

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CJC 17-01 Clerks of the Circuit Court  
**SPONSOR(S):** Civil Justice & Claims Subcommittee; Byrd  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice & Claims Subcommittee	13 Y, 0 N	MacNamara	Bond

### SUMMARY ANALYSIS

Following a 1998 amendment to the state's Constitution, the state was required to pay costs in the judicial system that had previously been the responsibility of the counties. The amendment also required that the 67 county clerks of court fund their activities using revenue from charges, fees, costs, and fines assessed in civil and criminal proceedings. The activities funded through these assessments only include activities that are considered court-related, as provided for by law.

In 2003, the Florida Clerks of Court Operations Corporation ("Corporation") was created to perform various functions as prescribed by law. Initially, the Corporation reviewed and certified proposed budgets from each clerk. In 2009, the Corporation's responsibilities changed and they were tasked with reviewing proposed budgets from each clerk before ultimately submitting a budget to the legislature to be approved as part of the General Appropriations Act.

The clerks of court's budgets are no longer included in the General Appropriations Act. Rather, the Corporation is currently responsible for preparing a combined budget for the clerk of courts and submitting it to the Legislative Budget Commission ("LBC") who has final authority with respect to reviewing, modifying, and approving the budget. Included in these budget requests, as "court-related" functions, are the cost of paying, processing, and providing meals and lodging for jurors and witnesses.

The bill removes the LBC's power of reviewing, modifying, and approving budgets for the clerk of courts and grants this power back to the Corporation. In addition, the bill provides reporting requirements for the Corporation and provides that the total combined budgets of the 67 clerks may not exceed the revenue estimates for the clerks established by the Revenue Estimating Conference.

The bill transfers the responsibility for the costs of juror payments, juror meals and lodging, and related personnel costs back to the state. The bill provides that each clerk of court and the Corporation will prepare quarterly estimates of the needed funds for the Justice Administrative Commission and, based on these estimates, state funding will be distributed to each clerk of court.

The estimated cost of juror payments, and juror meals and lodging for Fiscal Year 2016-2017 is \$11.7 million. This bill will have a recurring negative impact on general revenue funds in that amount. The states' clerk of the courts will see a recurring decrease in expenditures in that amount.

The effective date of the bill is July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **History of Clerk of Courts Funding**

Article V of the Florida Constitution establishes the judicial branch of state government, including the trial and appellate courts. The constitution describes the responsibilities and functions of officials involved in the courts system, including judges, state attorneys, public defenders, and the clerks of the court. It also provides the source of funding for the state court system.

In 1998, Florida voters approved Revision 7 to Article V of the State Constitution, which required the state to pay certain costs in the judicial system that had previously been county responsibilities. These changes were effective July 1, 2004. To that end, the Legislature defined the elements of the state courts system and assigned funding responsibilities to the state and local governments. State government began paying additional operational costs such as due process and court appointed counsel. County governments continued paying for facilities, communications, and security for the court system entities. Article V, section 14(c) provides that:

No county or municipality, except as provided in this subsection, shall be required to provide any funding for . . . the offices of clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, . . . the cost of construction or lease, . . . and security of facilities for . . . the offices of the clerks of the circuit and county courts performing court-related functions.

The constitutional amendment also required the 67 county clerks of court to fund their offices using revenues derived from service charges, court costs, filing fees, and fines assessed in civil and criminal proceedings.<sup>1</sup> The Legislature set the amount of some service charges, court costs, and filing fees. In other cases, the Legislature set a cap on the amounts. All 67 clerks have set the maximum amounts allowed by law. To assist in collecting owed service charges, court costs, filing fees, and fines, the clerks of court are authorized to use collection agents if necessary.

Art. V, s. 14 of the Florida Constitution specifies the state and county responsibilities for funding the state courts system by providing that the Supreme Court and the District Courts of Appeal must be fully funded by the state, and the trial courts (the circuit and county courts) are jointly funded by the state and counties. Art. V, s. 14(b) provides that:

All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided . . . 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.

Since the approval of Revision 7 the funding for the clerks of court and the process of proposing budgets and having budgets approved has undergone multiple changes.

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<sup>1</sup> s. 28.2401, F.S., prescribes the service charges and filing fees for specific services. The section also provides for exceptions and additional service charges.

### Clerk of Court Funding: 2004-2008

In 2004 legislation was passed to implement the changes to Art. V. From 2004-08, each county clerk was responsible for preparing a proposed budget which was then submitted to the Florida Clerks of Court Corporation (the "Corporation"), on or before August 15 of each fiscal year. The Legislature created the Corporation to provide accountability for the revenues collected by the clerks of the court. All clerks of the circuit court are members of the Corporation.<sup>2</sup>

The budget provided detailed information on the anticipated revenues and expenditures necessary for the performance of their court-related functions. The proposed budget was to be balanced, with estimated revenues equaling or exceeding anticipated expenditures.<sup>3</sup> Upon review and certification of the individual clerk of court budgets by the Corporation, revenues in excess of the amount needed to fund each approved clerk of court budget was to be deposited in the General Revenue Fund.

If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, the clerk was to report a revenue deficit to the Corporation. If a deficit still existed after retaining all of the projected collections from court-related fines, fees, service charges, and costs, the Department of Revenue would certify the amount of the deficit to the Executive Office of the Governor and request the release of funds from the Department of Revenue Clerks of the Court Trust Fund.<sup>4</sup>

Additionally, the clerks of court were allowed to retain portions of the moneys collected from filing fees, service charges, court costs, and fines, while other portions were distributed to the General Revenue Fund or other trust funds. The clerks were required to remit one-third of all fines, fees, service charges, and costs collected for court-related functions to the Department of Revenue for deposit in the Department of Revenue Clerks of the Court Trust Fund.<sup>5</sup> The Department of Revenue would then transfer those excess funds, not needed to resolve clerk deficits, from the Clerks of the Court Trust Fund to the General Revenue Fund.

The Corporation, by October of each year, certified to the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Department of Revenue, the amount of proposed budget for each clerk; the revenue projection supporting each clerk's budget; each clerk's eligibility to retain some or all of the state's share of fines, fees, service charges, and costs; the amount to be paid to each clerk from the Clerks of the Court Trust Fund within the Department of Revenue; the performance measures and standards approved by the Corporation for each clerk; and the results of each clerk meeting performance standards.<sup>6</sup>

The Legislative Budget Commission ("LBC") had authority to approve increases to the maximum annual budget 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.
- The additional funding was necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the legislature.<sup>7</sup>

The LBC is comprised of seven members appointed by the Senate President, and seven members appointed by the Speaker of the House.<sup>8</sup> The LBC, among other things, approves budget amendments during the interim between sessions.

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<sup>2</sup> s. 28.35, F.S.

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

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

<sup>5</sup> s. 28.37(2), F.S. (2008)

<sup>6</sup> s. 28.35(1)(f), F.S. (2008)

<sup>7</sup> See s. 28.36(6), F.S. (2008)

### Clerk of Court Funding: 2009-2013

During the 2009 legislative session, the Legislature substantially amended the statutory budget process and procedures for these entities, most noticeably by bringing the clerks and the Corporation into the state budget and appropriating their funds in the annual General Appropriations Act. While employees of the individual clerk offices remained local government employees, staff with the Corporation became state employees.

Ch. 2009-204, L.O.F., provided that all revenues received by the clerk in the fine and forfeiture fund from court-related fees, fines, costs and service charges are considered state funds and are remitted to the Department of Revenue for deposit in to the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).<sup>9</sup> The Corporation, moreover, was housed within the JAC but was not subject to the control, supervision, or direction of the JAC.

The new budget procedure also provided that the Corporation was responsible for preparing budget requests for resources necessary to perform its duties and submitting the request pursuant to ch. 216, F.S., to be funded as a budget entity in the General Appropriations Act.<sup>10</sup> Each clerk was required to submit in his or her budget request the number of personnel and the proposed budget for a specified list of core services, and include the unit cost for each service unit within each core services.<sup>11</sup> The Corporation was then required to compare the proposed unit costs for a given clerk to that of a peer group based on counties with similar sized population and case filings. If the proposed unit costs were higher than a clerk's peers, the clerk was required to justify the increased costs.

The Corporation had to recommend to the Legislature the unit costs for each clerk and a statewide budget amount for the clerks by December 1. Beginning in the 2010-2011 fiscal year, the Corporation was required to release appropriations to each clerk quarterly. If funds in the Clerks of Court Trust Fund were insufficient for the first quarter release, the Corporation could make a request to the Governor for a trust fund loan pursuant to chapter 215. The amount of the first three releases was based on one quarter of the estimated budget for each clerk as identified in the General Appropriations Act.<sup>12</sup>

The Chief Financial Officer (CFO) reviewed unit costs proposed by the Corporation and made recommendations to the Legislature and if necessary, could conduct an audit of a clerk or the Corporation. The Legislature could then reject or modify the proposed unit costs, and appropriate the total amount of the clerk budgets in the General Appropriations Act.

### **Current Law**

In 2013, the Legislature reversed many of the changes made in 2009 legislative session and expanded the role of the LBC. Most notably, funding for the clerks is no longer appropriated in the General Appropriations Act.

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<sup>8</sup> See generally s. 11.90, F.S.

<sup>9</sup> s. 28.37(2), F.S.

<sup>10</sup> Each year the General Appropriations Act is enacted during the annual 60-day session of the Legislature to cover state spending for the fiscal year that begins on July 1 and ends on June 30. Each budget request from each agency, as well as the request from the judicial branch, is required to be reviewed by the Legislature. This review may include a request for information or testimony from the agency, the Auditor General, the Office of Program Policy Analysis and Government Accountability, the Governor's Office of Planning and Budgeting, and the public regarding the proper level of funding for the agency to carry out its mission. See 216.023(8), F.S.

<sup>11</sup> Those core services included circuit criminal; county criminal; juvenile delinquency; criminal traffic; circuit civil; county civil; civil traffic; probate; family; and juvenile dependency. s. 28.36, F.S. (2011).

<sup>12</sup> s. 28.36(10), F.S. (2011)

Rather, the clerks of court work together with the Corporation, the Legislative Budget Commission, and the Judicial Administrative Commission in requesting, modifying, and finalizing a budget for the clerks of court.

### Florida Clerks of Court Operations Corporation

All clerks of the circuit court are still members of the Corporation and hold their position and authority in an ex officio capacity. The Corporation's current functions include:

- Adopting a plan of operations;
- Conducting an election of an executive council;
- Recommending to the Legislature changes in the amounts of various court-related fines, fees, service charges, and costs to ensure reasonable and adequate funding of the clerks of court;
- Developing and certifying a uniform system of performance measures and applicable performance standards for court-related functions as developed by the Corporation and clerk workload performance in meeting the workload performance standards;
- Entering into a contract with the Department of Financial Services for the department to audit the court-related expenditures of individual clerks;
- Reviewing, certifying, and recommending proposed budgets submitted by clerks of the court;
- Developing and conducting clerk educational programs; and
- Submitting a proposed budget for the clerks of court to the LBC on or before August 1 of each year.<sup>13</sup>

Before October 1 of each year, the LBC must consider the submitted budgets and approve, disapprove, or amend the Corporation's budget and approve, disapprove, or amend and approve the total of the clerks' combined budgets or any individual clerk's budget. If the LBC fails to approve or amend and approve the Corporation's budget or the clerks' combined budgets before October 1, the clerks must continue to perform their court-related functions based upon their budget for the previous fiscal year.<sup>14</sup>

### Clerks of Court Court-Related Functions

Pursuant to authority granted in Art. V, s. 14(b) of the Florida Constitution, the list of court-related functions clerks may perform is limited to those functions expressly authorized by statute or court rule. Presently, the court-related functions clerks may perform are:

- 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;
- Processing of bond forfeiture payments;
- Payment of jurors and witnesses;
- Payment of expenses for meal or lodging provided to jurors;
- Data collection and reporting;
- Processing of jurors;
- Determinations of indigent status; and
- Reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.<sup>15</sup>

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<sup>13</sup> s. 28.35(2), F.S.

<sup>14</sup> s. 28.35(2)(h), F.S.

<sup>15</sup> s. 28.35(3)(a), F.S.

The list of functions clerks may not fund from state appropriations include:

- Those functions not listed above;
- Functions assigned by administrative orders which are not required for the clerk to perform the functions listed above;
- Enhanced levels of service which are not required for the clerk to perform the functions listed above; and
- Functions identified as local requirements in law or local optional programs.<sup>16</sup>

### Juror Payments and Costs

The Justice Administrative Commission ("JAC" or "Commission") was created under s. 43.16, F.S. Its members are appointed and consist of two state attorneys and two public defenders.<sup>17</sup> The commission's duties include maintaining a central state office for administrative services and assistance to and on behalf of the state attorneys and public defenders, the Capital Collateral Regional Counsel, the Office of Criminal Conflict and Civil Regional Counsel, and the Guardian Ad Litem Program

Chapter 40, F.S., provides for juries, their payment, and due process costs. The chief judge of each judicial circuit is authorized and responsible for the management, operation, and oversight of the jury system. The clerk of the circuit court is delegated specific responsibilities regarding the processing of jurors, including qualifications, summons, selection lists, reporting, and compensation of jurors. The clerk of the circuit court may contract with the chief judge for the court's assistance in the provision of services to process jurors. The chief judge may also designate to the clerk of the circuit court additional duties consistent with established uniform standards of jury management practices that the Supreme Court adopts by rule or issues through administrative order.<sup>18</sup>

Prior to 2008, state general revenue funds were used to pay juror and witness payments, as well as juror meals and lodging. Each clerk of court prepared quarterly estimates of the needed funds for the Office of State Courts Administrator. Based on these estimates, state funding was distributed to each clerk of courts. In 2008, the Legislature amended the law to require the clerk of the courts to pay those costs from filing fees, service charges, court costs and fines.

Section 28.35, F.S., currently requires the clerks to pay for juror meals and lodging as well as juror and witness payments from filing fees, service charges, costs and fines. Chapter 40, F.S, provides for the management and operations of the state jury system. The chapter specifies that the clerk of the court is responsible for paying for juror payments and meals and lodging. It also provides for the payment process for jury and due process related costs. Juror service is defined and eligibility criteria for payment to jurors for service is provided. Such payments are to be made by the clerk of the circuit court.

The JAC must pay all due process service related invoices after review for compliance with applicable rates and requirements that were submitted by a state attorney, a private court-appointed counsel, a public defender, and the Office of Criminal Conflict and Civil Regional Counsel. If the funds required for payment of witnesses in civil traffic cases and witnesses of the state attorney, the public defender, criminal conflict and civil regional counsel, private court-appointed counsel, and persons determined to be indigent for costs in any county during a quarterly fiscal period exceeds the amount of the funds received from the CFO, the state attorney, public defender, or the Office of Criminal Conflict and Civil Regional Counsel, as applicable, must make a further request upon the JAC for the amount necessary to allow for full payment.

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<sup>16</sup> s. 28.35(3)(b), F.S.

<sup>17</sup> s. 43.16(2), F.S.

<sup>18</sup> s. 40.001, F.S.

The budget implementing bill for fiscal year 2016-2017 required the state, instead of the clerks of court, to pay the costs of juror payments, juror meals and lodging and juror related personnel expenditures for that fiscal year only.<sup>19</sup>

## **Effect of Bill**

### Florida Clerks of Court Operations Corporation

The bill removes the requirement that the LBC annually approve, disapprove, or amend the total combined budget of the clerks of court for court-related functions, and the budget of the Corporation. Instead, the Corporation is responsible for approving the proposed budget for each clerk of court. Moreover, the bill places a cap on combined budgets of the clerks of court; the total combined budgets are not allowed to exceed the revenue estimates established by the Revenue Estimating Conference.

The bill requires that the Corporation prepare and submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committee by January 1 of each year on the operations and activities of the Corporation. The report must also detail the budget development for the clerks of court and the end-of-year reconciliation of actual expenditures versus projected expenditures for each clerk.

### Court-Related Functions: Juror Costs

The bill transfers the responsibility for the costs of juror payments, juror meals and lodging, and related personnel costs to the JAC.

This bill amends s. 28.35, F.S., to remove the authorization of the clerks to pay for juror payments and meals and lodging from filing fees, service charges, costs and fines. The bill amends s. 40.29, F.S., to provide that each clerk of court will prepare quarterly estimates of the funds needed to compensate jurors for payments and meals and lodging for the JAC and, based on these estimates, state funding will be distributed to each clerk of courts. The Corporation must prepare quarterly estimates of the funds needed to compensate for jury related personnel costs.

The bill also amends s. 40.31, F.S., to provide that if the amount of the appropriation is not sufficient to fund such jury costs during the fiscal year, the JAC may apportion the funds to the clerks and any deficit would be paid by warrant. Likewise, in a deficit situation the clerks would pay jurors by certificate of the amount of compensation still due. This procedure mirrors current law in respect to witness payments.

Additionally, ss. 40.24, 40.32, 40.33, and 40.34, F.S., are amended to conform to the provisions of the bill.

## **B. SECTION DIRECTORY:**

Section 1 amends s. 11.90, F.S., relating to the Legislative Budget Commission.

Section 2 amends s. 28.35, F.S., relating to the Florida Clerks of Court Operations Corporation.

Section 3 amends s. 28.36, F.S., relating to budget procedure.

Section 4 amends s. 40.24, F.S., relating to compensation and reimbursement policy.

Section 5 amends s. 40.29, F.S., relating to payment of due-process costs.

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<sup>19</sup> See 2016-62, L.O.F., s. 66.  
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Section 6 amends s. 40.31, F.S., relating to Justice Administrative Commission appropriations.

Section 7 amends s. 40.32, F.S. relating to payments to jurors and witnesses.

Section 8 amends s. 40.33, F.S., relating to deficiencies.

Section 9 amends s. 40.34, F.S., relating to clerks making triplicate payroll.

Section 10 provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The budget implementing bill for fiscal year 2016-2017 required the state, instead of the clerks of court, to pay the costs of juror payments, juror meals and lodging and juror related personnel expenditures for that fiscal year only.<sup>20</sup> The Legislature included \$11.7 million for juror related costs in the 2016-2017 General Appropriations Act. .<sup>21</sup> This bill amends the law to require the state to pay for these juror costs for the 2017-2018 fiscal year and in subsequent fiscal years. The necessary appropriation to the Justice Administrative Commission for this purpose will be included in the FY 2017-18 House proposed General Appropriations Act.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have an impact on local government revenues.

#### 2. Expenditures:

The estimated cost of juror payments, juror meals and lodging and juror related personnel costs for Fiscal Year 2016-17 was \$11.7 million. The states' clerk of the courts will see a recurring decrease in expenditures in that amount.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

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<sup>20</sup> See 2016-62, L.O.F., s. 66.

<sup>21</sup> See 2016-17 GAA, ch. 2016-66, L.O.F., line 772A.



The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

None.