

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: SB 1130

INTRODUCER: Appropriations Committee on Criminal and Civil Justice; and Senators Hutson and Thompson

SUBJECT: Clerks of the Court

DATE: April 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bondq</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Fav/CS</u>
3.	<u>Kolich</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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. The bill also changes the requirement for transfer of a clerk's budget overage from monthly to quarterly.

The bill will redirect an estimated \$24.1 million in revenues from General Revenue Fund to the Clerks' Fine and Forfeiture Trust Fund 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 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,

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.").

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

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.⁵

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.

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 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.”).

⁵ FLA. CONST. art. V, s. 14(b) (emphasis added).

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

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:

- \$37.50 per case from the filing fee for dissolution of marriage
- \$15 to \$30 per case from the filing fee of various probate proceedings
- \$350 per case from the filing fee for foreclosures
- \$10 per issuance of a summons in a civil action

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.

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.

⁶ 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).

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 the fiscal impact of the individual fee categories as follows:

- Dissolution of Marriage - \$2.5 million
- Probate - \$2.0 million
- Foreclosure Filing Fee (\$350 per case) - \$7.3 million
- Issuance of a Summons - \$12.3 million⁷

The bill will redirect approximately \$24.1 million in recurring funds from the General Revenue Fund to the Clerks of Court.⁸ The annual general revenue reduction and amount accruing to the trust fund is expected to grow each fiscal year thereafter; the impact in Fiscal Year 2027-28 is expected to be \$26.7 million.⁹

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.

⁷ Office of Economic and Demographic Research, Article V Revenue Estimating Conference, March 24, 2023, SB 1130 and HB 977.

⁸ *Id.*

⁹ *Id.*

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Appropriations Committee on Criminal and Civil Justice on April 18, 2023:

The committee substitute removes the redirect of funds from the General Revenue Fund to the clerks of court for performing their court-related duties:

- \$465 per case from the filing fee for certain foreclosures; and,
- \$295 or \$395 per case from the filing fee to file a cross-claim or counterclaim in a county civil case.

The committee substitute also removes the redirect of \$5 from certain traffic infraction charges from the General Revenue Fund to the Public Records Modernization Trust Fund to be used exclusively for funding court-related technology needs to the clerks.

In addition, the committee substitute removes the following:

- Authorizing 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.
- Authorizing the clerks of court to submit a quarterly request for reimbursement, subject to legislative appropriation, for payment of \$195 per approved application for an indigency waiver of a civil case filing.
- Amending the provision for reimbursement of the costs of a domestic violence injunction from \$40 per petition to \$60 per petition.

B. Amendments:

None.