

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 1077 Clerks of Court

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

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/CS/SB 1470

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**FINAL HOUSE FLOOR ACTION:** 111 Y's

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**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 1077 passed the House on March 1, 2024, as amended, and subsequently passed the Senate on March 6, 2024.

The Florida Constitution mandates that there be an elected clerk of the circuit court (clerk) in each of Florida's 67 counties. The clerks collect court fines, fees, service charges, and court costs related to court dispositions and are authorized to charge fees to perform various functions. Much of the funding for the clerks' annual operating budgets comes from such fees, services charges, fines, and court costs that are deposited into the Florida Clerk of Court Trust Fund. However, such revenue does not go entirely to the clerks. Florida law directs the Florida Department of Revenue to distribute such revenue among the clerks, municipalities, counties, 51 state trust funds of various statutory function, and the state's General Revenue Fund.

Under ss. 318.15 and 322.245, F.S., a person's driver license and driving privilege may be suspended for various reasons, including failing to comply with civil penalties or other court directives within a specified time period; failing to enter into or comply with the terms of a penalty payment plan; or failing to pay child support. A person's driver license and privilege may not be reinstated until the person complies with all obligations and penalties imposed or with other specified court directives and presents a certificate of compliance to a driver license office along with a nonrefundable service charge of \$60.

The bill amends a number of statutes which increase revenue for clerks through the redistribution of specified service charges and fees. Specifically, the bill:

- Amends ss. 27.52, 27.54, 57.082, and 501.2101, F.S., to revise which trust funds certain moneys are deposited into.
- Amends s. 28.35, F.S., to allow clerks of court to utilize funding for the improvement of court technology.
- Amends ss. 34.041 and 318.18, F.S., to reduce the amount of fees distributed to the General Revenue Fund.
- Creates s. 322.76, F.S., to authorize the establishment of the Miami-Dade County Clerk of Court Driver License Reinstatement Pilot Program.
- Amends s. 27.703, F.S., to require appointed capital collateral regional counsel or other appointed attorney to be paid from funds appropriated to the Justice Administrative Commission.
- Amends s. 110.112, F.S., to eliminate state attorney and public defender reporting requirements regarding affirmative action programs.
- Amends s. 142.01, F.S., to authorize clerks of court to invest specified funds in an interest-bearing account and to direct the use of any such interest earned.
- Amends s. 186.003, F.S., to update the definition of "state agency" or "agency" in the state and regional planning chapter of the Florida Statutes.

The bill has a significant fiscal impact on state and local governments. See Fiscal Comments.

The bill was approved by the Governor on May 6, 2024, ch. 2024-153, L.O.F., and became effective on that date.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF 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. The clerk may also serve as ex officio clerk 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; and
- Paying reasonable administrative costs to enable the clerks to carry out these functions.<sup>3</sup>

#### Funding for the Clerks of the Circuit Courts

##### *Annual Operating Budgets*

Much of the funding for the clerks' annual operating budgets comes from collected revenues including judicial proceeding fees,<sup>4</sup> services charges,<sup>5</sup> fines,<sup>6</sup> 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 among the clerks, municipalities, counties, 51 state trust funds of various statutory functions, and the state's General Revenue Fund.

##### *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>8</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>9</sup>

#### Budget Procedures

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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.

<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 to 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, except for the power to appoint deputies. Ss. 28.06 and 112.312(17), F.S.

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

<sup>4</sup> Filing fees which the clerks must charge are generally set out in s. 28.241, F.S.

<sup>5</sup> Service charges which the clerks must charge are generally set out in s. 28.24, F.S.

<sup>6</sup> Ten percent of all court-related fines collected by the clerk, except for penalties or fines distributed to counties or municipalities, must be deposited into the fine and forfeiture fund to be used exclusively for clerk court-related functions. S. 28.37(6), 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> Selected salaries, costs, and expenses of the state courts system and court-related functions may also be funded from such fines, fees, charges, and costs. Art. V, s. 14, Fla. Const.; s. 28.37(1), F.S.

<sup>9</sup> S. 142.01, F.S.

On or prior to June 1<sup>st</sup> of each year, each clerk must prepare, summarize, and submit a proposed budget to CCOC in the manner and form prescribed by CCOC.<sup>10</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>11</sup> equals or exceeds the total of the anticipated expenditures.<sup>12</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 CCOC. If the CCOC verifies that a revenue deficit is likely, the CCOC must certify the deficit and notify 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>13</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 request release authority for additional funds from the FCC Trust Fund. The EOG may approve the release of such funds and provide notice of such approval to DOR and the Chief Financial Officer (CFO). The DOR must then request monthly distributions from the CFO in equal amounts to each clerk certified to have a revenue deficit.<sup>14</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>15</sup> Such revenue is then redistributed to clerks in counties that do not bring in sufficient revenue to fund their budget allocations.

Each year the clerks are required to remit to DOR for deposit into the FCC Trust Fund the cumulative excess<sup>16</sup> of all fines, fees, service charges, and court costs retained by the clerks, plus any funds received from the FCC Trust Fund based on revenue deficiency, which exceed the amount needed to meet the clerks' authorized budget amounts.<sup>17</sup> Thereafter, DOR must transfer 50 percent of the cumulative excess of the original revenue projection from the FCC Trust Fund to the General Revenue Fund. The remaining 50 percent in the FCC Trust Fund may be used in the development of the total combined budgets of the clerks.<sup>18</sup>

### Florida Clerks of Court Operations Corporation

In 2003, the Florida Legislature created the Florida Clerks of Court Operations Corporation (CCOC) to provide budget support to the clerks. All clerks of the circuit courts are members of the CCOC and hold

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<sup>10</sup> S. 28.36, F.S.

<sup>11</sup> "Estimated revenues available" may include the fines, fees, charges, and costs to be collected by the clerk in the upcoming fiscal year; 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 FCC Trust Fund after the transfer of funds to the General Revenue Fund which has been allocated to each clerk by the CCOC. S. 28.36(2)(b), F.S.

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

<sup>13</sup> S. 28.36(4), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> S. 28.37(3), F.S.

<sup>16</sup> Section 28.37(2)(a), F.S., defines "cumulative excess" to mean revenues derived from fines, fees, service charges, and court costs collected by the clerks of the court which are greater than the original revenue projection.

<sup>17</sup> S. 28.37(4)(a), F.S.

<sup>18</sup> S. 28.37(4)(b), F.S.

their positions and authority in an ex officio capacity.<sup>19</sup> CCOC is funded through appropriations by general law pursuant to a contract with the CFO.<sup>20</sup>

The CCOC is responsible for approving the combined budgets submitted by the clerks, and ensuring that the total combined budgets of all 67 clerks does not exceed the total estimated revenues from fees, service charges, court costs, and fines for court-related functions available for court-related expenditures; plus the balance of funds remaining in the Clerks of Court Trust Fund after the transfer of funds to the General Revenue Fund; and plus any appropriations for court-related functions.<sup>21</sup>

Additional CCOC duties include, but are not limited to:

- Adopting a plan of operations.
- Recommending to the Legislature changes in the amounts and distribution of various court-related fines, fees, service charges, and costs to ensure reasonable and adequate funding of the clerks in the performance of their 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.
- Preparing and submitting a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees by January 1 of each year on the operations and activities of the CCOC and detailing the budget development for the clerks of the court and the end-of-year reconciliation of actual expenditures versus projected expenditures for each clerk of court.
- Preparing an annual budget request which provides the anticipated amount necessary for reimbursement pursuant to s. 40.29(6), F.S., for certain petitions and orders.<sup>22</sup> The request for reimbursement must be submitted to the Governor for transmittal to the Legislature.<sup>23</sup>
- Participating in the Florida Retirement System for its eligible employees.<sup>24</sup>

### No Fee Court Functions

There are certain filings for which clerks may not charge a filing fee, including:

- A filing by an indigent party;<sup>25</sup>
- A petition for habeas corpus filed by a person detained as a mental health patient;<sup>26</sup>
- An ex parte order for an involuntary examination;<sup>27</sup>
- A petition for an involuntary commitment;<sup>28</sup>
- Appellate filings for an indigent person determined to be, and involuntarily committed as, a sexually violent predator;<sup>29</sup>
- A petition for involuntary assessment and stabilization for substance abuse impairment;<sup>30</sup>
- A petition for a risk protection order;<sup>31</sup> and
- A petition for a protective injunction against domestic violence;<sup>32</sup> repeat, sexual, or dating violence;<sup>33</sup> or stalking.<sup>34</sup>

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<sup>19</sup> S. 28.35(1)(a), F.S.

<sup>20</sup> S. 28.35(4), F.S.

<sup>21</sup> S. 28.35(2)(f), F.S.

<sup>22</sup> JAC is not authorized to make changes to the budget request except for technical changes necessary to conform to the legislative budget instructions. S. 28.35(2)(i), F.S.

<sup>23</sup> S. 28.35(2), F.S.

<sup>24</sup> S. 28.35(4), F.S.

<sup>25</sup> Ss. 57.081 and 57.082, F.S. This does not include prisoners as defined in s. 57.085, F.S.

<sup>26</sup> S. 394.459, F.S.

<sup>27</sup> S. 394.463, F.S.

<sup>28</sup> S. 394.467, F.S.

<sup>29</sup> S. 394.917, F.S.

<sup>30</sup> S. 397.6814, F.S.

<sup>31</sup> S. 790.401, F.S.

<sup>32</sup> S. 741.30, F.S.

<sup>33</sup> S. 784.046, F.S.

<sup>34</sup> S. 784.0485, F.S.

However, subject to legislative appropriation, clerks may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for reimbursement for petitions for protection against domestic violence; repeat, sexual, or dating violence; or stalking issued by the court, at the rate of \$40 per petition. From this reimbursement, if any, the clerk must pay any law enforcement agency that served such an injunction a fee requested by the agency, not to exceed \$20.<sup>35</sup>

### Driver License Suspension in Florida

Section 318.15, F.S., requires a clerk to notify the Department of Highway Safety and Motor Vehicles (DHSMV) if a person fails to:

- Comply with civil penalties within a specified time period;
- Enter into or comply with the terms of a penalty payment plan;
- Attend driver improvement school; or
- Appear at a scheduled hearing.<sup>36</sup>

Section 322.245, F.S., requires a clerk to notify DHSMV if a person fails to:

- Comply with all directives of a court, imposed based on a violation of a criminal offense, within the time allotted by the court; or
- Pay child support.<sup>37</sup>

Upon receipt of such notice from a clerk, pursuant to either ss. 318.15 or 322.245, F.S., DHSMV must immediately issue an order suspending the driver license and driving privilege of such person. The order must inform the person that he or she may contact the clerk to establish a payment plan to make partial payments for court-related fines, fees, service charges, and court costs.<sup>38</sup>

Sections 318.15 and 322.29, F.S., require a person to do the following before his or her driver license and privilege may be reinstated:

- Comply with the terms of a periodic payment plan or a revised payment plan with the clerk; comply with all obligations and penalties imposed; or comply with all court directives including payment of a delinquency fee; and
- Present a certificate of compliance issued by the court to a driver license office along with a nonrefundable service charge of \$60.<sup>39, 40</sup>

### **Effect of the Bill**

#### Trust Fund Deposits

The bill amends ss. 27.52, 27.54, 57.082, and 501.2101, F.S., to:

- Require 25 percent of any costs recovered by a state attorney from a fraudulent indigency application to be remitted to DOR for deposit into the Grants and Donations Trust Fund of the applicable state attorney instead of into the Grants and Donations Trust Fund of the Justice Administrative Commission (JAC).
- Require any payments received from a county or municipality in support of the operation of the offices of the various public defenders and regional counsel to be deposited into the Grants and Donations Trust Fund of the applicable public defender or criminal conflict and civil regional counsel instead of into the Grants and Donations Trust Fund of JAC.
- Require any moneys received by an enforcing authority for attorney fees and costs of investigation or litigation for specified proceedings to be deposited into the Grants and

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<sup>35</sup> Ss. 741.30(2)(a), 784.046(3)(b), and 784.0485(2)(a), F.S.

<sup>36</sup> S. 318.15(1)(a), F.S.

<sup>37</sup> S. 322.245(1-2), F.S.

<sup>38</sup> Ss. 318.15(1) and 322.245(3), F.S.

<sup>39</sup> S. 318.15(2), F.S.

<sup>40</sup> S. 322.29(2), F.S.

Donations Trust Fund of a state attorney instead of into the Consumer Frauds Trust Fund of JAC if the action is brought by the state attorney.

### Deposit and Distribution of Fees

The bill amends s. 34.041, F.S., to require service charges collected for issuing a summons to be deposited into the clerk's Fine and Forfeiture Fund instead of being remitted to DOR for deposit into the General Revenue Fund.

The bill amends s. 318.18, F.S., to require a \$12.50 administrative fee collected for all noncriminal and moving traffic violations to be distributed as follows, instead of being remitted to DOR for deposit into the General Revenue Fund:

- \$6.25 to be retained by the clerks and deposited into the Public Records Modernization Trust Fund and used exclusively for funding court-related technology needs of the clerk.
- \$6.25 to be deposited into the clerk's Fine and Forfeiture Fund.

### Miami-Dade County Clerk of Court Driver License Reinstatement Pilot Program

The bill creates s. 322.76, F.S., to authorize the establishment of the Miami-Dade County Clerk of Court Driver License Reinstatement Pilot Program. The bill authorizes the Clerk of the Circuit Court for Miami-Dade County to reinstate or provide an affidavit to the department to reinstate a suspended driver license that was originally suspended for the following reasons when the obligations have been met or the suspension period has lapsed:

- Failure to fulfill a court-ordered child support obligation.
- Driving record points.
- Failure to comply with any provision of chs. 318 or 322, F.S.

The bill requires a person to comply with the same requirements that are also required under s. 322.29, F.S., in order to qualify to have his or her license reinstated under this pilot program.

The bill requires DHSMV to ensure that its technology system allows the Miami-Dade County Clerk to reinstate suspended driver licenses within the system under the pilot program beginning on July 1, 2024.

The bill requires the Miami-Dade County Clerk to submit a report containing the following information to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Executive Director of the CCOC by December 31, 2025:

- The number of driver licenses reinstated.
- The amount of fees and costs collected, including the aggregate funds received by the clerk and local and state governmental entities, including from the General Revenue Fund.
- The personnel, operating, and other expenditures incurred by the clerk.
- Feedback received from the community, if any, in response to the Clerk's participation in the pilot program.
- Information regarding whether the pilot program provided more expeditious reinstatement of driver licenses.
- The Clerk's recommendation as to whether the pilot program should be extended in Miami-Dade County or to other clerks' offices.
- Any other information the Clerk deems necessary.

The bill repeals this pilot program on July 1, 2026.

## Other Changes

The bill amends s. 27.703, F.S., to require appointed capital collateral regional counsel or other appointed attorney to be paid from funds appropriated to JAC instead of from funds appropriated to the CFO.

The bill amends s. 28.35, F.S., to authorize clerks to fund improvements to court technology from filing fees, service charges, court costs, and fines.

The bill amends s. 110.112, F.S., to eliminate state attorney and public defender yearly reporting requirements regarding affirmative action programs.

The bill amends s. 142.01, F.S., to authorize the clerk of the circuit court in each county to invest funds held in the Fine and Forfeiture fund in an interest-bearing account. The bill requires any interest earned to be deposited into the Public Records Modernization Trust Fund to be used exclusively for additional court-related operations and enhancements.

The bill amends s. 186.003, F.S., to remove a reference to state attorneys, public defenders, capital collateral regional counsel, and JAC from the definition of “state agency” or “agency” in the state and regional planning chapter of the Florida Statutes.

The bill makes other technical and conforming changes.

The effective date of the bill is upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

#### **1. Revenues:**

See Fiscal Comments.

#### **2. Expenditures:**

See Fiscal Comments.

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

#### **1. Revenues:**

See Fiscal Comments.

#### **2. Expenditures:**

See Fiscal Comments.

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

None.

### **D. FISCAL COMMENTS:**

Redistribution of Specified Revenue

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 estimated total impact of funds being redirected in the bill from the General Revenue Fund to the clerks' local trust funds is approximately \$28.9 million in fiscal year 2024-25, and will average \$29.4 million annually over the next five years.<sup>41</sup> The incremental portions of the \$28.9 million fiscal year 2024-25 impact are explained below.

#### *Summons Issuance Fees*

Section 34.041(1)(d), F.S., authorizes the clerk to collect a \$10 service charge for issuance of a summons, or an electronic certified copy of a summons, which is currently remitted to DOR for deposit into the General Revenue Fund. The bill revises such distributions so that they are not remitted to DOR for deposit into the General Revenue Fund, but are instead deposited into the clerk's Fine and Forfeiture Fund. This results in an estimated \$8.4 million being redirected from the General Revenue Fund in fiscal year 2024-25, and will average \$8.6 million annually over the next five years.<sup>42</sup>

#### *Civil Traffic Violation Administrative Fee*

Section 318.18(18), F.S., authorizes collection of a \$12.50 administrative fee that must be paid in addition to any penalties imposed for all noncriminal moving and nonmoving violations under chs. 316, 320, and 322, F.S., and currently requires the clerk to remit the administrative fee to DOR for deposit into the General Revenue Fund. The bill revises such distributions so that the administrative fee will be retained by the clerks, with \$6.25 being deposited into the Public Records Modernization Trust Fund to be used exclusively for funding court-related technology needs of the clerk, and \$6.25 being deposited into the clerk's Fine and Forfeiture Fund. This results in an estimated \$20.5 million being redirected from the General Revenue Fund in fiscal year 2024-25, and will average \$20.8 million annually over the next five years.<sup>43</sup>

#### Fine and Forfeiture Funds

The bill may have an indeterminate positive fiscal impact on the clerks' revenue as the bill authorizes the clerks to invest funds held in the Fine and Forfeiture Fund into an interest-bearing account.

#### Miami-Dade County Clerk of the Court Driver License Reinstatement Pilot Program

The bill may require the Miami-Dade County clerk's office to spend funds to develop and implement the pilot program created in the bill.

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<sup>41</sup> Florida Office of Economic and Demographic Research, Revenue Estimating Impact Conference, 2024 House Bill 1077, pp. 147 -153, Jan. 12, 2024, <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2024/pdf/impact0112.pdf> (last visited Mar. 6, 2024).

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

<sup>43</sup> *Id.*