

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 838

INTRODUCER: Judiciary Committee and Senator Boyd and Others

SUBJECT: Clerks of the Circuit Court

DATE: April 14, 2021

REVISED: \_\_\_\_\_

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

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

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.
- Require the Clerk of Courts Operations Corporation to identify areas of increased costs to the clerks, and require these increased costs be presented in the Legislative Budget Request of the clerks.

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 bills 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.

The portions of the bill related to clerk funding are effective upon becoming a law, the remaining portions of the bill are effective 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 court<sup>1</sup> to serve as both the clerk of court, completing judiciary functions, and as the "*ex officio*"<sup>2</sup> clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."<sup>3</sup> 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.<sup>4</sup>

### 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.
- Paying reasonable administrative support costs to enable the clerks to carry out court-related functions.<sup>5</sup>

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-

<sup>1</sup> FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.

<sup>2</sup> 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.")

<sup>3</sup> 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.*

<sup>4</sup> 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.")

<sup>5</sup> 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).

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.<sup>6</sup>

#### ***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.”<sup>7</sup> Additionally, counties pay “reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.”<sup>8</sup>

#### ***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:

- Various services and filings for indigent parties to pending litigation.<sup>9</sup>
- Petitions for Habeas Corpus filed by persons detained as mental health patients.<sup>10</sup>

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<sup>6</sup> FLA. CONST. art. V, s. 14(b) (emphasis added).

<sup>7</sup> FLA. CONST. art. V, s. 14(c).

<sup>8</sup> *Id.* Additionally, Article V, section 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.

<sup>9</sup> Sections 57.081 and 57.082, F.S. This does not include prisoners as defined in s. 57.085, F.S.

<sup>10</sup> Section 394.459, F.S.

- Filing an ex parte order for involuntary examination (Baker Act).<sup>11</sup>
- Petitions for involuntary inpatient placement for mental health.<sup>12</sup>
- Appellate filing fees for indigent persons determined to be and involuntarily committed as a sexually violent predator.<sup>13</sup>
- Petitions for involuntary assessment and stabilization for substance abuse impairment.<sup>14</sup>
- Petitions for a risk protection order (Marjory Stoneman Douglas High School Public Safety Act).<sup>15</sup>
- Petitions for protective injunctions against domestic violence,<sup>16</sup> repeat, dating, or sexual violence,<sup>17</sup> or stalking.<sup>18</sup>

## 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.”<sup>19</sup> 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.<sup>20</sup>

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 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

<sup>11</sup> 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*).

<sup>12</sup> Section 394.467, F.S.

<sup>13</sup> Section 394.917, F.S.

<sup>14</sup> Section 397.6814, F.S.

<sup>15</sup> Section 790.401, F.S.; Ch. 2018-3, s. 16, Laws of Fla.

<sup>16</sup> Section 741.30, F.S.

<sup>17</sup> Section 784.046, F.S.

<sup>18</sup> Section 784.0485, F.S.

<sup>19</sup> *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.”).

<sup>20</sup> 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 clerks be held accountable and responsible to a cost standard which is independently established by the [L]egislature.<sup>21</sup>

Revision 7's 1998 amendment to Art. V of the Florida Constitution had to be implemented by July 1, 2004.<sup>22</sup> 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."<sup>23</sup>

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.<sup>24</sup>:

- Section 28.35, F.S., created the Florida Clerks of Court Operations Corporation (Corporation)<sup>25</sup> 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: 2004-2008***<sup>26</sup>

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.<sup>27</sup> 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,<sup>28</sup> a fund established to assist the clerks in meeting revenue deficits.

Regarding budget planning, the clerks had discretion to set their individual budgets based on anticipated revenues and expenditures. Each clerk's proposed budget had to be balanced with estimated revenues equaling or exceeding anticipated expenditures, although the budget could include a 10 percent contingency reserve.<sup>29</sup> If a clerk estimated that available funds plus

<sup>21</sup> *Id.*

<sup>22</sup> *Office of State Attorney for Eleventh Judicial Circuit v. Polites*, 904 So. 2d 527, 530 (Fla. 3d DCA 2005).

<sup>23</sup> Florida House of Representatives, *House Bill 113A Staff Analysis*, (May 14, 2003).

<sup>24</sup> 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.

<sup>25</sup> *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.

<sup>26</sup> This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).

<sup>27</sup> Section 142.01, F.S.

<sup>28</sup> Section 28.37(2), F.S. (2008).

<sup>29</sup> Section 28.36(3)(b), (c), F.S. (2008).

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.<sup>30</sup>

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.<sup>31</sup> Upon review and certification by the Corporation, revenue exceeding the amount needed to fund each budget was deposited in the General Revenue Fund.<sup>32</sup>

During this time, the Legislature's involvement in the clerks' budgets was limited. The Legislative Budget Commission (LBC) had 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.<sup>33</sup>

#### *Clerks in the General Appropriations Act: 2009-2012<sup>34</sup>*

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).<sup>35</sup> 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.<sup>36</sup>

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 moneys from the General Revenue Fund. The 2011 Legislature appropriated \$44.2 million from the General Revenue Fund to address FY 2010-2011 revenue deficits and the 2012 Legislature appropriated \$57.6 million to address FY 2011-2012 deficits.

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<sup>30</sup> Section 28.36(4), F.S. (2008).

<sup>31</sup> Section 28.36(3), F.S. (2008).

<sup>32</sup> Section 28.37(4), F.S. (2008).

<sup>33</sup> Section 28.36(6), F.S. (2008).

<sup>34</sup> This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).

<sup>35</sup> 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).

<sup>36</sup> Section 28.37(5), F.S.

***Return to Pre-2009 Funding Model: 2013-2019***<sup>37</sup>

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.<sup>38</sup>
- Corporation budget standard: required the Corporation to use the official Article V Revenue Estimating Conference revenue estimates for the clerks' budget process.<sup>39</sup>

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.<sup>40</sup> In 2017, however, the Legislature removed these duties from the LBC to review the clerks' budgets.<sup>41</sup>

***Most Recent Changes: 2019 to present***

The clerk's budget process was amended again in 2019.<sup>42</sup> 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:

- 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

<sup>37</sup> This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).

<sup>38</sup> Section 28.35(2)(f), F.S.

<sup>39</sup> Section 28.35(2)(f)6., F.S.

<sup>40</sup> Section 11.90(6)(d), F.S.

<sup>41</sup> Chapter 2017-126, s. 1, Laws of Fla.

<sup>42</sup> Chapter 2019-58, Laws of Fla.

the General Revenue Fund; provided, however, that the balance remaining in the Clerks of Courts 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.<sup>43</sup>

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.<sup>44</sup> 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 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.<sup>45</sup>

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<sup>43</sup> Chapter 2019-58, s. 32, Laws of Fla.

<sup>44</sup> Florida Clerks of Court Study, *Final Report* (November 15, 2019), available at <https://oppaga.fl.gov/Products/ReportDetail?rn=19-CLERKS>

<sup>45</sup> 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.



### III. Effect of Proposed Changes:

#### Clerk of Court Budgeting and Finances

The bill amends s. 28.35, F.S., to add to the duties of the Clerk of Courts Operations Corporation the duty to determine if:

- The estimated revenue available for the upcoming county fiscal year is adequate to fund court-related functions.
- New duties have been imposed on the clerks of court acting in their court-related role.
- Additional judges or magistrates have been authorized, leading to additional court-related duties for the clerks of court.
- Whether the total estimated revenues for court-related expenditures (determined by the Revenue Estimating Conference), plus unspent monies carried forward, plus any appropriations, are insufficient to fund the court-related functions of the clerks of the court at the current level of operations.

If any of these apply, the corporation is required to submit a legislative budget request for consideration.

The bill amends s. 28.35, F.S., to add to the duties of the Clerk of Courts Operations Corporation the duty to ask the Governor for a temporary transfer of unobligated funds to the Clerks of the Court Trust Fund. A temporary transfer (in the nature of a loan) to a state trust fund facing a shortfall is currently authorized by s. 215.18(1), F.S.

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 General Revenue, 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 General Revenue. 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.<sup>46</sup>

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.
- 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

<sup>46</sup> 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.

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 accessing a trust fund to fund a shortfall.

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 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.

The portions of the bill related to budgeting and financial matters of the clerks of court are effective upon becoming law, the remainder of the bill is effective 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.<sup>47</sup>

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 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.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>47</sup> 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](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/Impact0305.pdf)

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 28.246, 28.35, 28.36, 28.37, 28.42, 318.15, 318.20, 322.245, 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 by Judiciary on March 9, 2020:**

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

- B. **Amendments:**

None.