

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 31 Clerks of the Court

**SPONSOR(S):** Clemons

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 382

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Justice Appropriations Subcommittee		Smith	Keith
2) Judiciary Committee			
3) Appropriations Committee			

### SUMMARY ANALYSIS

The State Constitution establishes the office of the clerk of the circuit court in each of the state's 67 counties, and each clerk is elected to a 4-year term. The clerk of court is responsible for administering parts of the jury selection process and compensating the jurors. Currently, the Legislature appropriates funds to the Justice Administrative Commission (JAC), which then distributes those funds to the clerks for the compensation of jurors for meals and lodging and other jury-related costs. The amount disbursed to each clerk for juror compensation is calculated based on an estimate of juror compensation costs to be incurred during the upcoming quarter.

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.

HB 31 provides that clerks of court, instead of being paid upfront for their projected costs of compensating jurors, must submit a request for reimbursement to the Florida Clerks of Court Operations Corporation (CCOC) within 20 days after each quarter ends. Each clerk must attest to the actual costs to compensate jurors. The CCOC must review the requests and forward them to the JAC, which in turn submits a request for payment to the Chief Financial Officer.

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, requiring clerks to remit to 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 bill may have an insignificant fiscal impact on state government and local governments.

The bill provides an effective date of July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Clerks of Court

The State Constitution establishes the office of the clerk of the circuit court in each of the state's 67 counties, and each clerk is elected to a 4-year term.<sup>1</sup> The clerk's duties may be divided by special or general law between two officers.<sup>2</sup>

All funding for the offices of the clerks of the circuit and county courts performing court-related functions is provided by filing fees for judicial proceedings and service charges for performing court-related functions.<sup>3</sup> The costs associated with the payment of jurors and the expenses for meals and lodging of jurors are court-related functions that the clerk of the court must fund from filing fees, service charges, court costs, and fines.<sup>4</sup>

In the event that revenue generated by filing fees and service charges is inadequate to fund the offices of the clerks to perform court-related functions, the state must provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues.<sup>5</sup>

While the chief judge of a judicial circuit has overall authority for oversight of the jury selection system, the clerk of court also has responsibilities relating to the jury process, including:

- Determining the qualifications of jurors;
- Creating lists of potential jurors for future summons;
- Issuing jury summons for prospective jurors;
- Reporting information related to jurors, including the costs associated with the jury process; and
- Compensating jurors.<sup>6</sup>

It is estimated that clerks of the court summon almost two million jurors statewide on an annual basis.<sup>7</sup>

##### Florida Clerks of Courts Corporation

In 2003, the Legislature created the Florida Clerks of Court Operations Corporation (CCOC).<sup>8</sup> All clerks of the circuit court are members of the CCOC, and the CCOC's duties are performed by an executive council composed of eight clerks 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.<sup>9</sup> The CCOC's tasks include:

- Recommending changes in the amounts of various court-related fines, fees, service charges, and costs established by law to ensure that 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;
- Contracting with the Department of Financial Services (DFS) for audit of the court-related expenditures of individual clerks; and

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<sup>1</sup> Art. VIII, s. 1(d), Fla. Const.

<sup>2</sup> *Id.*; art. V, s. 16, Fla. Const.

<sup>3</sup> Art. V, s. 14(b), Fla. Const.

<sup>4</sup> S. 40.32(2), F.S.

<sup>5</sup> Art. V, s. 14(b), Fla. Const.

<sup>6</sup> S. 40.001, F.S.

<sup>7</sup> Florida Clerks of Court Operations Corporation, Agency Analysis of 2020 Senate Bill 590, p. 1 (Dec. 2, 2019).

<sup>8</sup> Ch. 2003-402, Laws of Fla.

<sup>9</sup> S. 28.35, F.S.

- Approving the clerks' proposed budgets.<sup>10</sup>

When approving a clerk's proposed budget, 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 available for court-related expenditures, as determined by the most recent Revenue Estimating Conference; plus
- The total unspent budgeted funds for court-related functions carried forward by the clerks from the previous county fiscal year; plus
- 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.<sup>11</sup>

### Budget Procedure for Payment of Jury Costs

The Justice Administrative Commission (JAC) receives funds from the Legislature and then provides those funds to the clerks to compensate jurors, pay for meals or lodging for jurors, and pay jury-related personnel costs.<sup>12</sup> Since 2016, the Legislature has provided \$11.7 million from General Revenue to cover the projected costs of managing the jury process.<sup>13</sup> The funds are released quarterly. Before 2008, jury costs were funded by the Legislature through the Office of the State Court Administrator.<sup>14</sup>

The current process for clerks to submit information to the JAC to request funding is as follows:

- Each clerk 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 tenth 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 sends the information to the DFS 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 on the amount expended for those purposes in each county during the previous fiscal year. The Chief Financial Officer then issues 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.<sup>15</sup>

### Service Charges

Clerks of circuit courts are required to charge fees for services rendered in recording documents and instruments.<sup>16</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>17</sup> such as providing certified copies of official county records. Some functions described in s. 28.24, F.S., can be

<sup>10</sup> S. 28.35(2), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> See s. 40.29(5), F.S.

<sup>13</sup> 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).

<sup>14</sup> See s. 40.31, F.S. (2007).

<sup>15</sup> S. 40.29(5), F.S.

<sup>16</sup> S. 28.24, F.S.

<sup>17</sup> See s. 28.222(1), F.S.

either court-related or county-related functions, depending on the type of document or service requested.<sup>18</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>19</sup>

In 2008, the Legislature amended s. 28.24, F.S., increasing various service charges for both county- and court-related functions.<sup>20</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>21</sup> to increase the court clerk's budgets.<sup>22</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>23</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>24</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.

### 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 court to a circuit court and a \$50 filing fee for appeals from the circuit court to the district court of appeal (DCA) or the Supreme Court.<sup>25</sup> Clerks were required to remit \$50 of these fees to the Department of Revenue for deposit into the General Revenue Fund.<sup>26</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>27</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>28</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

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<sup>18</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>19</sup> Fla. R. Jud. Admin. 2.420(b)(1)(A).

<sup>20</sup> Ch. 2008-111, s. 6, Laws of Fla.

<sup>21</sup> The CCOC is a public corporation whose duties include "adopting a plan of operation including a detailed budget" for the court clerks. See s. 28.35, F.S.

<sup>22</sup> Ch. 2008-111, s. 47, Laws of Fla.

<sup>23</sup> Florida Clerks of Court Operations Corporation, Agency Analysis of 2021 House Bill 31, p. 2 (Mar. 3, 2021).

<sup>24</sup> Ch. 2019-58, s. 6, Laws of Fla.; Florida Clerks of Court Operations Corporation, Agency Analysis of 2021 House Bill 31, p. 5 (Mar. 3, 2021).

<sup>25</sup> See ch. 2008-111, s. 8, Laws of Fla.

<sup>26</sup> *Id.*

<sup>27</sup> Florida Clerks of Court Operations Corporation, Agency Analysis of 2021 House Bill 31, p. 4 (Mar. 3, 2021).

<sup>28</sup> *Id.*

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>29,30</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>31</sup> However, 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>32</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>33</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>34</sup> However, 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 the entire \$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>35</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>36</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>37</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>38</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.

## Effect of Proposed Changes

HB 31 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., clarifying that the \$280 filing 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.

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<sup>29</sup> *Id.*

<sup>30</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>31</sup> Florida Clerks of Court Operations Corporation, Agency Analysis of 2021 House Bill 31, p. 4 (Mar. 3, 2021).

<sup>32</sup> See ch. 2008-111, s. 47, Laws of Fla.

<sup>33</sup> Florida Clerks of Court Operations Corporation, Agency Analysis of 2021 House Bill 31, p. 4 (Mar. 3, 2021).

<sup>34</sup> Ch. 2017-126, s. 2, Laws of Fla.

<sup>35</sup> Florida Clerks of Court Operations Corporation, Agency Analysis of 2021 House Bill 31, p. 4 (Mar. 3, 2021).

<sup>36</sup> Ch. 2019-58, s. 8, Laws of Fla.

<sup>37</sup> Ch. 2019-58, s. 30, Laws of Fla.

<sup>38</sup> Florida Clerks of Court Operations Corporation, Agency Analysis of 2021 House Bill 31, p. 5 (Mar. 3, 2021).

- The bill removes the \$20 General Revenue Fund portion of the filing fee from county court cases appealed to the circuit court. The bill reinstates the \$20 General Revenue Fund portion of the filing fee for appellate cases originating from the county court or circuit court being appealed to a district court of appeal or the Supreme Court. Codifying a practice which the clerks already engage in.

HB 31 also changes the process for allocating funds to the clerks of court for juror-related expenses from a “pre-impbursement” system to a reimbursement system. Instead of payment for the projected costs of compensating jurors for the upcoming quarter, each clerk must submit a request for reimbursement to the CCOC within 20 days after each quarter ends. Each clerk must attest to the actual costs to compensate jurors, pay for meals and lodging for jurors, and pay for jury-related personnel costs. The CCOC must review each request for reimbursement to ensure the costs are reasonable, directly related to jury management and do not exceed the quarterly funds available.

If requested funds exceed the available funding, the CCOC must adjust the total amount requested to match the available funding before submitting the request to the JAC. After determination if the requested amount is available, the JAC must submit a request for payment to the Chief Financial Officer.

The bill clarifies that the responsibility of the clerks of court extends to any compensation for jurors, including jury-related personnel costs exceeding available GAA funding.

The bill would take effect July 1, 2021.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 28.222, F.S., relating to clerk to be county recorder.

**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. 40.29, F.S., relating to payment of due-process costs.

**Section 5:** Amends s. 27.52, F.S., relating to determination of indigent status.

**Section 6:** Amends s. 28.22205, F.S., relating to electronic filing process.

**Section 7:** Amends s. 28.246, F.S., relating to payment of court related fines or fees.

**Section 8:** Amends s. 45.035, F.S., relating to clerks fees.

**Section 9:** Amends s. 55.141, F.S., relating to duties of the clerk.

**Section 10:** Amends s. 57.082, F.S., relating to determination of civil indigent status.

**Section 11:** Amends s. 197.502, F.S., relating to fees.

**Section 12:** Amends s. 197.532, F.S., related to fees for mailing additional notices.

**Section 13:** Amends s. 197.542, F.S., related to sale at public auction.

**Section 14:** Amends s. 197.582, F.S., related to disbursement of proceeds of sale.

**Section 15:** Amends s. 569.23, F.S., related to security requirements for tobacco settlement agreement signatories, successors, parents, and affiliates.

**Section 16:** Amends s. 712.06, F.S., related to contents of notice.

**Section 17:** Provides an effective date of July 1, 2021.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill may reduce state revenues by an insignificant amount due to the reallocation from the General Revenue Fund to the Clerks of Court Fine and Forfeiture Fund of revenues from the

remittance of the \$20 filing fee for appellate cases appealed from the county court to the circuit court.<sup>39</sup>

2. Expenditures:

The bill may have an indeterminate, but likely insignificant, positive impact on state expenditures associated with the change from a “pre-imburement” system to a reimbursement system for juror compensation. To the extent that actual costs for juror compensation are less than the amount provided for that purpose in the General Appropriations Act, cost savings may be achieved.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may increase revenues for the Clerks of Court by an insignificant amount due to the reallocation from the General Revenue Fund to the Clerks of Court Fine and Forfeiture Fund of revenues from the remittance of the \$20 filing fee for appellate cases appealed from the county court to the circuit court.<sup>40</sup>

2. Expenditures:

The bill may have an indeterminate, but likely insignificant, negative fiscal impact on local governments to the extent that actual costs for juror compensation exceed the amount provided for that purpose in the General Appropriations Act.

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:

This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>39</sup> Revenue Estimating Conference, *HB 591- Court Service Charges* (Jan. 17, 2020), [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/\\_pdf/page205-208.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/page205-208.pdf) (last visited Jan. 19, 2021).

<sup>40</sup> *Id.*

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.