

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: PCS/SB 790 (226652)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice and Senator Brandes

SUBJECT: Clerks of the Circuit Court

DATE: February 20, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	_____	_____	<u>AP</u>	_____

I. Summary:

PCS/SB 790 provides that the clerks of court must remit certain fees to the Department of Revenue only if those fees are collected for performing “court-related” functions, and allows the clerks to retain certain fees collected for performing “county-related” functions.

The bill also requires clerks to remit the Department of Revenue \$20 of the \$100 filing fee for appeals from the county or circuit courts to the district courts of appeal or the Supreme Court.

Removing the \$20 General Revenue portion of the filing fee for filing a notice of appeal from the county court to the circuit court and reinserting the \$20 General Revenue portion onto the fee for filing a notice of appeal from the county or circuit court to the district court of appeal or to the Supreme Court is estimated to negatively impact the General Revenue Fund by \$49,240 annually.

The bill is effective upon becoming law.

II. Present Situation:

Service Charges

Clerks of circuit courts are required to charge for services rendered in recording documents and instruments.¹ 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,² 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. For example, s. 28.24(3), F.S., describes a charge for

¹ Section 28.24, F.S.

² See s. 28.222(1), F.S.

certifying copies of any instrument in the public records. If the requested record is a court filing, the clerk's providing of certified copies of this record is a court-related function, while if the requested record is from the county official records, the clerk's providing of certified copies of this record is a county-related function.

In 2008, the Legislature amended s. 28.24, F.S., increasing many service charges for both county- and court-related functions.³ 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)⁴ to increase the court clerk's budgets.⁵ As a result, court clerks began retaining services 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.⁶

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 specified charge amounts) to the Department of Revenue for deposit into the General Revenue fund, effectively codifying the practices generally observed by the clerks.⁷ The 2019 amendments, however, did not specify that the increased fees generated by the 2008 amendments were to be remitted only when the fees were collected for the performance of court-related functions.

Appellate Filing Fees

Prior to 2008, s. 28.241(2), F.S., required court clerks to collect 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.⁸ Clerks were required to remit \$50 of these fees to the Department of Revenue for deposit into the General Revenue Fund.⁹ 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.¹⁰

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 \$100.¹¹ 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

³ Ch. 2008-111, § 6, Laws of Fla.

⁴ The CCOC is a public corporation whose duties include "adopting a plan of operation including a detailed budget" for the court clerks. Section 28.35, F.S.

⁵ *Id.* at § 47.

⁶ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 5.

⁷ Ch. 2019-58, § 6, Laws of Fla.; *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 5.

⁸ *See* Ch. 2008-111, § 8, Laws of Fla.

⁹ *See Id.*

¹⁰ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 1.

¹¹ *Id.*

for deposit into the Clerks of Court Trust Fund.^{12,13} 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.¹⁴ 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.¹⁵ As a result, the new money collected in excess of the \$80 filing fee, i.e. 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, all of the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court was deposited in the General Revenue Fund.¹⁶

In 2017, the Legislature again 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.¹⁷ But the provision barring the clerks' use of revenue generated by the 2008 fee increases remained intact, and the clerks continued remitting \$20 of the \$100 DCA and Supreme Court appellate fee 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 courts to the DCAs or Supreme Court.¹⁸

When the Legislature amended s. 28.241(2), F.S., in 2019, the clerks were required to remit \$20 from the \$280 filing fee for appeals from the county court to the circuit courts to the Department of Revenue for deposit into the General Revenue Fund.¹⁹ The 2019 amendments to, s. 28.241, F.S., were "remedial and clarifying in nature" and applied retroactively to July 1, 2008.²⁰

The CCOC maintains 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.²¹ 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.

III. Effect of Proposed Changes:

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.

¹² *Id.*

¹³ 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." Section 213.131, F.S.—Amendment Notes (2009).

¹⁴ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 2.

¹⁵ *See* Ch. 2008-111, § 47, Laws of Fla.

¹⁶ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 2.

¹⁷ Ch. 2017-126, § 2, Laws of Fla.

¹⁸ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 3.

¹⁹ Ch. 2019-58, § 8, laws of Fla.

²⁰ *Id.* at § 30.

²¹ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 3.

The bill amends s. 28.222, F.S., to specify that the distribution of funds is based on the type of service performed (court-related or county-related). This codifies a practice which, according to the Clerk of Court Operations Corporation, the court clerks are already engaged in.

The bill amends s. 28.24, F.S., to define the term “court-related functions” to have the same meaning as provided in the Florida Rules of Judicial Administration.

Rule 2.430 of the Rules of Judicial Administration (2019) defines “Court records” as the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, video tapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes or stenographic tapes of court proceedings.²²

The bill also clarifies that for appeals from the county or circuit courts to an appellate court, the clerks shall charge a \$100 filing fee, and shall remit \$20 of that fee to the Department of Revenue for deposit into the General Revenue Fund. This codifies a practice which, according to CCOC, the clerks already engage in.

The bill also deletes language in s. 28.241, F.S., stating that the \$280 filing fee applied both to appeals from lower courts to circuit courts and to appeals from county or circuit courts to appellate courts. This deletion clarifies that the \$280 fee applies to appeals from lower courts to circuit courts, while the \$100 fee applies to appeals from county or circuit courts to appellate courts (i.e. the DCAs and the Supreme Court).

The bill takes effect upon becoming law.

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.

²² Florida Rules of Judicial Administration 2019 p. 80 <https://www-media.floridabar.org/uploads/2019/01/RJA-1-1-19.pdf>
(Last visited February 18, 2020)

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 clarifies that clerks are no longer required to remit to the Department of Revenue \$20 from the \$280 fee for appeals from lower courts to circuit courts. The Clerk of Court Operations Corporation (CCOC) reports that there were 2,462 such appeals in the previous three fiscal years, and the non-remittance of \$20 for each case will result in a \$49,240 decrease to the General Revenue Fund and a corresponding increase to the clerks. The bill requires clerks to remit \$20 of the \$100 filing fee for appeals to the DCAs and Supreme Court, but, as the CCOC advised that clerks are already engaged in this practice, the fee will not result in an increase in revenue.²³

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 28.222, 28.24, and 28.241.

IX. **Additional Information:**

A. Committee Substitute – Statement of Changes:

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

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 18, 2020:

The committee substitute:

²³ Clerks of Court Operations Corporation Bill Analysis of SB 790 dated November 11, 2020 (on file with Senate Appropriations Subcommittee on Criminal and Civil Justice).

- Specifies that if a service charge is related to a court record, the charge is split between the clerks and the General Revenue Fund; and
- Defines "court records" for the purpose of s. 28.24, F.S. as having the same meaning as provided in the Florida Rules of Judicial Administration.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
