

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 977 Clerks of Court

**SPONSOR(S):** Justice Appropriations Subcommittee, Botana and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1130

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N	Mawn	Jones
2) Justice Appropriations Subcommittee	15 Y, 0 N, As CS	Smith	Keith
3) Judiciary Committee	20 Y, 0 N	Mawn	Kramer

### SUMMARY ANALYSIS

The State Constitution mandates that there be an elected clerk of the circuit court (“clerk”) in each of Florida’s 67 counties to serve as *ex officio* of the board of county commissioners, auditor, official records recorder, and custodian of all county funds. As an officer of the court, the clerk serves in a ministerial capacity, and his or her duties and authority are conferred entirely by law, which duties include the performance of court-related functions, compliance with court-related technology mandates, and the payment of mandatory Florida Retirement System (“FRS”) employer contributions.

Much of the funding for the clerks’ annual operating budgets comes from the fines, fees, service charges, and costs collected by the clerks in connection with judicial proceedings (“revenue”) and submitted into the Florida Clerk of Court Trust Fund (“FCC Trust Fund”) for distribution. However, such revenue does not go entirely to the clerks. Florida law directs the Florida Department of Revenue (“DOR”) to distribute such revenue among the clerks, municipalities, counties, 51 state trust funds with various purposes, and the state’s General Revenue Fund.

CS/HB 977:

- Provides for the redirection of specified revenue from the General Revenue Fund, totaling approximately \$25.6 million annually over the next five years, for deposit into specified trust funds for use by the clerks in performing court-related functions.
- Changes the remissions period for the submission of budget allocation overages from monthly to quarterly to address cash flow problems sometimes created by the monthly remittance requirement.

The bill may have a significant fiscal impact on state and local governments. See *Fiscal Analysis and Economic Impact Statement*.

The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Clerks of the Circuit Court

The Florida Constitution mandates that there be an elected clerk of the circuit court (clerk) in each of Florida's 67 counties to serve as ex officio of the board of county commissioners, auditor, official records recorder, and custodian of all county funds.<sup>1</sup> As an officer of the court, the clerk serves in a ministerial capacity, and his or her duties and authority are conferred entirely by law.<sup>2</sup> Such duties include the performance of court-related functions, such as:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing case assignment, reopening, reassignment, and appeals;
- Processing of bond forfeiture payments;
- Data collection and reporting;
- Determination of indigent status;<sup>3</sup> and
- Paying reasonable administrative costs to enable the clerks to carry out these functions.<sup>4</sup>

##### Funding for the Clerks of the Circuit Court

###### *Annual Operating Budgets*

Much of the funding for the clerks' annual operating budgets comes from collected revenues including judicial proceeding fees,<sup>5</sup> services charges,<sup>6</sup> fines, and court costs that are deposited into the Florida Clerk of Court Trust Fund ("FCC Trust Fund").<sup>7</sup> However, such revenue does not go entirely to the clerks. Florida law directs the Florida Department of Revenue ("DOR") to distribute such revenue amongst the clerks, municipalities, counties, 51 state trust funds of various statutory functions, and the state's General Revenue Fund.<sup>8</sup> Consequently, in Fiscal Year 2021-22, only 54 percent of the collected revenue remained with the clerks while all other funds were allocated to other entities.<sup>9</sup>

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<sup>1</sup> The clerk of the circuit court is elected by the county's electors to serve a four-year term. Art. V, s. 16 and Art. VIII, s. 1, Fla. Const.; Florida Department of State, *County Governments*, <https://dos.myflorida.com/library-archives/research/florida-information/government/local-resources/fl-counties/> (last visited April 12, 2023).

<sup>2</sup> "Ministerial" means acting "in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgment or discretion as the propriety of the action taken." The clerk may appoint deputies, for whose acts the clerk is liable, which deputies have the same power as the clerk, excepting the power to appoint deputies. Ss. 28.06 and 112.312(17), F.S.

<sup>3</sup> Florida law exempts an indigent person from paying specified fees, charges, and costs in any judicial proceeding. A person seeking to be designated indigent must apply to the clerk for a determination of his or her status, which application must meet specified statutory requirements. A person is considered "indigent" if he or she has an annual income equal to or below 200 percent of the federal poverty guidelines or is receiving Temporary Assistance for Needy Families -Cash Assistance, poverty-related veterans' benefits, or supplemental Social Security income. Ss. 57.081 and 57.082, F.S.

<sup>4</sup> S. 28.35(3)(a), F.S.

<sup>5</sup> Filing fees which the clerks must charge are generally set out in s. 28.241, F.S. Certain filings for which the clerks may not charge a filing fee, set out elsewhere in Florida law, include a petition for a protective injunction against domestic, repeat, dating, or sexual violence. See, e.g., ss. 741.30 and 784.046, F.S.

<sup>6</sup> Service charges which the clerks must charge are generally set out in s. 28.24, F.S.

<sup>7</sup> Other funding sources include grants and payments remitted by counties for the performance of county-related functions.

<sup>8</sup> Florida Court Clerks & Comptrollers, *Bill Analysis for HB 977* (Mar. 7, 2023).

<sup>9</sup> Specifically, in FY 2021-22, the clerks collected \$803.5 million in revenue, which revenue was distributed as follows: \$435.9 million to the clerks; \$143.5 million to the General Revenue Fund; \$100.4 million to various state trust funds; \$79.8 million to the state courts system; \$25.7 million to the state attorneys; and \$18.2 million to the public defenders. *Id.*; Florida Court Clerks & Comptrollers, *Revenue Distribution Chart* (2023) [https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/legislative/2023\\_session/comms/2023-legpriorities-distribut.pdf](https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/legislative/2023_session/comms/2023-legpriorities-distribut.pdf) (last visited April 12, 2023).

These revenue sources can also be unstable, resulting in instability in budgeting even where anticipated expenditures remain stable or actually increase over time.<sup>10</sup> As such, the clerks' annual operating budgets largely decreased between Fiscal Years 2010-11 and 2020-21, resulting in a Fiscal Year 2020-2021 budget that was approximately \$41 million less than the budget for Fiscal Year 2010-2011.<sup>11</sup> According to the clerks, though the budgets for Fiscal Years 2021-22 and 2022-23 did increase to levels comparable to budgets from ten years ago, the unpredictability of the revenue sources make the likelihood of continued increases, or at least budget stability, uncertain. The clerks indicate that they currently have a \$36.5 million funding gap between their allocated and need-based budgets, with expenditures expected to increase.<sup>12</sup>

### *Court-Related Functions*

The Florida Constitution mandates that funding for much of the clerks' court-related functions come from collected revenue deposited into the FCC Trust Fund.<sup>13</sup> Additionally, each clerk must create a Fine and Forfeiture Fund for use by the clerk's office in its execution of court-related functions. The Fine and Forfeiture Fund must consist of specified fines, fees, and costs which the clerk is authorized to retain or which are otherwise directed to the Fund.<sup>14</sup>

### Budget Procedures

On or prior to June 1<sup>st</sup> of each year, each clerk must prepare, summarize, and submit a proposed budget to the Florida Clerks of Court Operations Corporation ("CCOC")<sup>15</sup> in the manner and form prescribed by the CCOC.<sup>16</sup> The proposed budget must:

- Provide detailed information on the anticipated revenues available and expenditures necessary for the performance of court-related functions for the fiscal year beginning October 1; and
- Be balanced such that the total of the estimated revenues available<sup>17</sup> equals or exceeds the total of the anticipated expenditures.<sup>18</sup>

If a clerk estimates that his or her available funds in addition to projected revenues are insufficient to meet anticipated expenditures, the clerk must report the revenue deficit to the CCOC.<sup>19</sup> If the CCOC verifies that a revenue deficit is likely, the CCOC must certify the deficit and notify the DOR that the clerk will, as required by statute, retain collected revenues in an amount necessary to fully fund the projected revenue deficit, which revenues the clerk would otherwise have to remit to DOR for deposit into the FCC Trust Fund.<sup>20</sup>

If a revenue deficit is still projected for that clerk after retaining revenues as described above, the CCOC must certify the revenue deficit amount to the Executive Office of the Governor ("EOG") and

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<sup>10</sup> Traffic citations fines historically made up the bulk of the revenue collected by the clerks, but the issuance of such citations has declined in recent years. Bill Analysis, *supra* note 8.

<sup>11</sup> Meanwhile, the annual operating budgets for related agencies increased over that same time period. Florida Clerks & Comptrollers, *Florida Clerks' Unique Budget History*, [https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/legislative/2023\\_session/comms/2023-legpriorities-10yearbud.pdf](https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/legislative/2023_session/comms/2023-legpriorities-10yearbud.pdf) (last visited April 12, 2023); Florida Clerks & Comptrollers, *10-Year Budget Increase Comparison*

<sup>12</sup> *Id.*

<sup>13</sup> Selected salaries, costs, and expenses of the state courts system may also be funded from such fees, charges, and costs as provided by general law. Art. V, s. 14, Fla. Const.

<sup>14</sup> S. 142.01, F.S.

<sup>15</sup> The CCOC is the legislatively-created statewide budget, performance management, and court-related training office for the clerks. Part of its duties include reviewing and recommending to the Legislature changes in the statutorily-specified amounts of fines, fees, service charges, and court costs to ensure reasonable and adequate funding for the clerks in their performance of court-related functions; such recommendations typically focus on redistributing revenue rather than increasing such amounts. Bill Analysis, *supra* note 8; S. 28.35, F.S.

<sup>16</sup> S. 28.36, F.S.

<sup>17</sup> "Estimated revenues available" may include the fines, fees, charges, and costs to be collected by the Clerk in the upcoming fiscal year and the total of unspent budgeted funds for court-related functions carried forward by the Clerk from the previous county fiscal year and the portion of the balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund which has been allocated to the Clerk by the CCOC. *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

request release authority for additional funds from the FCC Trust Fund.<sup>21</sup> The EOG may approve the release of such funds and provide notice of such approval to DOR and the Chief Financial Officer (“CFO”).<sup>22</sup> The DOR must then request monthly distributions from the CFO in equal amounts to each clerk certified to have a revenue deficit.<sup>23</sup>

Once a clerk receives his or her court-related budget allocation for the fiscal year, the total is divided by 12 to give an estimated monthly budget allocation. In the event that the clerk collects more than the monthly projection, the clerk must submit such additional amount to the FCC Trust Fund by the 10<sup>th</sup> of the following month.<sup>24</sup> Such revenue is then redistributed to clerks in counties that do not bring in sufficient revenue to fund their budget allocations.<sup>25</sup>

At the end of each fiscal year, the CCOC goes through a “settle-up” process to determine which clerks submitted more than necessary to, or received more than necessary from, the FCC Trust Fund.<sup>26</sup> Upon such a determination, moneys are payed from or collected by the FCC Trust Fund to remedy the imbalance.<sup>27</sup> However, this process sometimes creates month-to-month cash-flow problems for clerks who overpaid into the fund as the funds are not reimbursed until the end of the fiscal year.<sup>28</sup>

## Effect of Proposed Changes

CS/HB 977 makes several changes to Florida law to close the funding gap between the clerks’ current revenues and anticipated expenditures so that they can provide essential court-related functions.

### Funding

The bill redistributes funds from specific sources that would otherwise be deposited into the General Revenue Fund and directs them to be deposited into the Fine and Forfeitures Trust Fund. These revenue sources include:

- The \$37.50 filing fee for a petition for dissolution of marriage;<sup>29</sup>
- The General Revenue Fund’s allotted share of various probate proceeding filing fees;<sup>30</sup>
- A portion of the General Revenue Fund’s allotted share of the foreclosure filing fees for certain claims valued at over \$50,000;<sup>31</sup> and
- The \$10 summons surcharge.<sup>32</sup>

Thus, the bill provides for the redirection of specified revenue from the General Revenue Fund totaling approximately \$25.6 million annually over the next five years for deposit into specified trust funds for use by the clerks in performing court-related functions.<sup>33</sup>

### Budget Procedures

The bill changes the remissions period for the submission of budget allocation overages to the FCC Trust Fund from monthly to quarterly and the basis for such submissions from a monthly calculation to

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

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Bill Analysis, *supra* note 8.

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

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

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

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

<sup>29</sup> This would redirect about \$2.5 million per year. Bill Analysis, *supra* note 8; Revenue Estimating Conference (“REC”), *SB 1130 and HB 977*, March 24, 2023, <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2023/pdf/page284-287.pdf> (last visited Apr. 12, 2023).

<sup>30</sup> The portion of the probate filing fees currently allotted to the General Revenue Fund varies depending on the type of filing. This would redirect about \$2 million per year. *Id.*; S. 28.2401, F.S.

<sup>31</sup> Under current law, \$195 of the foreclosure filing fee is directed to the Fine and Forfeiture Fund. The bill would increase the amount retained by the Clerks to \$545 where the claim is valued at \$50,000 or more but less than \$250,000. This would redirect about \$8.5 million per year. Bill Analysis, *supra* note 8; REC, *supra* note 29; S. 28.241, F.S.

<sup>32</sup> This would redirect about \$12.5 million per year. Bill Analysis, *supra* note 8; REC, *supra* note 29.

<sup>33</sup> REC, *supra* note 29.

a quarterly calculation. This may address the month-to-month cash flow problems created when overage payments are remitted monthly, as it would allow the clerks to consider shortages in the surrounding months of the quarter to create a more accurate picture of a clerk's revenues.

### Miscellaneous Provisions

The bill:

- Deletes an obsolete provision related to the distribution of specified filing fees remitted to the DOR for deposit into the General Revenue in Fiscal Year 2018-2019.
- Provides an effective date of July 1, 2023.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 28.101, F.S., relating to petitions and records of dissolution of marriage; additional charges.

**Section 2:** Amends s. 28.2401, F.S., relating to service charges and filing fees in probate matters.

**Section 3:** Amends s. 28.241, F.S., relating to filing fees for trial and appellate proceedings.

**Section 4:** Amends s. 28.37, F.S., relating to fines, fees, service charges, and costs remitted to the state.

**Section 5:** Provides an effective date of July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

The Revenue Estimating Conference considered the bill on March 24, 2023, and determined it would have a significant negative fiscal impact on revenues deposited into the state General Revenue Fund.<sup>34</sup> See *Fiscal Comments*.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The Revenue Estimating Conference considered the bill on March 24, 2023, and determined it would have a significant positive fiscal impact on revenues retained by the clerks of the court.<sup>35</sup> See *Fiscal Comments*.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

The bill provides for the redistribution of specified revenue collected by the clerks away from the General Revenue Fund and into other trust funds for use by the clerks. The Revenue Estimating Conference determined that such redistributions would result in a significant negative fiscal impact to General Revenue Fund receipts and a significant positive fiscal impact to trust funds utilized by the clerks. The total impact of funds being redirected in the bill from the General Revenue Fund to the other

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

trust funds for use by the clerks is approximately \$25.6 million annually over the next five years.<sup>36</sup> The total is reached as specified below.

#### Dissolution of Marriage Petition Filing Fees

When a party petitions for a dissolution of marriage, in addition to filing charges authorized in s. 28.241, F.S., Florida law authorizes a filing fee of \$37.50, which fee is currently deposited into the General Revenue Fund.<sup>37</sup> The bill revises s. 28.101, F.S., to redirect this filing fee away from the General Revenue Fund to the Fine and Forfeiture Fund, resulting in the redirection of an estimated \$2.5 million in revenue annually over the next five years.<sup>38</sup>

#### Probate Filing Fees

Section 28.2401, F.S., authorizes a service charge and filing fees for certain probate matters. The bill revises s. 28.2401, F.S., to redirect a portion of such service charge and filing fees away from the General Revenue Fund to the Fine and Forfeiture Fund, resulting in the redirection of an estimated \$2.0 million in fees annually over the next five years.<sup>39</sup>

#### Foreclosure Filing Fees

Section 28.241, F.S., authorizes filing fees for foreclosure actions, a portion of which is retained by the clerks (for certain foreclosure actions) and a portion of which is currently deposited into the General Revenue Fund. The bill revises such distributions so that half of the amount from such filing fees are split between, and deposited into, the General Revenue Fund and the Fine and Forfeiture Fund, resulting in the redirection of an estimated \$8.5 million in fees annually over the next five years.<sup>40</sup>

#### Summons Issuance Fees

Section 28.241(1)(d), F.S., authorizes a service charge of \$10 for issuing an original copy, a certified copy, or an electronic copy of a summons, which charge is deposited into the General Revenue Fund. The bill redirects such charge away from the General Revenue Fund to the Fine and Forfeiture Fund,<sup>41</sup> resulting in the redirection of an estimated \$12.5 million annually over the next five years.<sup>42</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to

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<sup>36</sup> *Id.*; Bill Analysis, *supra* note 8.

<sup>37</sup> S. 28.101(1)(c), F.S.

<sup>38</sup> REC, *supra* note 52.

<sup>39</sup> *Id.*

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

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On April 11, 2023, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute removed several sections of the bill relating to:

- Duties of the FCCOC regarding annual budget requests;
- Collection requirements for specified filing fees and penalties collected by the clerks;
- Authorization for the clerks to request specific reimbursements for certain costs and civil indigency applications; and
- Amendments made to ss. 741.30, 784.046, and 784.0485, F.S., relating to budget requests associated with the assessment of filing fees for a petition for protection against domestic violence, repeat violence, sexual violence, dating violence, and stalking.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.