

**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 Appropriations Committee on Criminal and Civil Justice

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BILL: SB 1130

INTRODUCER: Senators Hutson and Thompson

SUBJECT: Clerks of the Court

DATE: April 17, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>AP</u>	_____

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## I. Summary:

SB 1130 increases funding of the clerks of court by:

- Allowing the clerks to retain certain civil filing fees and service charges that are currently directed to the General Revenue Fund.
- Changing the requirement for transfer of a clerk's budget overage from monthly to quarterly.
- Allowing the clerks of court to request General Revenue funding, subject to appropriations, to reimburse the clerks for increases to the Florida Retirement System contribution rate and for certain civil filing fees waived because the filing party was indigent.
- Increasing the allowable reimbursement to clerks of court, subject to appropriations, for a domestic violence injunction filing, from \$40 to \$60 per case.

The bill will redirect an estimated \$30.1 million in revenues from General Revenue Fund to the Clerks' Fine and Forfeiture and Public Records Modernization Trust Funds starting in Fiscal Year 2023-24. See Section V. Fiscal Impact Statement.

The effective date of the bill is July 1, 2023.

## 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,

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<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.").

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. 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:

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>5</sup>

The court-related functions authorized by law or court rule which must be funded by the clerk’s collection of filing fees, service charges, costs, and fines, include 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.

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<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 Nov. 24, 2021). See also BLACK’S LAW DICTIONARY (10th ed. 2014) (“comptroller” means, “[a]n 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> FLA. CONST. art. V, s. 14(b) (emphasis added).

- Paying reasonable administrative support costs to enable the clerks to carry out court-related functions.<sup>6</sup>

### No-Fee Court Functions

There are certain categories of cases and certain types of filings for which the clerks of court may not 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>7</sup> A person is indigent if the person earns 200 percent or less than the federal poverty guidelines. In FY 2021-22, there were 43,236 approved indigency applications.<sup>8</sup>
- Petitions for Habeas Corpus filed by persons detained as mental health patients.<sup>9</sup>
- Filing an ex parte order for involuntary examination (Baker Act).<sup>10</sup>
- Petitions for involuntary inpatient placement for mental health.<sup>11</sup>
- Appellate filing fees for indigent persons determined to be and involuntarily committed as a sexually violent predator.<sup>12</sup>
- Petitions for involuntary assessment and stabilization for substance abuse impairment.<sup>13</sup>
- Petitions for a risk protection order (Marjory Stoneman Douglas High School Public Safety Act).<sup>14</sup>
- Petitions for protective injunctions against domestic violence,<sup>15</sup> repeat, dating, or sexual violence,<sup>16</sup> or stalking.<sup>17</sup>

### Reimbursement for No-Fee Court Functions

In 2002, the Florida Legislature established a mechanism whereby the clerks could request reimbursement for domestic violence injunctions issued by the court, subject to a legislative appropriation.<sup>18</sup> Under this law, a clerk may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for such reimbursement, which will be reimbursed at the rate of \$40 per petition if the Legislature appropriates funds for that purpose. From that \$40, the clerk must pay any law enforcement agency serving the injunction a fee of up to \$20, if the agency so requests payment.<sup>19</sup> However, the Legislature has never funded such an appropriation.<sup>20</sup>

<sup>6</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 Nov. 24, 2021).

<sup>7</sup> Sections 57.081 and 57.082, F.S. This does not include prisoners as defined in s. 57.085, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 394.459, F.S.

<sup>10</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 the Baker Act).

<sup>11</sup> Section 394.467, F.S.

<sup>12</sup> Section 394.917, F.S.

<sup>13</sup> Section 397.6814, F.S.

<sup>14</sup> Section 790.401, F.S.; ch. 2018-3, s. 16, Laws of Fla.

<sup>15</sup> Section 741.30, F.S.

<sup>16</sup> Section 784.046, F.S.

<sup>17</sup> Section 784.0485, F.S.

<sup>18</sup> Chapter 2002-55, Laws of Fla.

<sup>19</sup> Section 741.30, F.S.

<sup>20</sup> Florida Court Clerks & Comptrollers, *Bill Analysis for HB 977* (2023).

In 2022, the Florida Legislature established a mechanism whereby the clerks could request reimbursement for other types of cases for which no filing fees are authorized, including those brought under the Baker Act and the Marchman Act, at the rate of \$40 per case.<sup>21</sup> Under this law, the Florida Clerks of Court Operations Corporation (CCOC) must annually submit the anticipated amount necessary for such reimbursements to the Justice Administration Commission (“JAC”), who must then transmit the request to the Executive Office of the Governor as part of its legislative budget request.<sup>22</sup> The CCOC submitted its first reimbursement estimate in the summer of 2022, and the JAC included this request in its legislative budget request.<sup>23</sup>

### **Florida Retirement System**

The Florida Retirement System (“FRS”) operates the state employee retirement plan. Membership in the FRS is required for all full-time or part-time employees in a regularly-established position with a state agency, county government, district school board, state university, or community college, or with a participating city, independent special district, metropolitan planning organization, public charter school, or public charter technical career center. The membership requirements apply to the clerks and their employees who otherwise meet the conditions for FRS participation. Florida law requires each:

- Employee participating in the FRS to contribute 3 percent of his or her pretax salary, beginning with his or her first paycheck, regardless of which plan he or she chooses.
- Employer to contribute a percentage of the participating employee’s gross monthly salary, which percentage is set by the Legislature annually based on the employee’s membership class.

Although state agencies receive appropriations for required FRS employer contribution increases, the clerks do not; such increases must instead be paid by the clerks out of their portion of the collected revenue.<sup>24</sup> Consequently, the clerks assert that they are often unable to meet their required FRS employer contribution increases, and thus must occasionally resort to eliminating staff to lower their obligations.<sup>25</sup>

### **III. Effect of Proposed Changes:**

This bill makes fiscally related changes regarding the clerks of court as follows.

#### **Retention of Certain Filing Fees**

Any funds collected by a clerk that are not directed to a particular fund are retained by the clerk for use in operating the office of the clerk. Because a direction of monies collected is in statute and not in the state budget, a change in direction stays in effect until changed by a future Legislature. The bill changes the directions listed below from their current payment into the state General Revenue Fund to be retained instead for the benefit of the clerks of court in performing their court-related duties:

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<sup>21</sup> Chapter 2022-201, Laws of Fla.

<sup>22</sup> Section 40.29, F.S.

<sup>23</sup> Florida Court Clerks & Comptrollers, *Bill Analysis for HB 977 (2023)*.

<sup>24</sup> Florida Court Clerks & Comptrollers, *Bill Analysis for HB 977 (2023)*.

<sup>25</sup> *Id.*

- \$37.50 per case from the filing fee for dissolution of marriage, with an estimated annual impact of \$2.3 million.
- \$15 to \$30 per case from the filing fee of various probate proceedings, with an estimated annual impact of \$2 million.
- \$350 or \$465 per case from the filing fee for foreclosures, with an estimated annual impact of \$10.8 million.
- \$10 per issuance of a summons in a civil action, with an estimated annual impact of \$11 million.
- \$295 or \$395 per case from the filing fee to file a cross-claim or counterclaim in a county civil case, with an estimated annual impact of \$0.3 million.

The bill also redirects \$5 from certain traffic infraction charges from General Revenue to the Public Records Modernization Trust Fund to be used exclusively for funding court-related technology needs of the clerks, with an annual impact of \$4.75 million.

### **Clerk Budgeting**

The bill changes the payment of a clerk's excess collections over their budget authority from monthly to quarterly. Calculation of the excess is also moved from a monthly basis to a quarterly basis. This change appears to lower administrative burdens without change in net fiscal effect.

### **State Appropriations; Budget Requests**

The bills allows the clerks of court to submit an annual budget request, subject to legislative appropriations, for reimbursement of the anticipated amount necessary to fund increases in the employer contribution rate for the Florida Retirement System. The Justice Administrative Commission is directed to forward the budget request to the Executive Office of the Governor and Legislature. If appropriated, a clerk of court must submit a payment request to the Justice Administrative Commission on a quarterly basis.

The bill amends the provision for reimbursement of the costs of a domestic violence injunction from \$40 per petition to \$60 per petition. The \$20 payment for the cost of service of process remains the same, and so the clerk's portion increases from \$20 to \$40 per case.

The bill adds an additional area in which the clerks of court may submit a quarterly request for reimbursement, subject to legislative appropriations. The reimbursement is for payment of \$195 per approved application for an indigency waiver of a civil case filing.

The bill is effective July 1, 2023.

**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:**

The Article V Revenue Estimating Conference met on March 24, 2023 and determined that the bill will redirect approximately \$30.1 million in recurring funds from the General Revenue Fund to the Clerks' Fine and Forfeiture Trust Fund and the Public Records Modernization Trust Fund beginning in Fiscal Year 2023-24.<sup>26</sup> The annual general revenue reduction and amount accruing to the trust funds is expected to grow to each fiscal year thereafter; the impact in Fiscal Year 2027-28 is expected to be \$36.3 million.<sup>27</sup>

The Clerks of Court estimated the fiscal impact of the individual fee categories in the bill, as follows:

- Dissolution of Marriage - \$2.3 million

<sup>26</sup> Office of Economic and Demographic Research, Article V Revenue Estimating Conference, March 24, 2023, SB 1130 and HB 977.

<sup>27</sup> *Id.*

- Probate - \$2.0 million
- Foreclosure Filing Fee - \$10.8 million
- Issuance of a Summons - \$11.0 million
- County Civil Crossclaims and Counterclaims - \$0.3 million
- Public Records Modernization Fund - \$4.8 million<sup>28</sup>

The bill's provisions in Section 7 are subject to appropriation but would provide an additional \$16.9 million annually in the following categories: \$3.9 million for FRS costs, \$8.4 million for indigent filing fees, and \$4.6 million for injunctions for protection.<sup>29</sup> In addition, should the present or a future legislature elect to provide this funding to the clerks of court, there would also be a corresponding "significant but indeterminate workload impact" on the Justice Administrative Commission for processing the reimbursement requests.<sup>30</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 28.101, 28.2401, 28.241, 28.35, 28.37, 34.041, 40.29, 318.18, 741.30, 784.046, and 784.0485.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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<sup>28</sup> Florida Clerks of Court Operations Corporation, *Bill Analysis: SB 1130*, page 3 (on file with the Senate Committee on Judiciary).

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

<sup>30</sup> Justice Administrative Commission, *2023 Legislative Session Bill Analysis for Senate Bill 1130*, March 25, 2023, at Page 4 (on file with the Senate Committee on Judiciary).