

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 Appropriations

BILL: CS/CS/SB 838

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Judiciary Committee; and Senators Boyd and others

SUBJECT: Clerks of the Circuit Court

DATE: April 18, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Dale</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Dale</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 838 amends laws related to the funding of the clerks of court to:

- Require the Clerk of Courts Operations Corporation to establish and maintain a budget reserve of up to 16 percent of the budget from the previous year;
- Specify that portions of certain service charges collected by a clerk of court that are required to be transferred to the General Revenue Fund only apply for performing services related to a “court record”;
- Revise the appellate filing fee for an appeal from county court to circuit court by eliminating the requirement that \$20 of the \$100 fee be transferred to the General Revenue Fund; and
- Revise the procedure for clerks of the circuit court to receive payments for management of the jury process for the court system.

The bill amends laws related to monies owed to a clerk of court to:

- Specify that fines, costs, service charges, and court costs are due immediately upon assessment.
- Require a person owing monies to the clerk who cannot immediately pay to contact the clerk and set up a payment plan.
- Require an offender to contact the clerk within 30 days after release from incarceration to arrange for payment of any outstanding court obligations.
- Require creation of a statewide uniform payment plan form for monies owed to a clerk.

- Require notice of the availability of payment plans to individuals receiving a traffic infraction or a notice of suspension of driving privilege.

On March 5, 2021, the Office of Economic and Demographic Research (EDR), Revenue Estimating Impact Conference (REC) adopted a positive indeterminate impact for various state and local funds related to the bill's changes to payment plans. Additionally, the REC estimates an out-year negative indeterminate impact to the General Revenue Fund and a positive indeterminate impact to the clerks under certain circumstances. See Section V. Fiscal Impact Statement.

For the sections relating to the clerks' budget process changes, the effective date is upon becoming law. For the sections relating to the payment of juror costs, service charges, and correcting service charge cross-references, the bill is effective July 1, 2021. For the sections pertaining to payment plans, the bill's effective date is October 1, 2021.

II. Present Situation:

Clerk of the Circuit Court

The clerk of the circuit court is a constitutional officer. Each of Florida's 67 counties are required to elect a clerk of the circuit court¹ to serve as both the clerk of court, completing judiciary functions, and as the "*ex officio*"² clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."³ In other words, the clerk of the circuit court wears approximately five hats. In wearing the auditor and custodian of county funds hats, the clerk may also be referred to as the comptroller.⁴

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.⁵

¹ FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.

² See BLACK'S LAW DICTIONARY (10th ed. 2014) ("*ex officio*" means "By virtue or because of an office; by virtue of the authority implied by office.")

³ FLA. CONST. art. V, s. 16. This provision also provides that two officials may split the position, one serving as clerk of court and one serving in the *ex officio* position. Additionally, this provision permits the election of a county clerk of court when authorized by general or special law. *Id.*

⁴ See generally Florida Court Clerks & Comptrollers, *About Us, Clerks Duties & Services*, available at <https://www.flclerks.com/page/ClerksDuties> (last visited Mar. 5, 2021). See also BLACK'S LAW DICTIONARY (10th ed. 2014) ("*comptroller*" means "An officer of a business or a private, state, or municipal corporation who is charged with duties usu. relating to fiscal affairs, including auditing and examining accounts and reporting the financial status periodically.")

⁵ Section 28.35(1), F.S

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.⁶ 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.⁷

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
- 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.

Clerks of the Court Trust Fund

The Legislature created the Clerks of the Court Trust Fund in 2001⁸ 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 DOR in 2013 when the clerks' budget was removed from the General Appropriations Act (GAA). 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 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:

⁶ Florida Clerks of Court Operations Corporation, Welcome to Florida Clerks of Court Operations Corporation (CCOC), available at <https://flccoc.org/>.

⁷ Section 28.35(2)(c), (d), (e), and (f), F.S.

⁸ Section 213.131, F.S.

- No later than February 1, 2020, the cumulative excess of all fines, fees, services charges, and costs exceeding \$10 million 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 be transferred to the General Revenue Fund; provided, however, that the balance remaining in the Clerks of the Court 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 be transferred to the General Revenue Fund.

Service Charges Collected by a Clerk of Court

Clerks of circuit courts are required to charge for services rendered in recording documents and instruments.⁹ 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,¹⁰ 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 requested record is in the Official Records, the clerk’s providing of certified copies of this record is a county-related function.

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.¹¹ Clerks were required to remit \$50 of these fees to the DOR for deposit into the General Revenue Fund.¹² 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.¹³

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 \$100.¹⁴ The amendment required the clerks to remit \$80 from both fees to the DOR for deposit in the General Revenue Fund, and to remit one-third of the fees collected in excess of \$80 to the DOR for deposit into the Clerks of Court Trust Fund.¹⁵ 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

⁹ Section 28.24, F.S.

¹⁰ See s. 28.222(1), F.S.

¹¹ See Ch. 2008-111, s. 8, Laws of Fla.

¹² See *Id.*

¹³ Florida Clerks of Court Operations Corporation, Senate Bill 382 Analysis, p 4 (January 29, 2021).

¹⁴ *Id.*

¹⁵ *Id.*

appellate fee.¹⁶ 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.¹⁷ 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 DOR 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.¹⁸

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 DOR for deposit in the General Revenue Fund.¹⁹ 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 DOR 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.²⁰

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 DOR for deposit into the General Revenue Fund.²¹ The 2019 amendments to s. 28.241, F.S., were "remedial and clarifying in nature" and applied retroactively to July 1, 2008.²²

Effective January 1, 2021, most appeals from the county court are filed in the district court of appeal, rather than with the circuit court.²³

Funding for the Clerks' Court-Related Functions

In its capacity as the clerk of the circuit and county courts, the clerk is required to perform various court-related, administrative and ministerial functions. Any court-related function authorized by law or court rule must be funded by the clerk's collection of filing fees, service charges, costs, and fines, including all of the following:

- Case maintenance.
- Records management.
- Court preparation and attendance.
- Processing the assignment, reopening, and reassignment of cases.
- Processing appeals.
- Collection and distribution of fines, fees, service charges, and court costs.
- Data collection and reporting.
- Determinations of indigent status.

¹⁶ *Id.*

¹⁷ See Ch. 2008-111, s. 47, Laws of Fla.

¹⁸ Florida Clerks of Court Operations Corporation, Senate Bill 382 Analysis, p 4 (January 29, 2021).

¹⁹ Chapter 2017-126, s 2, Laws of Fla.

²⁰ Florida Clerks of Court Operations Corporation, Senate Bill 382 Analysis, p 4 (January 29, 2021)

²¹ Chapter 2019-58, s 8, Laws of Fla.

²² *Id.* at s. 30.

²³ Chapter 2020-61, Laws of Fla.

- Paying reasonable administrative support costs to enable the clerks to carry out court-related functions.²⁴

Court funding is governed by Art. V, s. 14 of the Florida Constitution. For the clerks of the circuit courts, Art. V, s. 14(b) provides that the clerks are self-sustaining and fund their court-related functions through the collection of filing fees, service charges, and other costs. Specifically, Art. V, s. 14(b) states:

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the Legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.²⁵

County Funding Referenced in Article V, Section 14(c)

As referenced above, Art. V, s. 14(c) of the Florida Constitution states that while funding for the state courts system, including the clerks of court, will *not* be required by a county or municipality, the counties are responsible to fund certain types of court infrastructure and maintenance, including “the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems and the cost of construction or lease, maintenance, utilities, and security of facilities for . . . the offices of the clerks of the circuit and county courts performing court-related functions.”²⁶ Additionally, counties pay “reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.”²⁷

No-Fee Court Functions

Additionally, as referenced above, there are certain categories of cases and certain types of filings for which the clerks of court cannot charge a filing fee and possibly other service charges or other costs. These types of cases and filings include the following:

²⁴ Section 28.35(3)(a), F.S. *See also* Florida Court Clerks & Comptrollers, *About Us, Clerks Duties & Services*, available at <https://www.flclerks.com/page/ClerksDuties> (last visited Mar. 5, 2021).

²⁵ FLA. CONST. art. V, s. 14(b) (emphasis added).

²⁶ FLA. CONST. art. V, s. 14(c).

²⁷ *Id.* Additionally, Art. V, s. 14(a) provides that funding for state court systems as well as state attorney’s offices, public defender’s offices, and court-appointed counsel will generally be paid from “state revenues appropriated by general law; and section 14(d) clarifies that the court system has no appropriations authority.

- Various services and filings for indigent parties to pending litigation.²⁸
- Petitions for Habeas Corpus filed by persons detained as mental health patients.²⁹
- Filing an ex parte order for involuntary examination (Baker Act).³⁰
- Petitions for involuntary inpatient placement for mental health.³¹
- Appellate filing fees for indigent persons determined to be and involuntarily committed as a sexually violent predator.³²
- Petitions for involuntary assessment and stabilization for substance abuse impairment.³³
- Petitions for a risk protection order (Marjory Stoneman Douglas High School Public Safety Act).³⁴
- Petitions for protective injunctions against domestic violence,³⁵ repeat, dating, or sexual violence,³⁶ or stalking.³⁷

History of the Clerks of Court Funding Model

1998 Article V Revision (“Revision 7”) and Implementing Legislation

Article V, section 14, was amended in 1998 to “substantially and significantly revise[] judicial system funding, greatly reducing funding from local governments and placing the responsibility primarily on the state.”³⁸ The statement of intent accompanying the revision of Art. V, s. 14(b), also known as “Revision 7,” reflects that the proposers intended for the Legislature to adopt procedures: (1) to fund the clerks’ office in the event “filing fees, services charges and costs are insufficient to cover the court-related salaries, costs, and expenses of the offices of the clerks . . . in a given fiscal year”; and (2) for the disposition of excess revenues collected by the clerks’ offices in a given fiscal year.³⁹

Further, the statement of intent clarifies that the purpose for Revision 7 is to require legislative oversight and an independent review of clerk funding and spending practices. The reason for independent oversight is set out as follows:

The drafters of subsection (b) recognize that there currently exists significant disparities among what the various clerks’ offices spend to perform the same functions. The determination by the [L]egislature as to

²⁸ Sections 57.081 and 57.082, F.S. This does not include prisoners as defined in s. 57.085, F.S.

²⁹ Section 394.459, F.S.

³⁰ Section 394.463, F.S. *See also Collins v. State*, 125 So. 3d 1046, 1047 (Fla. 4th DCA 2013) (noting s. 394.463, F.S., is also known as the Florida Statutes Florida Mental Health Act or *Baker Act*).

³¹ Section 394.467, F.S.

³² Section 394.917, F.S.

³³ Section 397.6814, F.S.

³⁴ Section 790.401, F.S.; Ch. 2018-3, s. 16, Laws of Fla.

³⁵ Section 741.30, F.S.

³⁶ Section 784.046, F.S.

³⁷ Section 784.0485, F.S.

³⁸ *City of Fort Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008) (“In its Statement of Intent, the Constitution Revision Commission explained: ‘The state’s obligation includes, but is not limited to, funding for all core functions and requirements of the state courts system and all other court-related functions and requirements *which are statewide in nature.*’ [e.s.] 26 Fla. Stat. Ann. (Supp.) 67.”).

³⁹ William A. Buzzett and Deborah K. Kearney, *Commentary <1998 Amendment (1997-1998 Constitution Revision Commission Revision 7)>*, FLA. STAT. ANN., FLA. CONST. art. V, s. 14.

the appropriate level of spending should not entail an acceptance of the current level of spending by the clerks' offices throughout the state to perform court-related functions. Rather, it is the intent of this proposal that the clerks be held accountable and responsible to a cost standard which is independently established by the [L]egislature.⁴⁰

Revision 7's 1998 amendment to Art. V of the Florida Constitution had to be implemented by July 1, 2004.⁴¹ In order to implement the 1998 amendment, the Legislature responded "in stages, beginning with passage of SB 1212 in 2000 (Chapter 200-237, Laws of Florida), followed by additional changes to that law in 2001, and, finally in 2002, through the funding of a study to assist in the final phase of implementation."⁴²

The final stage was implemented during the 2003 legislative session. To provide Revision 7's envisioned oversight, accountability, uniformity, and procedures in funding and budgeting for the clerks of court, the Legislature enacted sections 28.35, 28.36, and 28.37, F.S.⁴³:

- Section 28.35, F.S., created the Florida Clerks of Court Operations Corporation (Corporation),⁴⁴ which is responsible to provide accountability, procedural review, and oversight to the clerks of court budgeting process throughout the state.
- Section 28.36, F.S., established budget review and approval procedures of individual clerk of court budgets by the Corporation.
- Section 28.37, F.S., ensures that a portion of certain fines, fees, service charges, and costs collected by the clerks of court are remitted to the state to fund other court-related salaries, costs, and expenses.

Post-Article V Revision to Clerk Funding: 2004-2008⁴⁵

Between 2004 and 2008, the clerks collected and deposited into their local fine and forfeiture funds revenues from court filing fees, service charges, court costs, and fines assessed in civil and criminal proceedings.⁴⁶ A portion of the revenues in a clerk's fine and forfeiture fund was retained to finance the clerk's operations. However, another portion of these revenues were distributed to the General Revenue Fund or other state trust funds to meet other court-related costs. For example, the clerks were required to remit one-third of all fines, fees, service charges, and costs collected to the Department of Revenue for deposit into the Clerk of the Court Trust Fund,⁴⁷ a fund established to assist the clerks in meeting revenue deficits.

Regarding budget planning, the clerks had the discretion to set their individual budgets based on anticipated revenues and expenditures. Each clerk's proposed budget had to be balanced with

⁴⁰ *Id.*

⁴¹ *Office of State Attorney for Eleventh Judicial Circuit v. Polites*, 904 So. 2d 527, 530 (Fla. 3d DCA 2005).

⁴² Florida House of Representatives, *House Bill 113A Staff Analysis*, (May 14, 2003).

⁴³ 2003 Fla. Sess. Law Serv. Ch. 2003-402 (H.B. 113-A). *See also City of Ft. Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008). Note also that the bill seeks to amend each of these provisions.

⁴⁴ *See supra* note 5, and text. When it was first enacted, section 28.35 the "Clerk of court Operations Conference" which was changed in 2004 to the "Florida Clerks of Court Operations Corporation." Chapter 2004-265, s. 23, Laws of Fla. All clerks are members of the Corporation.

⁴⁵ This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).

⁴⁶ Section 142.01, F.S.

⁴⁷ Section 28.37(2), F.S. (2008).

estimated revenues equaling or exceeding anticipated expenditures, although the budget could include a 10 percent contingency reserve.⁴⁸ If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, that clerk could follow the statutory procedure for receiving funds from the Clerks of the Court Trust Fund to address the deficit.⁴⁹

Each clerk had to submit its proposed budget to the Corporation for review and certification that the individual budget was complete and complied with budget procedures.⁵⁰ Upon review and certification by the Corporation, revenue exceeding the amount needed to fund each budget was deposited in the General Revenue Fund.⁵¹

During this time, the Legislature's involvement in the clerks' budgets was limited. The Legislative Budget Commission (LBC) had the authority to approve increases to the maximum annual budgets approved for individual clerks if the additional funding was necessary to:

- Pay the cost of performing new or additional functions required by changes in law or court rule; or
- Pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature.⁵²

Clerks in the General Appropriations Act: 2009-2012⁵³

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court, the Legislature passed Chapter 2009-204, Laws of Fla., which substantially amended the clerks' statutory budget process and procedures. The new law brought the clerks into the state budget and appropriated their funding in the annual General Appropriations Act.

More specifically, the 2009 law required that all revenues received by the clerks from court-related fees, fines, costs, and service charges be remitted to the Department of Revenue for deposit into the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).⁵⁴ The law permitted the clerks, however, to deposit 10 percent of all court-related fines in the Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.⁵⁵

By 2009, revenues accruing to the Clerks of Court Trust Fund began to decline due to the downturn in the economy and the reduction in foreclosure filing fees. As a result, the Legislature reinforced the clerks' budgets with additional money from the General Revenue Fund. The 2011 Legislature appropriated \$44.2 million from the General Revenue Fund to address FY 2010-2011

⁴⁸ Section 28.36(3)(b), (c), F.S. (2008).

⁴⁹ Section 28.36(4), F.S. (2008).

⁵⁰ Section 28.36(3), F.S. (2008).

⁵¹ Section 28.37(4), F.S. (2008).

⁵² Section 28.36(6), F.S. (2008).

⁵³ This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).

⁵⁴ Chapter 2009-204, ss. 5-8, 12, 14, 19, Laws of Fla. The clerks' budgets were appropriated within the JAC budget from 2009-2012. *See also* s. 43.16, F.S. (establishes the Justice Administrative Commission, which administratively serves 49 judicial-related entities, as well as provides compliance and financial review of billings for services provided by private court-appointed attorneys representing indigent citizens and associated due process vendors).

⁵⁵ Section 28.37(5), F.S.

revenue deficits, and the 2012 Legislature appropriated \$57.6 million to address FY 2011-2012 deficits.

Return to Pre-2009 Funding Model: 2013-2019⁵⁶

In 2013, the Legislature reversed many of the 2009 funding model changes but expanded the oversight and accountability in the clerks' budget process. Chapter 2013-44, Laws of Florida, added the following:

- Monthly accounting: required each clerk to submit all collected revenues exceeding one-twelfth of the clerk's total budget for the prior month to the Department of Revenue for deposit into the Clerks of the Court Trust Fund.
- Annual accounting: required the transfer of revenue exceeding one-twelfth of the clerks' total budget out of the Clerks of Court Trust Fund into the General Revenue Fund each January *unless* the official estimate by the Revenue Estimating Conference projects a trust fund deficit (based on the current budget) in the current or upcoming fiscal year.
- Corporation audits: directed the Corporation to conduct annual base budget reviews, conduct cost-comparisons of similarly situated clerks, report pay and benefit issues, and provide an explanation of any clerk expenditure increases over 3 percent.⁵⁷
- Corporation budget standards: required the Corporation to use the official Article V Revenue Estimating Conference revenue estimates for the clerks' budget process.⁵⁸

The 2013 law also enhanced the role and responsibilities of the Legislative Budget Commission (LBC) and directed the LBC to review the budgets of the clerks and either: (1) approve, (2) disapprove, or (3) amend and approve the budgets by October 1 of each year.⁵⁹ In 2017, however, the Legislature removed these duties from the LBC to review the clerks' budgets.⁶⁰

Most Recent Changes: 2019 to present

The clerk's budget process was amended again in 2019.⁶¹ In addition to 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, the combined budget for the clerks of court may also include:

- The unspent budgeted funds for court-related functions carried forward by the clerks of court from the previous county fiscal year; and
- The balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37, F.S.

In 2019, the requirement that the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of court exceeding the amount needed to fund their authorized budgets was transferred to the General Revenue Fund, was changed as follows:

⁵⁶ This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).

⁵⁷ Section 28.35(2)(f), F.S.

⁵⁸ Section 28.35(2)(f)6., F.S.

⁵⁹ Section 11.90(6)(d), F.S.

⁶⁰ Chapter 2017-126, s. 1, Laws of Fla.

⁶¹ Chapter 2019-58, Laws of Fla.

- 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 the Court Trust Fund after the transfer may not exceed \$20 million.
- 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.

In that same act, the 2019 Legislature was looking ahead to 2022 and included the following language:

Section 32. Before the 2022 Regular Session of the Legislature, the Legislature shall review and consider the results of the analysis submitted pursuant to Specific Appropriation 2754 of the 2019-2020 General Appropriations Act regarding the review of the Clerk of Court Processes for the purpose of considering the extension or reenactment of provisions in this act relating to clerk funding.⁶²

Specific appropriation 2754 reads in relevant part:

From the funds in Specific Appropriation 2754, the Office of Program Policy Analysis and Government Accountability is directed to contract with an independent third party consulting firm to assist with a review of the Clerk of Court processes including collection and compilation of empirical evidence based on observation of a random sample of clerks' offices employees; comparison of clerks' office work patterns to propose efficiency and productivity standards; and assessment and comparison of organizational arrangements and deployment of personnel resources among all clerks' offices. Sample groups must include a broad number of large and small counties and include entities from all areas of the state. The analysis shall be submitted to the chair of the Senate Appropriations Committee and the chair of the House of Representatives Appropriations Committee by November 15, 2019.

The report contains 26 recommendations for operational efficiency and cost savings in five categories.⁶³ It is unknown how many recommendations have been implemented.

Payment Plans

Persons who pay money to the clerk of court for an outstanding fine, penalty, fee, service charge, or court cost are expected to pay in full. Many individuals, however, cannot afford to pay. Section 28.246(4), F.S., authorizes a clerk to accept partial payments and to enter into payment

⁶² Chapter 2019-58, s. 32, Laws of Fla.

⁶³ Florida Clerks of Court Study, *Final Report* (November 15, 2019), available at <https://oppaga.fl.gov/Products/ReportDetail?rn=19-CLERKS>

plans with individuals. Monthly payments of no more than 2 percent of the individual's net pay is presumed to be within an individual's ability to pay.⁶⁴

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.⁶⁵ It is estimated that Florida clerks summon almost 2 million jurors annually.⁶⁶

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.⁶⁷ 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.⁶⁸ 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.⁶⁹

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.⁷⁰ 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 Jury 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.⁷¹ The funds are released quarterly.

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:

⁶⁴ Using the 2021 Florida minimum wage at full-time employment and subtracting the standard federal payroll deductions, an unmarried individual would pay no more than \$26.80 a month on a clerk's payment plan.

⁶⁵ See s. 40.001, F.S.

⁶⁶ Florida Clerks of Court Operations Corporation, Senate Bill 590 Analysis (February 6, 2020), on file with Senate Appropriations Subcommittee on Criminal and Civil Justice.

⁶⁷ Chapter 2003-402, s. 40, Laws of Fla.

⁶⁸ Chapter 2004-265, Laws of Fla.

⁶⁹ Chapter 2008-111, Laws of Fla.

⁷⁰ Chapter 2016-62, s. 66, Laws of Fla.

⁷¹ For the Fiscal Year 2020-2021 appropriation, see ch. 2020-111, s. 4, Laws of Fla., Specific Appropriation 736).

- 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.

III. Effect of Proposed Changes:

Service Charges Collected by a Clerk of Court

The bill amends various service charges in s 28.24, F.S., to provide that service charges related to a “court record” is required to have a designated portion of the service charge transferred to the General Revenue Fund. A service charge not related to a court record is fully retained by the clerk. No service charge is increased or decreased by the bill.

The bill defines the term “court record” to mean the contents of a court file, to include:

- Progress dockets and other similar records generated to document activity in a case.
- Transcripts filed with the clerk.
- Documentary exhibits in the custody of the clerk.
- Electronic records, video recordings, and stenographic tapes of depositions or other proceedings filed with the clerk.
- Electronic records, video recordings, and stenographic tapes of court proceedings.

The bill amends s. 28.222, F.S., regarding the clerk’s role as county recorder, to provide that a service charge related to an instrument recorded in the Official Records is fully retained by the clerk, except that a service charge related to a court record or a court function in the Official Records is subject to the partial distribution to the General Revenue Fund. The bill also amends several sections of statute to correct cross-references to specific service charges.

Appellate Filing Fees

The bill amends s. 28.241, F.S., to provide that the \$20 distribution to the General Revenue Fund from the filing fee paid to a clerk of court of the lower court when filing an appeal does not apply

to an appeal from the county court to the circuit court. Thus, the bill provides that a clerk of court retains the entire \$100 fee.

The bill also clarifies in that subsection that the \$100 filing fee payable to the clerk of court as the lower court in the appeal is in addition to the filing fee payable to the appellate court.

Clerk of Court Budgeting and Finances

The bill amends s. 28.37, F.S., regarding funds collected in the Clerk of the Courts Trust Fund. Currently, if the clerks have a budget surplus at the end of their fiscal year, 50 percent of the surplus must be transferred to the General Revenue Fund, with a maximum retainage in the trust fund of \$20 million. After the county fiscal year 2021-22, 100 percent of the annual surplus with no retainage is to be transferred to the General Revenue Fund. The bill repeals the current sweeps and retainage laws and requires instead that 50 percent of the surplus be transferred to the General Revenue Fund. Of the remaining 50 percent, a minimum of 10 percent must be held in reserve in the Clerk of the Courts Trust Fund, and the remainder may be used to increase clerk budgets. The reserve may not exceed 16 percent of the total budget authority of the clerks from the current county fiscal year.⁷²

The bill amends s. 28.36, F.S., to allow the Florida Clerks of Court Operations Corporation to create a budget reserve in the Clerks of the Court Trust Fund of up to 16 percent of the total budget authority during the current county fiscal year. The budget reserve will only accrue should the clerks have a budget surplus that is not otherwise subject to being swept by the Department of Revenue. The budget reserve may only be used to:

- Offset a current-year deficit caused by a revenue shortfall;
- Provide supplemental funding related to a declared emergency; and
- Provide for a minimum continuation budget where the clerks have projected a deficit and the legislature did not appropriate funds sufficient to create a minimum continuation budget. A minimum continuation budget is the current county fiscal year budget unless the Corporation requires a lesser budget.

The bill requires the Corporation to request a budget amendment from the Governor in order to access the reserve. This is in line with the requirements for Executive Branch agencies seeking to establish trust fund budget from a reserve.

The bill amends s. 28.36, F.S., to allow a clerk of the court to request, and the Florida Clerks of Court Operations Corporation to approve, an increase in a clerk's budget authority for a financial impact resulting from increases in use of hearing officers and senior judges.

Monies Owed to a Clerk of Court

The bill amends s. 28.246, F.S., to direct the clerks of court to offer a payment plan to every person who owes money to the clerk and cannot immediately pay. The clerk is responsible for

⁷² For the latest county fiscal year (FY 2019-20), the total budget authority of the clerks was approximately \$403 million. If this bill were in effect, the maximum reserve would be approximately \$64.5 million.

setting the terms of individual plans, although the trial court may review the reasonableness of the plan.

The bill amends s. 28.42, F.S., to require the Florida Clerks of Court Operations Corporation to create a uniform payment plan form. The form must be created by October 1, 2021, and must be used by each clerk starting January 1, 2022. The bill amends traffic and licensing laws at ss. 318.15, 318.20, and 322.45, F.S., to require notice of the availability of payment plans through the clerk of court. The notice must be included with a notice of suspension of a license and must be appended to a citation.

The bill amends s. 28.246, F.S., to require that an individual released from incarceration contact the clerk within 30 days after release to either pay the outstanding fines and fees in full or set up a payment plan.

The bill amends the criminal fine statute at s. 775.083, F.S., to add that the clerk of the court is the entity that collects fines, fees, service charges, and court costs. This reflects current law. The bill also adds the requirement that an offender must contact the clerk to pay, or set up a payment plan, upon assessment by the court.

Jury Management

The bill modifies the process by which clerks receive funds for jury management by changing the current practice under which clerks receive pre-imburements for their costs to one in which they will receive reimbursements for the costs they have incurred.

The new process by which the clerks will receive reimbursement for jury-related costs is as follows:

- Each clerk of the court shall submit a request for reimbursement to the Florida Clerks of Court Operations Corporation (CCOC) within 20 days after each quarter attesting to the clerk's actual costs to compensate jurors, to pay for meals or lodging provided to jurors, and to pay jury-related personnel costs.
- The CCOC will review the request for reimbursement to ensure that the costs are reasonably and directly related to jury management.
- The CCOC will then forward the request for reimbursement to the Justice Administrative Commission (JAC) unless the requests total more than is available, in which case the CCOC will adjust the cumulative total to match the available funds before submittal.
- The JAC will then review the amount requested for the most recently completed quarter to determine if funds are available and submit a request for payment to the Chief Financial Officer.

For the sections relating to the clerks' budget process changes, the effective date is upon becoming law. For the sections relating to the payment of juror costs, service charges, and correcting service charge cross-references, the bill is effective July 1, 2021. For the sections pertaining to payment plans, the bill's effective date is October 1, 2021.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Art. VII, s. 18 of the Florida Constitution.

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:

On March 5th, 2021, the Office of Economic and Demographic Research (EDR), Revenue Estimating Impact Conference (REC) evaluated SB 838 and its companion HB 903. The conference adopted a positive indeterminate impact for various state and local trust funds, the General Revenue Fund, Clerks of Court Trust Fund, and Clerk's Fine and Forfeiture Funds as it relates to the bill's changes to payment plans.⁷³

Currently, if the Article V Estimating Conference forecasts that revenue will exceed the clerks' total budget, 50 percent of the surplus is transferred to General Revenue and the clerks retain the other 50 percent up to a maximum of \$20 million. This procedure is set to expire at the end of County Fiscal Year (CFY) 2021-22 after which time 100 percent

⁷³ Office of Economic and Demographic Research, Results of the Revenue Estimating Impact Conference held March 5, 2021, available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/Impact0305.pdf

of any surplus revenue will be transferred to the General Revenue Fund. Because the bill permanently codifies the existing revenue split, if clerk revenues surpass the total clerks' budget, the REC estimates there will be an indeterminate negative impact to the General Revenue Fund and a positive indeterminate impact to the clerks.

The sections of the bill related to service charges, appellate filing fees and jury management are expected to have an indeterminate but likely minimal fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 27.52 28.222, 28.22205, 28.24, 28.241, 28.246, 28.35, 28.36, 28.37, 28.42, 40.29, 45.035, 55.141, 57.082, 197.502, 197.532, 197.542, 197.582, 318.15, 318.20, 322.245, 569.23, 712.06, and 775.083.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 15, 2021:

The committee substitute:

- Removes provisions modifying the duties of the Florida Clerks of Court Operations Corporation with respect to the funding of clerks' offices;
- Incorporates the substance of SB 382 into the bill which:
 - Specifies that portions of certain service charges collected by a clerk of court that are required to be transferred to the General Revenue Fund only apply for performing services related to a "court record";
 - Revises the appellate filing fee for an appeal from county court to circuit court by eliminating the requirement that \$20 of the \$100 fee be transferred to the General Revenue Fund; and
 - Revises the procedure for clerks of the circuit court to receive payments for management of the jury process for the court system.

CS by Judiciary on March 9, 2021:

The committee substitute removes a provision that would have allowed a clerk of court to request a budget increase due to requirements of the courts, changes the effective date of portions of the bill other than clerk budgeting to October 1, 2021, and makes technical corrections and clarifications.

B. Amendments:

None.

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