

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 Committee on Judiciary

BILL: SB 790

INTRODUCER: Senator Brandes

SUBJECT: Clerks of the Circuit Court

DATE: December 9, 2019

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|------------|------------------|
| 1. | <u>Elsesser</u> | <u>Cibula</u> | <u>JU</u> | Favorable |
| 2. | _____ | _____ | <u>ACJ</u> | _____ |
| 3. | _____ | _____ | <u>AP</u> | _____ |

I. Summary:

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.

The Clerks of Court Operations Corporation identifies this as a “glitch” bill intended to clarify 2008, 2017, and 2019 modifications to the service charge and filing fee statutes, without reversing those modifications.

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 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

¹ Section 28.24, F.S.

² See s. 28.222(1), F.S.

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 charge amounts) to the Department of Revenue for deposit into the General Revenue fund, effectively a codification of the practice the clerks were already engaged in.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 impose \$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 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 for deposit into the Clerks of Court Trust Fund.^{12,13} Thus, the clerks' retention of the fee for

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.*

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).

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, for the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court, all \$100 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

The Legislature amended s. 28.241(2), F.S., again in 2019, 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.¹⁹ The 2019 amendments to, inter alia, s. 28.241, F.S., were "remedial and clarifying in nature" and applied retroactively to July 1, 2008.²⁰

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.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 adds subsection (29) to s. 28.24, F.S., clarifying that the moneys required by that section to be remitted to the General Revenue Fund (i.e. the amount by which services charges increased after the 2008 amendments) include only those revenues collected for court-related functions. Revenues from county-related functions must continue to be retained by the clerks. This codifies a practice which, according to the Clerk of Court Operations Corporation, the court clerks are already engaged in.

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 states that the term “court-related functions” have the same meaning as it does in s. 28.35(3), F.S. That section lists the following as court-related functions:

- 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;
- data collection and reporting;
- determinations of indigent status; and
- paying reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.

Section 28.35 states that clerks may not use filing fees to fund functions not included in the above list. The bill amends Section 30 of chapter 2019-58, Laws of Florida, clarifying that its amendments only apply court-related functions, and that the term “court-related functions” has the same meaning as it does in s. 28.35, F.S.

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.

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 states 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 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 in revenue. The bill requires clerks to remit \$20 of the \$100 filing fee for appeals to the DCAs and Supreme Court, but, as the CCOC says that clerks are already engaged in this practice, the fee will not result in an increase in revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.24 and 28.241; the bill also amends section 30 of chapter 2019-58 of the Laws of Florida.

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.

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