

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 591 Court Service Charges  
**SPONSOR(S):** Civil Justice Subcommittee, Clemons  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 0 N, As CS	Jones	Luczynski
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

The clerks of the circuit courts are required to charge fees for services rendered in recording documents and instruments. Some services involve "court-related" functions, while other services involve "county-related" functions. Whether the function is "court-related" or "county-related" determines whether the clerk must forward part of the charged fee to the state or whether the clerk may keep the fee.

Clerks also charge litigants fees when they appeal cases within the court system. The amount of the fee charged varies based on the type of case being appealed. Depending on the type of case, the clerk must forward a specified portion of the fee to the state but may keep a portion of the fee.

During the 2019 session, the Legislature passed CS/CS/HB 337, which, among other changes, amended:

- Section 28.24, F.S., affecting the service charges collected by the clerks.
- Section 28.241, F.S., affecting the structure of fees collected for appeals.

CS/HB 591 clarifies that only court-related services are impacted by the 2019 changes made to the statutory service charges, and that clerks may retain the revenues collected for county-related services. The bill defines "court records" to help clarify the distinction between a court-related service and a county-related service.

The bill also corrects the filing fee structure for appellate cases. The bill removes the \$20 General Revenue Fund portion of the filing fee from appellate cases originating in the county court and reinserts the \$20 General Revenue Fund portion onto cases originating from the circuit court being appealed to the district court of appeals or the Supreme Court.

The bill may have an insignificant negative fiscal impact on state government and may have an insignificant positive fiscal impact on local governments.

The bill provides an effective date of July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Service Charges

Clerks of circuit courts are required to charge fees for services rendered in recording documents and instruments.<sup>1</sup> Section 28.24, F.S., specifies the maximum amount a clerk may charge for these services. Some services described in s. 28.24, F.S., are "court-related" functions, while other services are "county-related" functions performed by the clerk in its capacity as county recorder,<sup>2</sup> such as providing certified copies of official county records. Some functions described in s. 28.24, F.S., can be either court-related or county-related functions, depending on the type of document or service requested.<sup>3</sup>

The Florida Supreme Court, through its rulemaking process, defines "court records" as "contents of the court file," including:

- The progress docket and other similar records documenting activity in a case.
- Transcripts.
- Documentary exhibits.
- Records of depositions.
- Records of court proceedings.<sup>4</sup>

In 2008, the Legislature amended s. 28.24, F.S., increasing various service charges for both county- and court-related functions.<sup>5</sup> Included in the 2008 amendments was a provision prohibiting the revenue increases generated by the 2008 amendments from being used by the Clerks of Court Operations Corporation (CCOC)<sup>6</sup> to increase the court clerk's budgets.<sup>7</sup> As a result, court clerks began retaining service charges for court-related functions only in the pre-2008 amounts, and began remitting the difference to the Department of Revenue for deposit in the General Revenue Fund; the clerks continued to retain the entirety of the charges for the performance of county-related functions.<sup>8</sup>

Thus, whether a function performed by the clerk is a "court-related" function or a "county-related" function implicates whether the clerk can keep the entire fee charged for the function. If the function is court-related, the clerk remits part of the fee to the state; if the function is county-related, the clerk keeps the fee.

In 2019, the Legislature again amended s. 28.24, F.S., specifically requiring court clerks to remit portions of service charges (portions equal to the difference between the pre- and post-2008 charge amounts) to the Department of Revenue for deposit into the General Revenue Fund, effectively codifying a practice the clerks were already doing.<sup>9</sup> The 2019 amendments, however, did not specify that the increased fees generated by the 2008 amendments must be remitted only when the fees were collected for the performance of court-related functions.

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<sup>1</sup> S. 28.24, F.S.

<sup>2</sup> See s. 28.222(1), F.S.

<sup>3</sup> For example, s. 28.24(3), F.S., describes a charge for certifying copies of an instrument in the public records. If the requested record is a court filing, the clerk's providing of certified copies of the record is a court-related function. If the requested record is from the county official records, the clerk's providing certified copies of this record is a county-related function.

<sup>4</sup> Fla. R. Jud. Admin. 2.420(b)(1)(A).

<sup>5</sup> Ch. 2008-111, s. 6, Laws of Fla.

<sup>6</sup> The CCOC is a public corporation whose duties include "adopting a plan of operation including a detailed budget" for the court clerks. S. 28.35, F.S.

<sup>7</sup> Ch. 2008-111, s. 47, Laws of Fla.

<sup>8</sup> Florida Clerks of Court Operations Corporation, Agency Analysis of 2020 House Bill 591, p. 4 (Jan. 3, 2020).

<sup>9</sup> Ch. 2019-58, s. 6, Laws of Fla.; Florida Clerks of Court Operations Corporation, Agency Analysis of 2020 House Bill 591, pp. 4-5 (Jan. 3, 2020).

## Appellate Filing Fees

Before 2008, s. 28.241(2), F.S., required court clerks to impose a \$250 filing fee for appeals from the county to circuit courts and a \$50 filing fee for appeals from the circuit court to the district court of appeal (DCA) or the Supreme Court.<sup>10</sup> Clerks were required to remit \$50 of these fees to the Department of Revenue for deposit into the General Revenue Fund.<sup>11</sup> Therefore, the clerks were able to retain \$200 of the fees for appeals from county to circuit courts, but none of the fees from appeals from circuit courts to the DCAs or the Supreme Court.<sup>12</sup>

In 2008, the Legislature amended s. 28.241(2), F.S., increasing the filing fee for appeals from the county to the circuit courts from \$250 to \$280 and increasing the fee for appeals from the circuit courts to the DCAs or Supreme Court from \$50 to \$100.<sup>13</sup> The amendment required the clerks to remit \$80 from both fees to the Department of Revenue for deposit in the General Revenue Fund, and to remit one-third of the fees collected in excess of \$80 to the Department of Revenue for deposit into the Clerks of Court Trust Fund.<sup>14,15</sup> Thus, the clerks' retention of the fee for appeal from the county to circuit courts remained at \$200, but the clerks were now allowed to retain \$20 of the DCA and Supreme Court appellate fee.<sup>16</sup> But the 2008 amendments included a provision stating that the Florida Court Clerks of Court Operations Corporation (CCOC) could not approve increases in court clerks' budgets based on increased revenue generated by the amendments.<sup>17</sup>

As a result, the new money collected in excess of the \$80 filing fee (that is, the \$20 retained from the fees for appeals to the DCAs or Supreme Court), sent to the Department of Revenue for deposit in the Clerks of Court Trust Fund, could not be used for court clerks' budgets. Thus, for the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court, the full \$100 amount was deposited in the General Revenue Fund.<sup>18</sup>

In 2017, the Legislature amended s. 28.241(2), F.S., removing the requirement that clerks remit \$80 of the appellate filing fees to the Department of Revenue for deposit in the General Revenue Fund.<sup>19</sup> But the provision barring the clerks' use of revenue generated by the 2008 fee increases remained, and the clerks continued remitting \$20 of the \$100 DCA and Supreme Court appellate fees to the Department of Revenue for deposit in the General Revenue Fund. Thus, after the 2017 amendments, the clerks were able to retain all of the \$280 fee for appeals from the county to the circuit courts, and retain \$80 of the \$100 fee for appeals from the circuit court to the DCA or Supreme Court.<sup>20</sup>

In 2019, the Legislature again amended s. 28.241(2), F.S., requiring the clerks to remit \$20 from the \$280 filing fee for appeal from the county to the circuit courts to the Department of Revenue for deposit into the General Revenue Fund.<sup>21</sup> The 2019 amendments to s. 28.241, F.S., were intended to be "remedial and clarifying in nature" and applied retroactively to July 1, 2008.<sup>22</sup>

According to the CCOC, the \$20 remittal added in 2019 was applied to the wrong fee and should have been applied to the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court.<sup>23</sup> The 2019 amendment, according to the CCOC, was meant to codify the clerks' practice of remitting \$20 of the \$100 fee to the Department of Revenue.

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<sup>10</sup> See ch. 2008-111, s. 8, Laws of Fla.

<sup>11</sup> See *id.*

<sup>12</sup> Florida Clerks of Court Operations Corporation, Agency Analysis of 2020 House Bill 591, pp. 1-2 (Jan. 3, 2020).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> The Clerks of Court Trust Fund exists within the Department of Revenue and receives funds from clerks of court, to be used "for purposes set forth in legislation." S. 213.131, F.S.—Amendment Notes (2009).

<sup>16</sup> Florida Clerks of Court Operations Corporation, Agency Analysis of 2020 House Bill 591, p. 2 (Jan. 3, 2020).

<sup>17</sup> See ch. 2008-111, s. 47, Laws of Fla.

<sup>18</sup> Florida Clerks of Court Operations Corporation, Agency Analysis of 2020 House Bill 591, p. 2 (Jan. 3, 2020).

<sup>19</sup> Ch. 2017-126, s. 2, Laws of Fla.

<sup>20</sup> Florida Clerks of Court Operations Corporation, Agency Analysis of 2020 House Bill 591, p. 2 (Jan. 3, 2020).

<sup>21</sup> Ch. 2019-58, s. 8, Laws of Fla.

<sup>22</sup> Ch. 2019-58, s. 30, Laws of Fla.

<sup>23</sup> Florida Clerks of Court Operations Corporation, Agency Analysis of 2020 House Bill 591, p. 3 (Jan. 3, 2020).

## Effect of Proposed Changes

CS/HB 591 makes technical and clarifying changes to fix several "glitch" issues affecting the clerks of court resulting from the passage of CS/CS/HB 337 (2019). Specifically, the bill:

- Specifies that if a service charge is related to a court record, the charge is split between the clerks and the General Revenue Fund. It further clarifies, within the subsections it amends, that if the specific service charge is not for a court record, the clerk retains the full amount of the charge.
  - The bill also defines "court records" to help clarify the distinction between a court-related service and a county-related service.
- Amends s. 28.222, F.S., to include language restating that the distribution of funds is based on the type of service performed (court-related or county-related).
- Corrects the filing fee structure for appellate cases in s. 28.241, F.S. The bill removes the \$20 General Revenue Fund portion of the filing fee from cases appealed to the circuit court and reinserts the \$20 General Revenue Fund portion onto cases originating from the circuit court being appealed to a district court of appeal or the Supreme Court.

The bill provides an effective date of July 1, 2020.

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 28.001, F.S., relating to definitions.

**Section 2:** Amends s. 28.24, F.S., relating to service charges.

**Section 3:** Amends s. 28.241, F.S., relating to filing fees for trial and appellate proceedings.

**Section 4:** Amends s. 28.222, F.S., relating to clerk to be county recorder.

**Section 5:** Provides an effective date of July 1, 2020.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may have an insignificant negative fiscal impact on state revenues based on its reallocation of \$20 of filing fees that must be remitted to the General Revenue Fund in certain appellate cases.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill may have an insignificant positive fiscal impact on local revenues based on its reallocation of \$20 of filing fees that must be remitted to the General Revenue Fund in certain appellate cases.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2020, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Defined "court records" to clarify the difference between a "court-related" and "county-related" function.
- Clarified what fee a clerk should charge for each type of appeal.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.