets, the CCOC must ensure that the total combined budgets of the clerks do not exceed:

- The total estimated revenues from fees, service charges, costs, and fines for court-related functions that are available for court-related expenditures (as determined by the most recent Revenue Estimating Conference);
- The total of unspent budgeted funds for court-related functions carried forward by the clerks from the previous county fiscal year; *and*

¹ FLA. CONST. art. V, s. 16 and art. VIII, s. (1)(d).

² Section 28.35(1), F.S.

³ Florida Clerks of Court Operations Corporation, *Welcome to Florida Clerks of Court Operations Corporation (CCOC)*, available at <https://flccoc.org/>.

⁴ Section 28.35(2)(c), (d), (e), and (f), F.S.

- The balance of funds remaining in the Clerks of Court Trust Fund after funds are transferred to the General Revenue Fund as required by law.⁵

Jury Management

Court clerks' responsibilities include managing the jury process. This includes determining the qualifications of jurors, issuing jury summons, providing selection lists, reporting, and compensating jurors when necessary to prevent financial hardship.⁶ It is estimated that Florida clerks summon almost 2 million jurors annually.⁷

Juror Cost Reimbursement

Under Revision 7 to Article V of the Florida Constitution, juror compensation and related expenses were initially a state court system responsibility and paid for with state revenues appropriated by general law.⁸ The 2004 Legislature amended s. 28.35, F.S., to require the clerks to pay the payment to jurors and witnesses as well as juror meals and lodging.⁹ Each clerk prepared quarterly estimates of needed funds for the Office of State Court Administrator (OSCA). Based on these estimates, OSCA approved the payment 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.¹⁰

In recognition of 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.¹¹ The Legislature also appropriated \$11.7 million in recurring general revenue in the General Appropriations Act within the Justice Administrative Commission to support funding these jury expenses.

Budget Procedure for Payment of Costs

The Justice Administration Commission (JAC) is required by s. 40.29(5), F.S., to provide funds to the clerks to compensate jurors, pay for meals or lodging for jurors, and pay jury-related personnel costs. As noted above, since 2016, the Legislature has provided \$11.7 million annually from General Revenue to cover the projected costs of managing the jury process.¹² The funds are released quarterly.

⁵ Section 28.35(2)(f), F.S.

⁶ See s. 40.001, F.S.

⁷ Florida Clerks of Court Operations Corporation, *Senate Bill 590 Analysis* (Feb. 6, 2020), <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=29742>.

⁸ Ch. 2003-402, s. 40, Laws of Fla.

⁹ Ch. 2004-265, Laws of Fla.

¹⁰ Ch. 2008-111, Laws of Fla.

¹¹ Ch. 2016-62, s. 66, Laws of Fla.

¹² For the Fiscal Year 2019-2020 appropriation, see ch. 2019-115, s. 4, Laws of Fla., Specific Appropriation 770 (Reimbursement of Expenditures Related to Circuit and County Juries Required by Statute from General Revenue Fund . . . \$11,700,000).

The process established in s. 40.29, F.S., for clerks to submit information to the JAC to request funding, has been modified slightly from statute by agreement between the clerks and the CCOC. The process is as follows:

- Each clerk of the circuit court forwards to the CCOC a *quarterly estimate* of funds needed to compensate jurors, pay for meals or lodging, and personnel and other costs related to jury management for the *upcoming* quarter. Each clerk must include a signed and dated certification letter by the 10th of the month immediately before the beginning of the requested quarter.
- The CCOC reviews the quarterly requests and determines a funding allocation for each of the 67 clerks, then forwards the funding estimate to the JAC for its review.
- The JAC reviews the funding estimate for the individual counties, determines that the funds are available for the upcoming quarterly funding allocation from General Revenue, and processes the payment through the Department of Financial Services for pre-imburement payments to each clerk.

Pursuant to s. 40.29(5), F.S., if the JAC believes the amount appropriated by the Legislature is not sufficient to meet the costs for the remainder of the state fiscal year, the JAC may apportion funds appropriated in the General Appropriations Act (GAA) among the counties. The apportionment is based upon the amount expended for those purposes in each county during the previous fiscal year. The Chief Financial Officer will then issue the appropriate apportioned amount to each county. The statute further provides that the clerks are responsible for any compensation costs that exceed the funding provided in the GAA. However, the JAC reports that the CCOC has never requested more than the \$11.7 million appropriation provided by the Legislature.¹⁵

Clerks of the Court Trust Fund

The Legislature created the Clerks of the Court Trust Fund in 2001¹⁶ within the Department of Revenue (DOR). The Trust Fund was transferred to the JAC in 2009 when the clerks' budget was placed in the state budget process. The Trust Fund was transferred back to the Department of Revenue in 2013 when the clerks' budget was removed from the GAA.¹⁷ The Trust Fund exists as a one sentence item in the statutes with no mention of a purpose.

According to the CCOC, the Trust Fund is used as a repository for funds from counties that have a projected revenue surplus. Section 28.37(2), F.S., provides that, since November 1, 2013, all fines, fees, service charges, and costs that are collected by the clerks for the previous month which exceed one-twelfth of the clerks' total budget for performing court-related functions must be remitted to DOR for deposit into the Clerks of the Court Trust Fund. Those funds are distributed by DOR to clerks in counties that have a projected revenue deficit. The CCOC also uses the Trust Fund to annually reconcile the clerks' expenditures. In the reconciliation process at the end of the year, a clerk's total revenues are compared to total expenditures. Some clerks

¹⁵ Telephone interview with Cris Martinez and Greg Cowan, Justice Administrative Commission, in Tallahassee, Fla. (Dec. 4, 2019).

¹⁶ Section 213.131, F.S.

¹⁷ Florida Clerks of Court Operations Corporation, *supra*, note 3.

will receive additional money to meet expenses, and other clerks will be required to return money because he or she had a surplus of revenue after covering expenses.

Additionally, during the 2019 legislative session, s. 28.37, F.S. was amended to require:

- No later than February 1, 2020, the cumulative excess of all fines, fees, services charges, and costs exceeding \$10 million will be transferred to the General Revenue Fund;
- No later than February 1, 2021, and no later than February 1, 2022, not less than 50 percent of the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund; provided, however, that the balance remaining in the Clerks of Courts Trust Fund after the transfer may not exceed \$20 million; and
- No later than February 1, 2023, and each February 1 thereafter, the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund.

III. Effect of Proposed Changes:

The bill makes two significant changes to the process by which clerks receive funds for the jury management process. Notably, the bill removes the responsibility for paying jury management costs from the JAC and assigns that responsibility to the Department of Revenue. Consistent with that change, the JAC will no longer provide oversight and management of the funds to the counties. That oversight responsibility will be assumed by CCOC. Additionally, the current practice under which clerks receive *pre-imburements* for their costs is changed and the clerks will receive *reimbursements* for the costs they have incurred.

Clerks of the Court Trust Fund

The Clerks of the Court Trust Fund is established in statute as a depository for the portion of the fines, fees, service, charges, and costs that are collected by the clerks which exceed one-twelfth of the individual clerks' total budget. Additional funds that may be deposited in the Trust Fund are revenues designated for that purpose by statute, funds appropriated by the Legislature, and grants from public or private entities.

Excess Funds and Reconciliation

The funds collected in a month that exceed one-twelfth of the clerks' total budget are designated solely for the purpose of providing funds to clerks who project a revenue deficit.¹³ The CCOC must conduct an end-of-year reconciliation in which it reviews a clerk's total revenues and compares that figure to the total expenditures to ensure that clerks receive the approved budget amounts.

The New Procedure

Department of Revenue

The bill requires the Department of Revenue to deposit into the Clerks of the Court Trust Fund the funds appropriated to the clerks in the General Appropriations Act to cover the compensation

¹³ This definition could be construed to conflict with the statutorily required transfers to General Revenue outlined in s. 28.37, F.S.

of jurors, payment for meals and lodging for jurors, and payment for jury-related personnel and operational costs as provided in the General Appropriations Act.

Clerks

The clerks are required to submit a request for *reimbursement* to the CCOC within 30 days after each quarter ends. They must attest to their actual costs to compensate jurors, to pay for meals and lodging provided to jurors, and to pay for jury-related personnel and operational costs.

CCOC

The CCOC must then review the request for reimbursement to make certain that the costs are reasonable and directly related to jury management. After completing their review tasks, the CCOC must forward to the Department of Revenue the amount necessary to reimburse each clerk. As in current law, the clerks remain responsible for any compensation costs that exceed the funding provided in the GAA.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will increase workload for the Department of Revenue. The bill will remove the JAC review for juror payments and move that activity to the Clerks of Court Operations Corporation. There will be a workload reduction by eliminating some of the steps for reimbursement. The workload reduction will be realized by the JAC and the clerks; there will be some workload involved for the Department of Revenue.

A technical realignment of the \$11,700,000 from JAC to DOR will need to be processed in order to accomplish this contingent upon the passing of this bill.

VI. Technical Deficiencies:

The language in section 2 of the bill which delineates the purpose of the Clerks of Court Trust Fund does not make mention of the requirements set forth in s. 28.37, F.S. and, therefore, could be construed to conflict with the statutorily-required transfers of the cumulative excess funds to General Revenue.

Additionally, inclusion of appropriation for juror costs in the Clerks of Court Trust Fund could result in counties receiving more funds for juror costs than have been appropriated for that purpose, thereby reducing the excess funds in the Clerk of Courts Trust Fund which accrue to the General Revenue Fund pursuant to s. 28.37, F.S.

VII. Related Issues:

If the intent is to streamline the process for reimbursement to the clerks for juror and witness expenses. The process could be modified without moving the budget from the JAC to the DOR.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 40.29 and 213.131.

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.