



Justice Appropriations Subcommittee

**Tuesday, January 24, 2012
2:00 p.m.
Morris Hall**

MEETING PACKET

**Dean Cannon
Speaker**

**Richard Glorioso
Chair**



The Florida House of Representatives

Justice Appropriations Subcommittee

Dean Cannon
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Chair

AGENDA

Tuesday, January 24, 2012

2:00 p.m.

Morris Hall (17 HOB)

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. Consideration of the following bill(s):
HB 777 Securities Law Violations by Eisnaugle
- IV. Workshop on the following:
Chair's Budget Proposal for FY 2012-13
- V. Consideration of the following proposed committee bill(s):
PCB JUAS 12-01 -- Juvenile Detention
PCB JUAS 12-02 -- State Courts Revenues
PCB JUAS 12-03 -- Clerks of the Court
PCB JUAS 12-04 -- Capital Collateral Regional Counsel Trust Fund/Justice Administrative Commission
PCB JUAS 12-05 -- Correctional Privatization
- VI. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 777 Securities Law Violations
SPONSOR(S): Eisnaugle
TIED BILLS: None IDEN./SIM. BILLS: SB 1290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N	Williams	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Jones Darity <i>J. Darity</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 517, F.S., entitled the "Florida Securities and Investor Protection Act" (FSIPA), is designed to protect the public from fraudulent and deceptive practices in the sale and marketing of securities. This purpose is achieved principally by requiring the registration of securities and securities dealers.

Section 517.07(1), F.S., makes it unlawful for any person to sell or offer to sell specified securities unless they are registered. In addition to being registered, s. 517.07(2), F.S., requires that a securities purchaser be furnished with a prospectus meeting specified requirements. Violations of s. 517.07(1) and (2), F.S., are currently 3rd degree felonies, ranked in Level 2 of the Offense Severity Ranking Chart.

Section 517.12(1), F.S., makes it unlawful for a dealer, associated person, or issuer of securities to sell or offer for sale any securities in or from offices in Florida, or sell securities to persons in Florida from offices outside of Florida, by mail or otherwise, unless the person has been registered. A violation of s. 517.12(1), F.S., is a 3rd degree felony ranked in Level 1 of the Offense Severity Ranking Chart.

The bill increases the ranking of securities-related offenses in the Offense Severity Ranking Chart as follows:

- A violation of s. 517.07(1), F.S., goes from a Level 2 offense to a Level 4 offense; and
- A violation of s. 517.12(1), F.S., goes from a Level 1 offense to a Level 4 offense.

As a result, the lowest permissible sentence for these offenses will be increased.

The Criminal Justice Impact Conference met January 17, 2012 and determined this bill will have an insignificant impact on the state prison beds because of the low volume of individuals reported with this offense.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Criminal Punishment Code - Offense Severity Ranking Chart

The Criminal Punishment Code applies to sentencing for felony offenses (except capital felonies) committed on or after October 1, 1998.¹ Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the legislature.² As the offense level increases, the number of points rises. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.³

A defendant's sentence is calculated based on points, which are assigned for factors including: the offense for which the defendant is being sentenced; victim injury; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors.⁴ The points are added in order to determine the "lowest permissible sentence" for the offense. If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction (i.e., jail). If the total sentence points exceed 44 points, a prison sentence is the lowest permissible sentence. In each instance, the sentencing range is the lowest permissible sentence up to the maximum penalty provided in s. 775.082, F.S., which is based on the degree of the felony.⁵

Florida Securities and Investor Protection Act

Chapter 517, F.S., is entitled the "Florida Securities and Investor Protection Act" (FSIPA).⁶ The purpose of FSIPA is to protect the public from fraudulent and deceptive practices in the sale and marketing of securities.^{7, 8} This purpose is achieved principally by requiring the registration of securities and securities dealers, which provides potential investors with sufficient information to enable them to protect themselves.⁹

The Office of Financial Regulation (OFR)¹⁰ is the entity responsible for registering securities and securities dealers.¹¹ The processes for registering are outlined in ss. 517.081, 517.082, 517.12, and 517.1201, F.S., which include requirements that OFR be provided an application, certain financial statements, and other specified information.

¹ Section 921.002, F.S.

² Section 921.0022, F.S.

³ Section 921.0023, F.S.

⁴ Section 921.0024, F.S.

⁵ The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years. Section 775.082, F.S.

⁶ Section 517.011, F.S.

⁷ Section 517.021, F.S., defines the term "security" to include any of the following: notes, stocks, treasury stocks, bond, a debenture, an evidence of indebtedness, certificates of deposit, certificates of deposit for a security, certificates of interest or participation, whiskey warehouse receipts or other commodity warehouse receipts, certificates of interest in a profit-sharing agreement or the right to participate therein, certificates of interest in an oil, gas, petroleum, mineral, or mining title or lease or the right to participate therein, collateral trust certificates, reorganization certificates, preorganization subscriptions, transferable shares, investment contracts, a beneficial interest in title to property, profits, or earnings, an interest in or under a profit-sharing or participation agreement or scheme, any option contract which entitles the holder to purchase or sell a given amount of the underlying security at a fixed price within a specified period of time, other instruments commonly known as a security, including an interim or temporary bond, debenture, note, or certificate, receipts for a security, or for subscription to a security, or any right to subscribe to or purchase any security. And viatical settlement investments.

⁸ *Rushing v. Wells Fargo Bank, N.A.*, 752 F. Supp. 2d 1254 (M.D. Fla. 2010); *Arthur Young & Co. v. Mariner Corp.*, 630 So.2d 1199, 1203 (Fla. 4th DCA 1994).

⁹ 32 Fla. Jur 2d Investment Securities, Etc. s. 122

¹⁰ The Office of Financial Regulation regulates the banking, finance and securities industries in Florida and is administratively housed within the Department of Financial Services. OFR is headed by a commissioner appointed by the Financial Services Commission, which consists of the Governor and Cabinet. (<http://www.flofr.com/Office/Aboutofr.aspx>)(last visited on January 5, 2012).

¹¹ Sections 517.081 and 517.12, F.S.

Section 517.07(1), F.S., makes it unlawful for any person to sell or offer to sell specified securities unless they are registered. In addition to being registered, s. 517.07(2), F.S., requires that a securities purchaser be furnished with a prospectus meeting the requirements of rules adopted by the Financial Services Commission. Violations of s. 517.07(1) and (2), F.S., are currently 3rd degree felonies, ranked in Level 2 of the Offense Severity Ranking Chart.¹² A Level 2 offense equates to 10 sentencing points.

Section 517.12(1), F.S., specifies that no dealer, associated person, or issuer¹³ of securities shall sell or offer for sale any securities in or from offices in Florida, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with OFR. In addition, OFR is prohibited from registering any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office pursuant to chapter 517, F.S.¹⁴ A violation of s. 517.12(1), F.S., is a 3rd degree felony ranked in Level 1 of the Offense Severity Ranking Chart.¹⁵ A Level 1 offense equates to 4 sentencing points.

In addition to the above-described unlawful acts, FSIPA contains many other provisions that prescribe unlawful behavior relating to securities.¹⁶ With one exception,¹⁷ these offenses are 3rd degree felonies, and except as provided above, are ranked in Level 1 of the Offense Severity Ranking Chart.¹⁸

Effect of the Bill

The bill increases the ranking of securities-related offenses in the Offense Severity Ranking Chart as follows:

- A violation of s. 517.07(1), F.S. (requiring certain securities to be registered prior to sale), goes from a Level 2 offense (equating to 10 sentencing points) to a Level 4 offense (equating to 22 sentencing points)
- A violation of s. 517.12(1), F.S. (requiring securities dealers, etc. to be registered), goes from a Level 1 offense (equating to 4 sentencing points) to a Level 4 offense (equating to 22 sentencing points).

As a result, the lowest permissible sentence for violations of ss. 517.07(1) and 517.12(1), F.S., will be increased.

B. SECTION DIRECTORY:

Section 1. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 2. Provides an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹² See ss. 517.302 and 921.0022(3)(b), F.S.

¹³ Section 517.021, F.S., defines the terms “dealer,” “associated person,” and “issuer.”

¹⁴ Section 517.12(1), F.S.

¹⁵ See ss. 517.302 and 921.0022(3)(a), F.S.

¹⁶ See, e.g., ss. 517.301, 517.311, and 517.312, F.S.

¹⁷ A person who violates s. 517.312(1), F.S., by obtaining money or property of an aggregate value exceeding \$50,000 from five or more persons is guilty of a 1st degree felony. Section 517.302(2), F.S.

¹⁸ See ss. 517.302 and 921.0022(3)(a), F.S.

2. Expenditures:

The Criminal Justice Impact Conference met January 17, 2012 and determined this bill will have an insignificant impact on the state prison beds because of the low volume of individuals reported with this offense.

The Florida Department of Law Enforcement reported that there were 48 convictions for violations of s. 517.07(1), F.S., and 53 convictions for violations of s. 517.12(1), F.S., from 2006 - 2011.¹⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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

¹⁹ Office of Financial Regulation. Analysis on HB 777. January 6, 2012. (On file with House Criminal Justice Subcommittee staff).

HB 777

2012

1 A bill to be entitled
 2 An act relating to securities law violations; amending
 3 s. 921.0022, F.S.; reclassifying certain securities
 4 law offenses for purposes of the offense severity
 5 ranking chart of the Criminal Punishment Code;
 6 providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraphs (b) and (d) of subsection (3) of
 11 section 921.0022, Florida Statutes, are amended to read:

12 921.0022 Criminal Punishment Code; offense severity
 13 ranking chart.—

14 (3) OFFENSE SEVERITY RANKING CHART

15 (b) LEVEL 2

16

Florida	Felony	Description
Statute	Degree	
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection

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HB 777

2012

19			Act.
20	403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
21	517.07(2)	3rd	Registration of securities and Furnishing of prospectus required.
22	590.28(1)	3rd	Intentional burning of lands.
23	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
24	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
25	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.

HB 777

2012

26	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
27	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
28	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
29	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
30	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
31	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit,

HB 777

2012

			etc., credit card, value over \$300.
32	817.52 (3)	3rd	Failure to redeliver hired vehicle.
33	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
34	817.60 (5)	3rd	Dealing in credit cards of another.
35	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
36	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
37	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
38	831.01	3rd	Forgery.
39	831.02	3rd	Uttering forged instrument;

HB 777

2012

			utters or publishes alteration with intent to defraud.
40	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
41	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
42	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
43	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
44	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
45	843.08	3rd	Falsely impersonating an officer.
46	893.13 (2) (a) 2.	3rd	Purchase of any s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5.,

HB 777

2012

(2) (c) 6., (2) (c) 7., (2) (c) 8.,
 (2) (c) 9., (3), or (4) drugs
 other than cannabis.

47

893.147(2) 3rd Manufacture or delivery of drug
 paraphernalia.

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(d) LEVEL 4

50

Florida Statute	Felony Degree	Description
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51

316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
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52

499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
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499.0051(2)	3rd	Failure to authenticate pedigree papers.
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499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell,
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HB 777

2012

55			contraband prescription drugs.
56	<u>517.07(1)</u>	3rd	<u>Registration of securities.</u>
57	<u>517.12(1)</u>	3rd	<u>Registration of dealers, associated persons, and issuers required.</u>
58	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
59	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
60	784.075	3rd	Battery on detention or commitment facility staff.
61	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
62	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
63	784.081(3)	3rd	Battery on specified official or employee.

HB 777

2012

64	784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
65	784.083 (3)	3rd	Battery on code inspector.
66	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
67	787.03 (1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
68	787.04 (2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
69	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
70	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.

HB 777

2012

71	790.115 (2) (b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
72	790.115 (2) (c)	3rd	Possessing firearm on school property.
73	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
74	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
75	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
76	810.06	3rd	Burglary; possession of tools.
77	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.

HB777

2012

78	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
79	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
80	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
81	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
82	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
83	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
84	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.

HB 777

2012

85	837.02 (1)	3rd	Perjury in official proceedings.
86	837.021 (1)	3rd	Make contradictory statements in official proceedings.
87	838.022	3rd	Official misconduct.
88	839.13 (2) (a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
89	839.13 (2) (c)	3rd	Falsifying records of the Department of Children and Family Services.
90	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
91	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
	843.15 (1) (a)	3rd	Failure to appear while on bail for felony (bond estreature or

HB 777

2012

			bond jumping).
92	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
93	874.05(1)	3rd	Encouraging or recruiting another to join a criminal gang.
94	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
95	914.14(2)	3rd	Witnesses accepting bribes.
96	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
97	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
98	918.12	3rd	Tampering with jurors.
99	934.215	3rd	Use of two-way communications

HB 777

2012

device to facilitate commission
of a crime.



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Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JUAS 12-01 DJJ Respite Beds
SPONSOR(S): Justice Appropriations Subcommittee
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee		Toms 	Jones Darity 

SUMMARY ANALYSIS

The proposed committee bill conforms to the House of Representatives proposed Fiscal Year 2012-13 General Appropriations Act.

The term "respite" is defined in chapter 985.03(46) as "a placement that is available for the care, custody, and placement of a youth charged with domestic violence as an alternative to secure detention or for placement of a youth when a shelter bed for a child in need of services or a family in need of services is unavailable."

Currently, respite care is lawfully authorized as an alternative to secure detention for preadjudicated youth who have been charged with domestic violence who do not otherwise meet detention criteria. Counties are statutorily required to pay for the costs of secure detention but not the costs of respite care.

This bill would modify the definition of the term "detention care" to include alternatives to secure detention, including but not limited to respite beds for youth charged with domestic violence. The counties would be required to pay the costs of respite care.

Respite beds have a lower per diem cost than secure detention beds. If respite beds are used instead of secure detention beds, counties will realize a cost savings as a result of this bill. The Shared County/Juvenile Detention Trust Fund will realize a savings of \$3.2 million and 77 FTE from using respite beds. \$1.2 million of the savings will be reinvested into the Shared County/Juvenile Detention Trust Fund to provide funding for 43 respite beds across the state. The trust fund will have a net savings of \$2 million in the House proposed FY 2012-13 GAA.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Currently, respite care is lawfully authorized as an alternative to secure detention for preadjudicated youth who have been charged with domestic violence. The term "respite" is defined in chapter 985.03(46) as "a placement that is available for the care, custody, and placement of a youth charged with domestic violence as an alternative to secure detention or for placement of a youth when a shelter bed for a child in need of services or a family in need of services is unavailable." Section 985.255(2), Florida Statutes, states the court may hold youth in secure detention if a youth charged with domestic violence does not meet detention criteria and the court makes specific written findings that respite care for the child is not available or it is necessary to place the child in secure detention in order to protect the victim from injury.¹ The youth may not be held in secure detention pursuant to this provision for more than 48 hours unless ordered by the court. After 48 hours, the court is required to hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that detention care is necessary to protect the victim from injury. The department does not currently contract for any respite beds for the purposes described in this section.

Pursuant to section 985.686, counties are responsible for paying the costs of preadjudatory secure detention pursuant but are not required to pay the costs of respite care. In Fiscal Year 2010-11, 2,614 low-risk youth who did not meet secure detention criteria were placed in secure detention for domestic violence charges because there were no respite beds available². Because these youth were preadjudicated, the counties were responsible for paying their detention costs. According to the Department of Juvenile Justice, the average length of stay for the 2,614 youth was 6 days.³ From July 1, 2011 through December 31, 2011, there were 1,043 youth placed in secure detention for domestic violence charges because there were no respite beds available⁴.

Effect of Proposed Bill

PCB JUAS 12-01 proposes to expand the definition of "detention care" to include "alternatives to secure detention, including but not limited to respite beds for youth charged with domestic violence charges." This would require the counties to pay the costs of respite beds.. If respite beds are used in lieu of secure detention, the counties will realize a savings⁵.

B. SECTION DIRECTORY:

Section 1: Amends section 985.686, F.S., relating to shared county and state responsibility for juvenile detention.

Section 2: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹ Section 985.255(2), F.S.

² Department of Juvenile Justice, "Alternatives to Detention (Respite Beds)"

³ The department defines the average length of stay as the total number of detained days for the domestic violence-related stays. Domestic violence-related stays is defined as detention stays that appear to have only been necessary due to the domestic violence criteria being met, according to the department. The department did not include youth who met other detention immediate qualifier criteria.

⁴ *Id.*

⁵ *Id.*

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "fiscal comments" section.

2. Expenditures:

See "fiscal comments" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department of Juvenile Justice may contract with private providers for respite care beds to provide care for youth charged with domestic violence.

D. FISCAL COMMENTS:

The estimated daily cost of a respite bed is \$100⁶ compared to the estimated daily cost of secure detention, \$275⁷. It is estimated that 43 respite beds⁸ will be needed for the youth in Florida who are charged with domestic violence but do not meet secure detention criteria. The Shared County/Juvenile Detention Trust Fund will realize a savings of \$3.2 million and 77 FTE from using respite beds. \$1.2 million of the savings will be reinvested into the Shared County/Juvenile Detention Trust Fund to provide funding for 43 respite beds across the state. The trust fund will have a net savings of \$2 million.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

PCB JUAS 12-01 will provide the counties with a less expensive alternative to detention for youth charged with domestic violence and do not meet the criteria for secure detention. The bill does not require the county detention centers to use respite beds, it allows them to use respite beds if they are available. Counties will realize a savings in detention costs from the changes this bill proposes.

This bill does not appear to require counties or municipalities to 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:

⁶ Governor's FY 2012-13 Budget Recommendations, Department of Juvenile Justice, Governor's Office of Policy and Budget Analyst Workpapers, Prepared by Jason Welty, December 2011

⁷ 2010-11 Detention Cost Sharing Final Expenditures Reversions, Department of Juvenile Justice

⁸ Governor's FY 2012-13 Budget Recommendations, Department of Juvenile Justice, Governor's Office of Policy and Budget Analyst Workpapers, Prepared by Jason Welty, December 2011

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to juvenile detention; amending s.
 3 985.686, F.S.; providing that detention care, for
 4 purposes of provisions relating to shared county and
 5 state responsibility for juvenile detention costs,
 6 includes alternatives to secured detention; providing
 7 an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Paragraph (a) of subsection (2) of section
 12 985.686, Florida Statutes, is amended to read:

13 985.686 Shared county and state responsibility for
 14 juvenile detention.—

15 (2) As used in this section, the term:

16 (a) "Detention care" means secure detention and
 17 alternatives to secure detention, including, but not limited to,
 18 respite beds for youth charged with domestic violence charges.

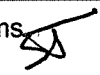
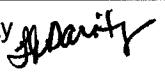
19 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JUAS 12-02 State Courts Foreclosure Revenue

SPONSOR(S): Justice Appropriations Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee		Toms 	Jones Darity 

SUMMARY ANALYSIS

The proposed committee bill conforms to the House of Representatives proposed Fiscal Year 2012-13 General Appropriations Act. PCB JUAS 12-02 proposes to redirect revenues associated with mortgage foreclosure filing fees and mortgage foreclosure counterclaims filing fees from the State Courts Revenue Trust Fund into the General Revenue Fund. This will redirect revenues generated from mortgage foreclosure filing fees and mortgage foreclosure counterclaims filing fees from the State Courts Revenue Trust Fund (SCRTF) to the General Revenue Fund.

The House of Representative proposed FY 2012-13 GAA fund-shifts \$224.3 million from the State Courts Revenue Trust Fund to the General Revenue Fund. The redirection of revenues will offset deficits in the State Courts Revenue Trust Fund and provide stable funds to support and operate the State Courts System.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The 2009 Florida Legislature passed Senate Bill 14-A (Ch. 2009-7, L.O.F.) creating the State Courts Revenue Trust Fund during a special session called to address current year budget shortfalls. The bill was passed with Senate Bill 12-A (Ch. 2009-6, L.O.F.) which redirected fines, fees and revenues into the State Courts Revenue Trust Fund. The two bills significantly altered how the State Court System is funded. In Fiscal Year 2008-09, 90 percent of the State Court System's budget was funded with General Revenue and the remaining 10 percent was funded with trust funds; currently, only 10 percent of the State Court System's budget is funded with General Revenue and 90 percent is funded with trust funds.

The SCRTF funds 83 percent of the total State Court System's budget. The trust fund receives revenues from probate fees¹, circuit filing fees², mortgage foreclosure filing fees³, mortgage foreclosure counterclaim filing fees⁴, appellate fees⁵ and traffic fines⁶. The largest revenue source for the trust fund comes from mortgage foreclosure filing fees. In FY 2009-10, foreclosure filing fees made up 80% of the entire trust fund and in FY 2010-11, foreclosure filing fees made up 67%⁷ of the total trust fund.

Since the creation of the State Courts Revenue Trust Fund, there has been a steep decline in mortgage foreclosure filing fee revenue. The February 2010 Revenue Estimating Conference projected revenue of \$379.8⁸ million for FY 2010-11. The February 2011 Revenue Estimating Conference projected revenue of \$216.7⁹ million for the same fiscal year. In one year, the projected revenue dropped \$163.1 million. An appropriation of \$38.9 million in General Revenue was necessary in the 2011-12 GAA to cover the State Court's System budget deficit for FY 2010-11¹⁰.

Similar trends continue for Fiscal Year 2011-12. The February 2011 Revenue Estimating Conference projected revenue of \$415.7¹¹ million for FY 2011-12. The December 2011 Revenue Estimating Conference projected revenue of \$260.3¹² million for the same fiscal year. In ten months, the projected revenue dropped \$155.4 million. The House proposed 2012-13 GAA appropriates \$121.7 million in General Revenue to fulfill the State Court System's current year budget deficit.

The December 2011 Revenue Estimating Conference has made an official estimate of \$298.7¹³ million for Fiscal Year 2012-13. Currently the base budget for the SCRTF is \$359.9 million. If trends continue, the Legislature will need to continue to fund the SCRTF shortfall with General Revenue in order to maintain current funding levels.

The table below further illustrates the continuing decline in revenue for the State Courts Revenue Trust Fund as projected by the Revenue Estimating Conferences. The table also shows the appropriated budget for each fiscal year.

¹Section 28.2401(1), F.S.

² Section 28.241(1)(a)1.a., F.S. and section 28.241(1)(a)1.b., F.S.

³ Section 28.241(1)(a)2.d., F.S.

⁴ Section 28.241(1)(c)2, F.S.

⁵ Section 25.241, F.S. and 35.22, F.S.

⁶ Section 318.14, F.S., 318.18(19)(a), F.S., and 318.21(20), F.S.

⁷ Office of Economic and Demographic Research, Article V Revenues breakdown spreadsheet, on file with the Justice Appropriations Subcommittee Staff

⁸ Estimating Conference, Article V Fees & Transfers, Executive Summary, February 2010

⁹ Estimating Conference, Article V Fees & Transfers, Executive Summary, February 2011

¹⁰ Ch. 2011-69, L.O.F.

¹¹ Estimating Conference, Article V Fees & Transfers, Executive Summary, February 2011

¹² Estimating Conference, Article V Fees & Transfers, Executive Summary, December 2011

¹³ Estimating Conference, Article V Fees & Transfers, Executive Summary, December 2011

State Courts Revenue Trust Fund Projected Revenues

Fiscal Year	REC Feb 2010	REC Feb 2011	REC Dec 2011	Budget
2010-11	\$379.8	\$216.7	N/A	\$370.4
2011-12	\$291.8	\$415.7	\$260.3	\$361.2
2012-13	\$229.3	\$309.4	\$298.7	\$359.9 ¹⁴

Source: Revenue Estimating Conference, Article V Fees & Transfers, Executive Summaries - Feb 2010, Feb 2011, Dec 2011

Effect of Proposed Bill

PCB JUAS 12-02 proposes to redirect revenues associated with mortgage foreclosure filing fees and mortgage foreclosure counterclaims filing fees from the State Courts Revenue Trust Fund into the General Revenue Fund. Due to the instability of revenue from mortgage foreclosure filing fees, the current revenue stream is not sufficient to fund the State Court System at current levels. Fund shifting the revenues and providing the State Court System with General Revenue will stabilize the Court System's budget.

As a result of this statute change, revenues will be deposited into the General Revenue Fund from foreclosure filing fees, totaling \$224.3 million¹⁵. Trust fund authority would be reduced from the State Court's budget and General Revenue would be appropriated. The SCRTF would continue to be funded with probate fees, circuit fees, appellate fees and traffic fines. This change in statute and budget should mitigate the need for the legislature to cover a budget deficit with General Revenue and stabilize the operations of the courts due to increased funding predictability.

B. SECTION DIRECTORY:

Section 1: Amends section 28.241 related to filing fees for trial and appellate proceedings.

Section 2: Provides an effective date of June 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "fiscal comments" section.

2. Expenditures:

See "fiscal comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

¹⁴ Base Budget

¹⁵ Office of Economic and Demographic Research, Article V Revenue Estimates breakdown spreadsheet, on file with the Justice Appropriations Subcommittee Staff

None. The filing fees are not being increased or decreased, simply redirected.

D. FISCAL COMMENTS:

A fund shift of \$224.3 million will be redirected from the State Courts Revenue Trust Fund to the General Revenue Fund to fund the State Court System. The mortgage foreclosure filing fees will be redirected into the General Revenue Fund. In order to fund the deficit caused by the revenue shortfall, an additional \$63.8 million in General Revenue is needed.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to state court revenues; amending s.
 3 28.241, F.S.; redirecting revenue from filing fees for
 4 civil actions in circuit court relating to real
 5 property or mortgage foreclosure from the State Courts
 6 Revenue Trust Fund to the General Revenue Fund;
 7 conforms provisions; providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Paragraphs (a) and (c) of subsection (1) of
 12 section 28.241, Florida Statutes, are amended to read:

13 28.241 Filing fees for trial and appellate proceedings.—

14 (1)(a)1.a. Except as provided in sub-subparagraph b. and
 15 subparagraph 2., the party instituting any civil action, suit,
 16 or proceeding in the circuit court shall pay to the clerk of
 17 that court a filing fee of up to \$395 in all cases in which
 18 there are not more than five defendants and an additional filing
 19 fee of up to \$2.50 for each defendant in excess of five. Of the
 20 first \$280 in filing fees, \$80 must be remitted by the clerk to
 21 the Department of Revenue for deposit into the General Revenue
 22 Fund, \$195 must be remitted to the Department of Revenue for
 23 deposit into the State Courts Revenue Trust Fund, \$3.50 must be
 24 remitted to the Department of Revenue for deposit into the
 25 Clerks of the Court Trust Fund within the Justice Administrative
 26 Commission and used to fund the Florida Clerks of Court
 27 Operations Corporation created in s. 28.35, and \$1.50 must ~~shall~~
 28 be remitted to the Department of Revenue for deposit into the

29 Administrative Trust Fund within the Department of Financial
 30 Services to fund clerk budget reviews conducted by the
 31 Department of Financial Services. One third of any filing fees
 32 collected by the clerk of the circuit court in excess of \$100
 33 must ~~shall~~ be remitted to the Department of Revenue for deposit
 34 into the Clerks of the Court Trust Fund within the Justice
 35 Administrative Commission.

36 b. The party instituting any civil action, suit, or
 37 proceeding in the circuit court under chapter 39, chapter 61,
 38 chapter 741, chapter 742, chapter 747, chapter 752, or chapter
 39 753 shall pay to the clerk of that court a filing fee of up to
 40 \$295 in all cases in which there are not more than five
 41 defendants and an additional filing fee of up to \$2.50 for each
 42 defendant in excess of five. Of the first \$180 in filing fees,
 43 \$80 must be remitted by the clerk to the Department of Revenue
 44 for deposit into the General Revenue Fund, \$95 must be remitted
 45 to the Department of Revenue for deposit into the State Courts
 46 Revenue Trust Fund, \$3.50 must be remitted to the Department of
 47 Revenue for deposit into the Clerks of the Court Trust Fund
 48 within the Justice Administrative Commission and used to fund
 49 the Florida Clerks of Court Operations Corporation created in s.
 50 28.35, and \$1.50 must ~~shall~~ be remitted to the Department of
 51 Revenue for deposit into the Administrative Trust Fund within
 52 the Department of Financial Services to fund clerk budget
 53 reviews conducted by the Department of Financial Services.

54 c. An additional filing fee of \$4 shall be paid to the
 55 clerk. The clerk shall remit \$3.50 to the Department of Revenue
 56 for deposit into the Court Education Trust Fund and shall remit

57 | 50 cents to the Department of Revenue for deposit into the
 58 | Clerks of the Court Trust Fund within the Justice Administrative
 59 | Commission to fund clerk education. An additional filing fee of
 60 | up to \$18 shall be paid by the party seeking each severance that
 61 | is granted. The clerk may impose an additional filing fee of up
 62 | to \$85 for all proceedings of garnishment, attachment, replevin,
 63 | and distress. Postal charges incurred by the clerk of the
 64 | circuit court in making service by certified or registered mail
 65 | on defendants or other parties shall be paid by the party at
 66 | whose instance service is made. ~~No~~ Additional fees, charges, or
 67 | costs may not ~~shall~~ be added to the filing fees imposed under
 68 | this section, except as authorized in this section or by general
 69 | law.

70 | 2.a. Notwithstanding the fees prescribed in subparagraph
 71 | 1., a party instituting a civil action in circuit court relating
 72 | to real property or mortgage foreclosure shall pay a graduated
 73 | filing fee based on the value of the claim.

74 | b. A party shall estimate in writing the amount in
 75 | controversy of the claim upon filing the action. For purposes of
 76 | this subparagraph, the value of a mortgage foreclosure action is
 77 | based upon the principal due on the note secured by the
 78 | mortgage, plus interest owed on the note and any moneys advanced
 79 | by the lender for property taxes, insurance, and other advances
 80 | secured by the mortgage, at the time of filing the foreclosure.
 81 | The value shall also include the value of any tax certificates
 82 | related to the property. In stating the value of a mortgage
 83 | foreclosure claim, a party shall declare in writing the total
 84 | value of the claim, as well as the individual elements of the

PCB JUAS 12-02

ORIGINAL

2012

85 value as prescribed in this sub-subparagraph.

86 c. In its order providing for the final disposition of the
87 matter, the court shall identify the actual value of the claim.
88 The clerk shall adjust the filing fee if there is a difference
89 between the estimated amount in controversy and the actual value
90 of the claim and collect any additional filing fee owed or
91 provide a refund of excess filing fee paid.

92 d. The party shall pay a filing fee of:

93 (I) Three hundred and ninety-five dollars in all cases in
94 which the value of the claim is \$50,000 or less and in which
95 there are not more than five defendants. The party shall pay an
96 additional filing fee of up to \$2.50 for each defendant in
97 excess of five. Of the first \$280 in filing fees, \$275 ~~\$80~~ must
98 be remitted by the clerk to the Department of Revenue for
99 deposit into the General Revenue Fund, ~~\$195 must be remitted to~~
100 ~~the Department of Revenue for deposit into the State Courts~~
101 ~~Revenue Trust Fund~~, \$3.50 must be remitted to the Department of
102 Revenue for deposit into the Clerks of the Court Trust Fund
103 within the Justice Administrative Commission and used to fund
104 the Florida Clerks of Court Operations Corporation created in s.
105 28.35, and \$1.50 must ~~shall~~ be remitted to the Department of
106 Revenue for deposit into the Administrative Trust Fund within
107 the Department of Financial Services to fund clerk budget
108 reviews conducted by the Department of Financial Services;

109 (II) Nine hundred dollars in all cases in which the value
110 of the claim is more than \$50,000 but less than \$250,000 and in
111 which there are not more than five defendants. The party shall
112 pay an additional filing fee of up to \$2.50 for each defendant

113 | in excess of five. Of the first \$785 in filing fees, \$780 ~~\$80~~
 114 | must be remitted by the clerk to the Department of Revenue for
 115 | deposit into the General Revenue Fund, ~~\$700 must be remitted to~~
 116 | ~~the Department of Revenue for deposit into the State Courts~~
 117 | ~~Revenue Trust Fund,~~ \$3.50 must be remitted to the Department of
 118 | Revenue for deposit into the Clerks of the Court Trust Fund
 119 | within the Justice Administrative Commission and used to fund
 120 | the Florida Clerks of Court Operations Corporation described in
 121 | s. 28.35, and \$1.50 must ~~shall~~ be remitted to the Department of
 122 | Revenue for deposit into the Administrative Trust Fund within
 123 | the Department of Financial Services to fund clerk budget
 124 | reviews conducted by the Department of Financial Services; or
 125 | (III) One thousand nine hundred dollars in all cases in
 126 | which the value of the claim is \$250,000 or more and in which
 127 | there are not more than five defendants. The party shall pay an
 128 | additional filing fee of up to \$2.50 for each defendant in
 129 | excess of five. Of the first \$1,785 in filing fees, \$1,780 ~~\$80~~
 130 | must be remitted by the clerk to the Department of Revenue for
 131 | deposit into the General Revenue Fund, ~~\$1,700 must be remitted~~
 132 | ~~to the Department of Revenue for deposit into the State Courts~~
 133 | ~~Revenue Trust Fund,~~ \$3.50 must be remitted to the Department of
 134 | Revenue for deposit into the Clerks of the Court Trust Fund
 135 | within the Justice Administrative Commission to fund the Florida
 136 | Clerks of Court Operations Corporation created in s. 28.35, and
 137 | \$1.50 must ~~shall~~ be remitted to the Department of Revenue for
 138 | deposit into the Administrative Trust Fund within the Department
 139 | of Financial Services to fund clerk budget reviews conducted by
 140 | the Department of Financial Services.

141 e. An additional filing fee of \$4 shall be paid to the
 142 clerk. The clerk shall remit \$3.50 to the Department of Revenue
 143 for deposit into the Court Education Trust Fund and shall remit
 144 50 cents to the Department of Revenue for deposit into the
 145 Clerks of the Court Trust Fund within the Justice Administrative
 146 Commission to fund clerk education. An additional filing fee of
 147 up to \$18 shall be paid by the party seeking each severance that
 148 is granted. The clerk may impose an additional filing fee of up
 149 to \$85 for all proceedings of garnishment, attachment, replevin,
 150 and distress. Postal charges incurred by the clerk of the
 151 circuit court in making service by certified or registered mail
 152 on defendants or other parties shall be paid by the party at
 153 whose instance service is made. ~~No~~ Additional fees, charges, or
 154 costs may not shall be added to the filing fees imposed under
 155 this section, except as authorized in this section or by general
 156 law.

157 (c)1. A party in addition to a party described in sub-
 158 subparagraph (a)1.a. who files a pleading in an original civil
 159 action in circuit court for affirmative relief by cross-claim,
 160 counterclaim, counterpetition, or third-party complaint shall
 161 pay the clerk of court a fee of \$395. A party in addition to a
 162 party described in sub-subparagraph (a)1.b. who files a pleading
 163 in an original civil action in circuit court for affirmative
 164 relief by cross-claim, counterclaim, counterpetition, or third-
 165 party complaint shall pay the clerk of court a fee of \$295. The
 166 clerk shall remit the fee to the Department of Revenue for
 167 deposit into the General Revenue Fund.

168 2. A party in addition to a party described in

169 subparagraph (a)2. who files a pleading in an original civil
 170 action in circuit court for affirmative relief by cross-claim,
 171 counterclaim, counterpetition, or third-party complaint shall
 172 pay the clerk of court a graduated fee of:

173 a. Three hundred and ninety-five dollars in all cases in
 174 which the value of the pleading is \$50,000 or less;

175 b. Nine hundred dollars in all cases in which the value of
 176 the pleading is more than \$50,000 but less than \$250,000; or

177 c. One thousand nine hundred dollars in all cases in which
 178 the value of the pleading is \$250,000 or more.

179

180 The clerk shall remit the fees collected under this subparagraph
 181 to the Department of Revenue for deposit into the General
 182 Revenue Fund, ~~except that the clerk shall remit \$100 of the fee~~
 183 ~~collected under sub-subparagraph a., \$605 of the fee collected~~
 184 ~~under sub-subparagraph b., and \$1,605 of the fee collected under~~
 185 ~~sub-subparagraph c. to the Department of Revenue for deposit~~
 186 ~~into the State Courts Revenue Trust Fund.~~


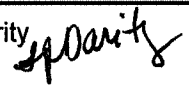
187 Section 2. This act shall take effect June 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JUAS 12-03 Clerks of the Court

SPONSOR(S): Justice Appropriations Subcommittee

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee		Toms 	Jones Darity 

SUMMARY ANALYSIS

The proposed committee bill makes conforming changes to the proposed House of Representatives Fiscal Year 2012-13 General Appropriations Act by making substantial changes to the clerks of court and Clerks of Court Operations Corporation (Corporation) funding and operations. The bill primarily removes the clerks of court and the Corporation from the state budget and while restoring most budgetary functions and procedures in place in the statutes prior to the enactment of chapter 2009-006, Laws of Florida, it expands the role of the Legislative Budget Commission (LBC) in the clerks' budget process.

The net fiscal impact of this bill is estimated to be approximately \$446.7 million in reduced trust fund appropriations as reflected in the proposed House of Representatives FY 2012-13 General Appropriations Act.

There will be a loss to the General Revenue Fund due to the non assessment of the eight percent general revenue charge. This equates to a \$33 million loss according to the January 2012 General Revenue Estimating Conference. However, funds in excess of the amount needed for the clerks operation will be remitted to general revenue as a function of the bill. The net of the two fiscal effects has not yet been determined by the impact conference.

The 2010 Legislature transferred \$18.6 million from the State Courts Revenue Trust Fund to the Clerks of Court Trust Fund to pay a portion of the eight percent general revenue charge for Fiscal year 2009-10. The 2011 Legislature appropriated of \$44.2 million in nonrecurring general revenue in the 2011-12 GAA to cover the Clerks of Court Trust Fund deficit. In current year, the clerks of court are projecting a deficit of \$58.5 million.

Since the inception of the clerks being in the GAA \$62.8 million of state funds have been appropriated to offset the assessment of the GR service charge and the clerk's deficit. The House proposed 2012-13 GAA appropriates \$58.5 million in General Revenue to fund the clerk's current year deficit and GR service charge.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Revision 7 to Article V Overview

Article V of the Florida Constitution establishes the judicial branch of state government, including the trial and appellate courts. The constitution also describes the primary participants in the courts system, including judges, state attorneys, public defenders, and the clerks of the court. To that end, “[t]hese elected independent officials interact as part of a complex interdependent system.”¹

In 1998, voters approved an additional revision to Article V, referenced as Revision 7, which allocates more costs to the state.² Subsequent to this revision, Article V, section 14 of the Florida Constitution now specifies the state and county responsibilities for funding the state courts system by providing that the Supreme Court and the District Courts of Appeal are fully funded by the state, and the trial courts, the circuit and county courts, are jointly funded by the state and counties. Article V, section 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.

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.

Clerks’ Court-Related Functions

Pursuant to authority granted in Article V, section 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 and must include the following:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Processing the assignment, reopening, and reassignment of cases;
- Processing of 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 meals or lodging provided to jurors;
- Data collection and reporting;

¹ Office of Program Policy Analysis and Government Accountability, *Many Article V Trial Courts Funding Issues Still Need to Be Resolved*, Report No. 01-54, 1 (Nov. 2001).

² *Id.* at 2.

- 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.³

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.⁴

Post- Article V: 2004-2008

This section describes the law relating to the clerks of court after legislation was passed to implement the changes to Article V and prior to the 2009 legislation.

Budget Procedure for the Court-Related Functions of the Clerk of the Court

On or before August 15 of each fiscal year, each county clerk prepared a proposed budget which was submitted to the Florida Clerks of Court Corporation. 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.⁵ Upon review and certification of the individual clerk of court budgets by the Clerks of Court Operations 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 the Corporation verified that the proposed budget was limited and a revenue deficit projected, a clerk was to increase all fees, service charges, and any other court-related clerk fees and charges to the maximum amounts specified by law to resolve the deficit. If the clerk raised fees, services charges, and any other court-related clerk fees to the maximum amounts but still had a deficit, the Corporation would notify the Department of Revenue that the clerk was authorized to retain revenues in an amount necessary to fully fund the projected deficit. 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.⁶

Prior to the passage of SB 2108 in the 2009 Legislative Session, 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.⁷ The Department of Revenue would then transfer those funds in the Clerks of the Court Trust Fund not needed to resolve clerk deficits to the General Revenue Fund.

Florida Clerks of Court Operations Corporation

³ Section 28.35(3)(a), F.S.

⁴ Section 28.35(3)(b), F.S.

⁵ Section 28.36(3), F.S. (2008).

⁶ Section 28.36(4), F.S. (2008).

⁷ Section 28.37(2), F.S. (2008).

The Corporation had responsibility for the certification of the clerks' budget. Specific tasks included:

- Calculating the maximum authorized annual budget;
- Identifying those proposed budget exceeding the maximum annual budget for the standard list of court-related functions;
- Identifying those proposed budgets containing funding for items not included on the standard list of court-related functions; and
- Identifying those clerks projected to have court-related revenue insufficient to fund their anticipated court-related expenditures.⁸

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.

Legislative Budget Commission

The Legislative Budget Commission (LBC)⁹ had authority to approve increases to the maximum annual budgets 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.¹⁰

Chapter 2009-204, Laws of Florida

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court and the Corporation, the Legislature passed SB 2108 during the 2009 legislative session. This bill 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 full-time equivalents.

Chapter 2009-204, Laws of Florida, provides 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).¹¹ The clerk is, however, allowed to deposit 10 percent of all court-related fines in his or her Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.¹²

Florida Clerks of Court Operations Corporation

⁸ See s. 28.35(1)(f), F.S. (2008).

⁹ The Legislative Budget Commission is comprised of seven members appointed by the Senate President, and seven members appointed by the Speaker of the House. The Commission, among other things, approves budget amendments during the interim between sessions. *See generally* Section 11.90, F.S.

¹⁰ See s. 28.36(6), F.S. (2008).

¹¹ Section 28.37(2), F.S.

¹² *Id.*

The Corporation is now considered a political subdivision of the state and is exempt from corporate income tax.¹³ The Corporation is administratively housed within the Justice Administrative Commission and its employees are considered state employees. The Corporation is not subject to control, supervision, or direction by the JAC in the performance of its duties, but the employees of the Corporation are governed by the classification plan and salary and benefits plan of the JAC. All clerks of the circuit court are members of the Corporation and hold their position and authority in an ex officio capacity.¹⁴ The Corporation's functions include:

- Developing and certifying a uniform system of performance measures and applicable performance standards and the service unit cost;
- Identifying deficiencies and corrective action plans when clerks fail to meet performance standards;
- Notify the Legislature and the Supreme Court of any clerk not meeting performance standards and provide a copy of any correction action plan;
- Recommending to the Legislature changes in the various court-related fines, fees, service charges, and court costs established by law to ensure reasonable and adequate funding of the clerks of court in the performance of their court-related functions;
- Develop the performance measures and performance standards in consultation with Legislature and the Supreme Court; and
- Review proposed budgets submitted by the clerks of the court.¹⁵

The Corporation prepares a legislative budget request for the resources necessary to perform its duties and submits the request pursuant to chapter 216, funded as a budget entity in the General Appropriations Act.¹⁶

Budget procedure

Subsequent to the statutory changes made in 2009, by October 1 of each fiscal year, each county clerk prepares a budget request for the last quarter of the county fiscal year (July 1 – September 30) and the first three quarters of the next county fiscal year (October 1 – June 30) and submits it to the Corporation and provides a copy of the budget request to the Supreme Court.¹⁷

Each clerk is required to submit in his or her budget request the number of personnel and the proposed budget for each of the following core services:¹⁸

1. Circuit criminal;
2. County criminal;
3. Juvenile delinquency;
4. Criminal traffic;
5. Circuit civil;
6. County civil;
7. Civil traffic;
8. Probate;
9. Family; and
10. Juvenile dependency.

The budget request must identify the service units to be provided within each core service and must propose a unit cost for each service unit.¹⁹

¹³ Section 28.35(1)(c), F.S.

¹⁴ Section 28.35(1)(a), F.S.

¹⁵ Section 28.35(2), F.S.

¹⁶ Section 28.35(4), F.S.

¹⁷ Section 28.36(1), F.S.

¹⁸ The core services listed in statute were changed during the 2010 session. (ch. 2010-162, s. 14) Prior to this change, the following core services were listed: case processing; financial processing; jury management; information and reporting.

¹⁹ Section 28.36(4) and (5), F.S.

The Corporation is 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 are higher than a clerk's peers, the clerk must justify the increased costs. Justification may include collective bargaining agreements, county civil service agreements, and the number and distribution of court houses. If the Corporation finds that the increased costs are not justified, the Corporation reduces the unit cost to the average of its peers.²⁰ The Corporation recommends to the Legislature the unit costs for each clerk and a statewide budget amount for the clerks by December 1. The Chief Financial Officer (CFO) is required to review unit costs proposed by the Corporation and makes recommendations to the Legislature and if necessary, may conduct an audit of a clerk or the Corporation.²¹ The Legislature may reject or modify the proposed unit costs, and appropriates the total amount of the clerk budgets in the General Appropriations Act.²²

In the 2010 session, legislation was passed which adjusted the way that the clerk's budget was released. 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 are insufficient to provide a release in a quarter in a single release, the corporation may release partial amounts for that quarter so long as the total of those partial amounts does not exceed that quarter's release. If funds in the Clerks of Court Trust Fund are insufficient for the first quarter release, the corporation may make a request to the Governor for a trust fund loan pursuant to chapter 215. The amount of the first three releases shall be based on one quarter of the estimated budget for each clerk as identified in the General Appropriations Act²³.

The corporation is required to estimate the fourth quarter's number of units to be performed by each clerk. The amount of the fourth-quarter release is to be adjusted downward if the clerk has performed fewer service units in the first three quarters of the year compared to three quarters of the estimated number of service units in the General Appropriations Act.

Effect of proposed changes

Generally, this bill reverses many of the changes made in SB 2108 during the 2009 legislative session relating to the budgets of the clerks of court, but expands the role of the LBC in the clerks' budgeting process. Specifically, the bill:

- Removes the funding for the clerks of court and the Corporation from the General Appropriations Act.
- Removes the provisions describing the Corporation as a "state agency" or "agency".
- Removes the provisions that administratively housed the Corporation within the Justice Administrative Commission and their staff as state employees.
- Provides that all filing fees should be retained as fee income for the clerks.
- Provides that one-third of filing fees collected each month be remitted to the Department of Revenue for deposit into the Clerks of the Court Trust Fund, unless the remaining two-thirds are less than one-twelfth of the clerk's total budget.
- Transfers the Clerks of the Court Trust Fund to the Department of Revenue, and transfers fund balances.
- Deletes references for deposits from the Justice Administrative Commission to the Department of Revenue.
- Requires the clerks of court to remit funds in excess of approved budget to the Department of Revenue for deposit in the Department of Revenue Clerks of Court Trust Fund.
- Provides for the deposit of excess revenue over the amount needed to meet the approved budget amounts to be transferred from the Department of Revenue to the General Revenue Fund.
- Requires the clerks of court and the Corporation to submit annual budget requests to the LBC.

²⁰ Section 28.36(6), F.S.

²¹ Section 28.36(8), F.S.

²² Section 28.36(9), F.S.

²³ Section 28.36(10), F.S.

- Authorizes the Legislative Budget Commission to review, approve, disapprove or amend both the Corporations' and the clerks of court budgets.
- Provides an approved budget amount for the clerks to operate during the transition period (the last quarter of the county fiscal year) until the LBC meets in September.
- Provides that the clerks' budget not exceed 1 percent of the prior year's budget and provides for exceptions.
- Defines workload measures and workload performance standards.
- Removes language declaring revenues received by the clerk in the fine and forfeiture fund from court-related fees, fines, costs, and service charges as state funds.
- Redirects/restores the current \$5.00 split of the filing fee collected for trial and appellate proceedings (\$1.50 to the Department of Financial Services for performing clerk audits and the \$3.50 to the Corporation for operations funding) to the Department of Financial Services' Administrative Trust Fund to fund the contract with the Corporation.
- Outlines that the contract with the Chief Financial Officer will be used in determining compliance by the Corporation.
- Removes the provisions requiring the Chief Financial Officer to review and conduct audits of the clerks and the Corporation unit cost reporting.
- Outlines the budget procedures for calculating the clerks' budget, and the mechanism for counties with projected revenue deficits to request for additional funds from a surplus clerk.
- Removes the provisions requiring the Corporation to submit a legislative budget request pursuant to chapter 216, F.S.
- Removes the provisions requiring the clerks to submit a budget based on core services and unit costs.
- Removes the provisions requiring the Corporation to develop performance measures and standards in consultation with the Supreme Court.
- Requires the clerks of court and the Corporation to adhere to the procurement provisions of chapter 287.

B. SECTION DIRECTORY:

Section 1. Transfers balances from the Clerks of the Court Trust Fund in the Justice Administrative Commission to the Department of Revenue.

Section 2. Amends s. 11.90, F.S., relating to the Legislative Budget Commission.

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

Section 4. Amends 28.2455, F.S, providing technical revisions.

Section 5. Amends s. 28.246, F.S., relating to payment of court-related fees, charges, and costs; partial payments; distribution of funds to reflect deposits in the Department of Revenue Clerks of the Court Trust Fund.

Section 6. Amends s. 28.35, F.S., relating to the Florida Clerks of Court Operations Corporation.

Section 7. Amends s. 28.36, F.S., relating budget procedures for the court-related functions.

Section 8. Creates s. 28.365, F.S., relating to the procurement requirements for the clerks of court.

Section 9. Amends s. 28.37, F.S., relating to fines, fees, services charges, and cost remitted to the state.

Section 10. Amends s.28.43, F.S., authorizing the Department of Revenue to adopt rules.

Section 11. Amends s. 34.041, F.S., relating to filing fees collected by the clerks.

Section 12. Amends s. 43.16, F.S., relating to the membership, powers and duties of the Justice Administrative Commission.

Section 13. Amends s. 110.205, F.S., relating to exemptions for career service positions.

Section 14. Amends s. 142.01, F.S., relating to the fine and forfeiture funds and disposition of revenue for the clerk of the circuit court.

Section 15. Amends s. 213.131, F.S., relating to the creation of the Clerks of the Court Trust Fund in the Department of Revenue.

Section 16. Amends s. 216.011, F.S., relating to definitions for the purpose defining a "state agency" or "agency".

Section 17. Provides for an approved budget for the clerks of court.

Section 18. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "fiscal comments" section.

2. Expenditures:

See "fiscal comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "fiscal comments" section.

2. Expenditures:

See "fiscal comments" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The 2010 Legislature transferred \$18.6 million from the State Courts Revenue Trust Fund to the Clerks of Court Trust Fund to pay a portion of the eight percent general revenue charge for Fiscal year 2009-10. The 2011 Legislature appropriated of \$44.2 million in nonrecurring general revenue in the 2011-12 GAA to cover the Clerks of Court Trust Fund deficit. In current year, the clerks of court are projecting a deficit of \$58.5 million.

The bill removes the funding for the clerks of court and Clerks of Court Operations Corporation from the General Appropriations Act and redirects all revenue from the Clerks of Court Trust Fund in the Justice Administrative Commission to the Department of Revenue. Removing these entities from the budget reduces state trust fund expenditures by \$446.7 million. As a state trust fund, it is assessed an 8% service charge payable to the General Revenue Fund based on the revenue collected in the trust fund. The December 2011 Article V Revenue Estimating Conference projected the trust fund will generate

approximately \$422 million in revenue for Fiscal Year 2011-2012 and \$423.6 for Fiscal Year 2012-13. The loss of the general revenue service charge is estimated to be \$33 million.

By reverting to the former budget processes, the bill outlines the process for calculating the clerks' budget, collecting revenue and submitting these funds to the Department of Revenue after expenditures have been satisfied. The remaining funds are then transferred from the Department of Revenue Clerks of the Court Trust Fund to the General Revenue Fund. While the excess revenue to be transferred to the General Revenue Fund cannot be determined at this time (the Corporation would have to certify budgets), based on the last four years when these policies were in practice, an average of \$62 million was transferred. However, it should be noted the clerks are expecting a decline in collections.

Fiscal Year	GR service charge assessed	GR service charged paid by clerks	Clerks Operating Deficit	Amount of deficit paid with state funds and funding source	
2009-10	\$ 26.80	\$ 8.20	\$ -	\$ 18.60	State Courts Revenue TF
2010-11	\$ 35.90	\$ -	\$ 8.30	\$ 44.20	General Revenue
2011-12	\$ 32.90	\$ -	\$ 25.60	\$ 58.50	Proposed House GAA 2012-2013; Funds with General Revenue

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to clerks of the court; transferring
 3 the Clerks of the Court Trust Fund within the Justice
 4 Administrative Commission together with all balances
 5 in the fund to the Department of Revenue; amending s.
 6 11.90, F.S.; providing additional powers and duties
 7 for the Legislative Budget Commission; amending s.
 8 28.241, F.S.; revising the distribution of filing
 9 fees; amending ss. 28.2455 and 28.246, F.S.;
 10 conforming provisions to changes made by the act;
 11 amending s. 28.35, F.S.; revising provisions relating
 12 to the Florida Clerks of Court Operations Corporation;
 13 deleting provisions relating to administrative housing
 14 and budgeting of the corporation under the Justice
 15 Administrative Commission; deleting provisions
 16 relating to the corporation's employees as state
 17 employees; deleting provisions relating to ex officio
 18 members of the executive council; deleting an
 19 exemption from the Administrative Procedures Act;
 20 specifying that the corporation is subject to
 21 specified procurement provisions; revising duties of
 22 the corporation; requiring establishment of a process
 23 for the review of proposed court-related budgets
 24 submitted by clerks of the court for completeness and
 25 compliance with specified provisions; providing for
 26 review and certification of proposed budgets submitted
 27 by clerks of the court; requiring annual submission of
 28 its proposed budget and specified information to the

29 Legislative Budget Commission; specifying functions
 30 that clerks may and may not fund from filing fees,
 31 service charges, court costs, and fines; deleting
 32 provisions relating to preparation of a legislative
 33 budget request; providing for funding pursuant to a
 34 contract with the Chief Financial Officer; revising
 35 provisions relating to audits; amending s. 28.36,
 36 F.S.; conforming provisions to changes made by the
 37 act; providing for proposed budgets from clerks;
 38 requiring reporting of anticipated deficits; requiring
 39 increasing all fees and service charges and any other
 40 court-related clerk fees and charges in certain
 41 circumstances; authorizing the retention of the
 42 additional revenues from such increases in certain
 43 circumstances; providing for corrective measures if
 44 the Chief Financial Officer finds the court-related
 45 budget proposed by a clerk includes functions not
 46 included in the standard list of court-related
 47 functions; authorizing the Legislative Budget
 48 Commission to approve increases to the maximum annual
 49 budgets approved for individual clerks of the court
 50 for court-related functions in certain circumstances;
 51 providing a limit on the total amount of such
 52 increases for each county fiscal year; authorizing the
 53 corporation to submit proposed legislation for
 54 approval of clerk budget request amounts exceeding
 55 specified restrictions; deleting provisions relating
 56 to legislative budget requests and release of funds;

57 | creating s. 28.365, F.S.; providing that clerks of the
 58 | court are subject to specified procurement
 59 | requirements and limitations; amending s. 28.37, F.S.;
 60 | providing, beginning July 1, 2012, for periodic
 61 | remission of a specified amount of all fines, fees,
 62 | service charges, and court costs collected by the
 63 | clerks of the court to the Department of Revenue for
 64 | deposit into the Clerks of the Court Trust Fund;
 65 | providing an exception; providing, beginning January
 66 | 1, 2013, for remission of all fines, fees, service
 67 | charges, and court costs and certain other funds
 68 | collected by the clerks of the court to the Department
 69 | of Revenue for deposit into the General Revenue Fund
 70 | in excess of the amount needed to meet the approved
 71 | budget amounts; requiring the Department of Revenue to
 72 | collect any funds that the Florida Clerks of Court
 73 | Operations Corporation determines upon investigation
 74 | were due but not remitted; amending ss. 28.43, 34.041,
 75 | 43.16, 110.205, and 142.01, F.S.; conforming
 76 | provisions to changes made by the act; amending s.
 77 | 213.131, F.S.; conforming provisions to changes made
 78 | by the act; providing that funds received by the
 79 | Department of Revenue from the clerks of the court
 80 | shall be credited to the Clerks of the Court Trust
 81 | Fund as provided in a specified act; amending s.
 82 | 216.011, F.S.; providing that the Florida Clerks of
 83 | Court Operations Corporation is not included in the
 84 | definition of the term "state agency" for specified

85 | purposes; specifying the approved budget for the
 86 | clerks of the circuit court for a specified period;
 87 | providing for determination of budget amounts for
 88 | individual clerks; providing an effective date.

89

90 | Be It Enacted by the Legislature of the State of Florida:

91

92 | Section 1. The Clerks of the Court Trust Fund within the
 93 | Justice Administrative Commission, FLAIR number 21-2-588, is
 94 | transferred together with all balances in the fund to the
 95 | Department of Revenue.

96 | Section 2. Subsection (6) of section 11.90, Florida
 97 | Statutes, is amended to read:

98 | 11.90 Legislative Budget Commission.—

99 | (6) The commission shall have the power and duty to:

100 | (a) Review and approve or disapprove budget amendments
 101 | recommended by the Governor or the Chief Justice of the Supreme
 102 | Court as provided in chapter 216.

103 | (b) Develop the long-range financial outlook described in
 104 | s. 19, Art. III of the State Constitution.

105 | (c) Review and approve, disapprove, or amend the budget of
 106 | the Florida Clerks of Court Operations Corporation.

107 | (d) Review and approve, disapprove, or amend the total
 108 | combined budgets of the clerks of the court or the budget of any
 109 | individual clerk of the court.

110 | ~~(e) In addition to the powers and duties specified in this~~
 111 | ~~subsection, the commission shall~~ Exercise all other powers and
 112 | perform any other duties prescribed by the Legislature.

113 Section 3. Paragraph (a) of subsection (1) of section
 114 28.241, Florida Statutes, is amended to read:

115 28.241 Filing fees for trial and appellate proceedings.—

116 (1) (a) 1.a. Except as provided in sub-subparagraph b. and
 117 subparagraph 2., the party instituting any civil action, suit,
 118 or proceeding in the circuit court shall pay to the clerk of
 119 that court a filing fee of up to \$395 in all cases in which
 120 there are not more than five defendants and an additional filing
 121 fee of up to \$2.50 for each defendant in excess of five. Of the
 122 first \$280 in filing fees, \$80 must be remitted by the clerk to
 123 the Department of Revenue for deposit into the General Revenue
 124 Fund, \$195 must be remitted to the Department of Revenue for
 125 deposit into the State Courts Revenue Trust Fund, and \$5 ~~\$3.50~~
 126 must be remitted to the Department of Revenue for deposit into
 127 the Administrative Clerks of the Court Trust Fund within the
 128 Department of Financial Services ~~Justice Administrative~~
 129 ~~Commission~~ and used to fund the contract with the Florida Clerks
 130 of Court Operations Corporation created in s. 28.35. One-third
 131 of the filing fees collected each month, unless the remaining
 132 two-thirds of the filing fees collected is less than one-twelfth
 133 of the clerk's total budget, shall be remitted to the Department
 134 of Revenue for deposit into the department's Clerks of the Court
 135 Trust Fund. If the filing fees collected are insufficient to
 136 remit one-third to the department, the clerk shall submit that
 137 portion of one-third of the filing fees collected that is in
 138 excess of one-twelfth of the clerk's total budget to the
 139 Department of Revenue for deposit into the department's Clerks
 140 of the Court Trust Fund, ~~and \$1.50 shall be remitted to the~~

141 ~~Department of Revenue for deposit into the Administrative Trust~~
 142 ~~Fund within the Department of Financial Services to fund clerk~~
 143 ~~budget reviews conducted by the Department of Financial~~
 144 ~~Services. One third of any filing fees collected by the clerk of~~
 145 ~~the circuit court in excess of \$100 shall be remitted to the~~
 146 ~~Department of Revenue for deposit into the Clerks of the Court~~
 147 ~~Trust Fund within the Justice Administrative Commission.~~

148 b. The party instituting any civil action, suit, or
 149 proceeding in the circuit court under chapter 39, chapter 61,
 150 chapter 741, chapter 742, chapter 747, chapter 752, or chapter
 151 753 shall pay to the clerk of that court a filing fee of up to
 152 \$295 in all cases in which there are not more than five
 153 defendants and an additional filing fee of up to \$2.50 for each
 154 defendant in excess of five. Of the first \$180 in filing fees,
 155 \$80 must be remitted by the clerk to the Department of Revenue
 156 for deposit into the General Revenue Fund, \$95 must be remitted
 157 to the Department of Revenue for deposit into the State Courts
 158 Revenue Trust Fund, and \$5 ~~\$3.50~~ must be remitted to the
 159 Department of Revenue for deposit into the Administrative Clerks
 160 ~~of the Court~~ Trust Fund within the Department of Financial
 161 Services ~~Justice Administrative Commission~~ and used to fund the
 162 contract with the Florida Clerks of Court Operations Corporation
 163 created in s. 28.35, ~~and \$1.50 shall be remitted to the~~
 164 ~~Department of Revenue for deposit into the Administrative Trust~~
 165 ~~Fund within the Department of Financial Services to fund clerk~~
 166 ~~budget reviews conducted by the Department of Financial~~
 167 ~~Services.~~

168 c. An additional filing fee of \$4 shall be paid to the

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169 clerk. The clerk shall remit \$3.50 to the Department of Revenue
170 for deposit into the Court Education Trust Fund and shall remit
171 50 cents to the Department of Revenue for deposit into the
172 department's Clerks of the Court Trust Fund ~~within the Justice~~
173 ~~Administrative Commission~~ to fund clerk education. An additional
174 filing fee of up to \$18 shall be paid by the party seeking each
175 severance that is granted. The clerk may impose an additional
176 filing fee of up to \$85 for all proceedings of garnishment,
177 attachment, replevin, and distress. Postal charges incurred by
178 the clerk of the circuit court in making service by certified or
179 registered mail on defendants or other parties shall be paid by
180 the party at whose instance service is made. No additional fees,
181 charges, or costs shall be added to the filing fees imposed
182 under this section, except as authorized in this section or by
183 general law.

184 2.a. Notwithstanding the fees prescribed in subparagraph
185 1., a party instituting a civil action in circuit court relating
186 to real property or mortgage foreclosure shall pay a graduated
187 filing fee based on the value of the claim.

188 b. A party shall estimate in writing the amount in
189 controversy of the claim upon filing the action. For purposes of
190 this subparagraph, the value of a mortgage foreclosure action is
191 based upon the principal due on the note secured by the
192 mortgage, plus interest owed on the note and any moneys advanced
193 by the lender for property taxes, insurance, and other advances
194 secured by the mortgage, at the time of filing the foreclosure.
195 The value shall also include the value of any tax certificates
196 related to the property. In stating the value of a mortgage

197 foreclosure claim, a party shall declare in writing the total
 198 value of the claim, as well as the individual elements of the
 199 value as prescribed in this sub-subparagraph.

200 c. In its order providing for the final disposition of the
 201 matter, the court shall identify the actual value of the claim.
 202 The clerk shall adjust the filing fee if there is a difference
 203 between the estimated amount in controversy and the actual value
 204 of the claim and collect any additional filing fee owed or
 205 provide a refund of excess filing fee paid.

206 d. The party shall pay a filing fee of:

207 (I) Three hundred and ninety-five dollars in all cases in
 208 which the value of the claim is \$50,000 or less and in which
 209 there are not more than five defendants. The party shall pay an
 210 additional filing fee of up to \$2.50 for each defendant in
 211 excess of five. Of the first \$280 in filing fees, \$80 must be
 212 remitted by the clerk to the Department of Revenue for deposit
 213 into the General Revenue Fund, \$195 must be remitted to the
 214 Department of Revenue for deposit into the State Courts Revenue
 215 Trust Fund, and \$5 ~~\$3.50~~ must be remitted to the Department of
 216 Revenue for deposit into the Administrative Clerks of the Court
 217 Trust Fund within the Department of Financial Services Justice
 218 ~~Administrative Commission~~ and used to fund the contract with the
 219 Florida Clerks of Court Operations Corporation created in s.
 220 28.35, ~~and \$1.50 shall be remitted to the Department of Revenue~~
 221 ~~for deposit into the Administrative Trust Fund within the~~
 222 ~~Department of Financial Services to fund clerk budget reviews~~
 223 ~~conducted by the Department of Financial Services;~~

224 (II) Nine hundred dollars in all cases in which the value

225 of the claim is more than \$50,000 but less than \$250,000 and in
 226 which there are not more than five defendants. The party shall
 227 pay an additional filing fee of up to \$2.50 for each defendant
 228 in excess of five. Of the first \$785 in filing fees, \$80 must be
 229 remitted by the clerk to the Department of Revenue for deposit
 230 into the General Revenue Fund, \$700 must be remitted to the
 231 Department of Revenue for deposit into the State Courts Revenue
 232 Trust Fund, and \$5 ~~\$3.50~~ must be remitted to the Department of
 233 Revenue for deposit into the Administrative Clerks of the Court
 234 Trust Fund within the Department of Financial Services Justice
 235 ~~Administrative Commission~~ and used to fund the contract with the
 236 Florida Clerks of Court Operations Corporation created ~~described~~
 237 in s. 28.35, and ~~\$1.50~~ shall be remitted to the Department of
 238 Revenue for deposit into the ~~Administrative Trust Fund within~~
 239 ~~the Department of Financial Services to fund clerk budget~~
 240 ~~reviews conducted by the Department of Financial Services; or~~

241 (III) One thousand nine hundred dollars in all cases in
 242 which the value of the claim is \$250,000 or more and in which
 243 there are not more than five defendants. The party shall pay an
 244 additional filing fee of up to \$2.50 for each defendant in
 245 excess of five. Of the first \$1,785 in filing fees, \$80 must be
 246 remitted by the clerk to the Department of Revenue for deposit
 247 into the General Revenue Fund, \$1,700 must be remitted to the
 248 Department of Revenue for deposit into the State Courts Revenue
 249 Trust Fund, and \$5 ~~\$3.50~~ must be remitted to the Department of
 250 Revenue for deposit into the Administrative Clerks of the Court
 251 Trust Fund within the Department of Financial Services Justice
 252 ~~Administrative Commission~~ to fund the contract with the Florida

253 Clerks of Court Operations Corporation created in s. 28.35, and
 254 ~~\$1.50 shall be remitted to the Department of Revenue for deposit~~
 255 ~~into the Administrative Trust Fund within the Department of~~
 256 ~~Financial Services to fund clerk budget reviews conducted by the~~
 257 ~~Department of Financial Services.~~

258 e. An additional filing fee of \$4 shall be paid to the
 259 clerk. The clerk shall remit \$3.50 to the Department of Revenue
 260 for deposit into the Court Education Trust Fund and shall remit
 261 50 cents to the Department of Revenue for deposit into the
 262 department's Clerks of the Court Trust Fund ~~within the Justice~~
 263 ~~Administrative Commission~~ to fund clerk education. An additional
 264 filing fee of up to \$18 shall be paid by the party seeking each
 265 severance that is granted. The clerk may impose an additional
 266 filing fee of up to \$85 for all proceedings of garnishment,
 267 attachment, replevin, and distress. Postal charges incurred by
 268 the clerk of the circuit court in making service by certified or
 269 registered mail on defendants or other parties shall be paid by
 270 the party at whose instance service is made. No additional fees,
 271 charges, or costs shall be added to the filing fees imposed
 272 under this section, except as authorized in this section or by
 273 general law.

274 Section 4. Section 28.2455, Florida Statutes, is amended
 275 to read:

276 28.2455 Transfer of trust funds in excess of amount needed
 277 for clerk budgets.—By June 20th of each year, the Florida Clerks
 278 of Court Operations Corporation shall identify the amount of
 279 funds in the Clerks of the Court Trust Fund in excess of the
 280 amount needed to fund the approved clerks ~~clerk~~ of the court

281 budgets for the current state fiscal year. The Department of
 282 Revenue ~~Justice Administrative Commission~~ shall transfer the
 283 amount identified by the corporation from the Clerks of the
 284 Court Trust Fund to the General Revenue Fund by June 25th of
 285 each year.

286 Section 5. Paragraph (b) of subsection (5) of section
 287 28.246, Florida Statutes, is amended to read:

288 28.246 Payment of court-related fees, charges, and costs;
 289 partial payments; distribution of funds.—

290 (5) When receiving partial payment of fees, service
 291 charges, court costs, and fines, clerks shall distribute funds
 292 according to the following order of priority:

293 (b) That portion of fees, service charges, court costs,
 294 and fines which are required to be retained by the clerk of the
 295 court or deposited into the Clerks of the Court Trust Fund
 296 within the Department of Revenue ~~Justice Administrative~~
 297 ~~Commission~~.

298
 299 To offset processing costs, clerks may impose either a per-month
 300 service charge pursuant to s. 28.24(26)(b) or a one-time
 301 administrative processing service charge at the inception of the
 302 payment plan pursuant to s. 28.24(26)(c).

303 Section 6. Section 28.35, Florida Statutes, is amended to
 304 read:

305 28.35 Florida Clerks of Court Operations Corporation.—

306 (1)(a) The Florida Clerks of Court Operations Corporation
 307 is created as a public corporation organized to perform the
 308 functions specified in this section and s. 28.36 ~~and shall be~~

309 | ~~administratively housed within the Justice Administrative~~
 310 | ~~Commission. The corporation shall be a budget entity within the~~
 311 | ~~Justice Administrative Commission, and its employees shall be~~
 312 | ~~considered state employees. The corporation is not subject to~~
 313 | ~~control, supervision, or direction by the Justice Administrative~~
 314 | ~~Commission in the performance of its duties, but the employees~~
 315 | ~~of the corporation shall be governed by the classification plan~~
 316 | ~~and salary and benefits plan of the Justice Administrative~~
 317 | ~~Commission. The classification plan must have a separate chapter~~
 318 | ~~for the corporation.~~ All clerks of the circuit court shall be
 319 | members of the corporation and hold their position and authority
 320 | in an ex officio capacity. The functions assigned to the
 321 | corporation shall be performed by an executive council pursuant
 322 | to the plan of operation approved by the members.

323 | (b) The executive council shall be composed of eight
 324 | clerks of the court elected by the clerks of the courts for a
 325 | term of 2 years, with two clerks from counties with a population
 326 | of fewer than 100,000, two clerks from counties with a
 327 | population of at least 100,000 but fewer than 500,000, two
 328 | clerks from counties with a population of at least 500,000 but
 329 | fewer than 1 million, and two clerks from counties with a
 330 | population of more than 1 million. ~~The executive council shall~~
 331 | ~~also include, as ex officio members, a designee of the President~~
 332 | ~~of the Senate and a designee of the Speaker of the House of~~
 333 | ~~Representatives. The Chief Justice of the Supreme Court shall~~
 334 | ~~designate one additional member to represent the state courts~~
 335 | ~~system.~~

336 | (c) The corporation shall be considered a political

337 subdivision of the state and shall be exempt from the corporate
 338 income tax. The corporation is ~~not~~ subject to the procurement
 339 provisions of chapter 287 ~~120~~.

340 (d) The functions assigned to the corporation under this
 341 section and ss. 28.36 and 28.37 are considered to be for a valid
 342 public purpose.

343 (2) The duties of the corporation shall include the
 344 following:

345 (a) Adopting a plan of operation.

346 (b) Conducting the election of an executive council
 347 ~~directors~~ as required in paragraph (1)(b) ~~(1)(a)~~.

348 (c) Recommending to the Legislature changes in the various
 349 court-related fines, fees, service charges, and court costs
 350 established by law to ensure reasonable and adequate funding of
 351 the clerks of the court in the performance of their court-
 352 related functions.

353 (d) Developing and certifying a uniform system of workload
 354 ~~performance~~ measures and applicable workload performance
 355 standards for the functions specified in paragraph (3)(a) and
 356 ~~the service unit costs required in s. 28.36 and measures for~~
 357 ~~clerk~~ workload performance in meeting the workload performance
 358 standards. These workload measures and workload performance
 359 standards shall be designed to facilitate an objective
 360 determination of the performance of each clerk in accordance
 361 with minimum standards for fiscal management, operational
 362 efficiency, and effective collection of fines, fees, service
 363 charges, and court costs. The corporation shall develop the
 364 workload ~~performance~~ measures and workload performance standards

365 in consultation with the Legislature and the Supreme Court. The
 366 Legislature may modify the clerk performance measures and
 367 performance standards in legislation implementing the General
 368 Appropriations Act or other law. When the corporation finds a
 369 clerk has not met the workload performance standards, the
 370 corporation shall identify the nature of each deficiency and any
 371 corrective action recommended and taken by the affected clerk of
 372 the court. The corporation shall notify the Legislature and the
 373 Supreme Court of any clerk not meeting workload performance
 374 standards and provide a copy of any corrective action plans. For
 375 the purposes of this section, the term:

376 1. "Workload measures" means the measurement of the
 377 activities and frequency of the work required for the clerk to
 378 adequately perform the court-related duties of the office.

379 2. "Workload performance standards" means the standards
 380 developed to measure the timeliness and effectiveness of the
 381 activities that are accomplished by the clerk in the performance
 382 of the court-related duties of the office.

383 (e) Pursuant to contract with the Chief Financial Officer,
 384 establishing a process for the review of proposed court-related
 385 budgets submitted by clerks of the court for completeness and
 386 compliance with this section and ss. 28.36 and 28.37. Such
 387 process shall be designed and be sufficiently detailed to permit
 388 independent verification and validation of the budget
 389 certification. The contract shall specify the process to be used
 390 in determining compliance by the corporation with this section
 391 and ss. 28.36 and 28.37 and shall require the corporation to
 392 determine the minimum amount of revenue necessary for each clerk

393 of the court to efficiently perform the list of court-related
 394 functions specified in paragraph (3)(a) in its budget review and
 395 approval process.

396 (f)-(e) Reviewing and certifying proposed budgets submitted
 397 by clerks of the court using the process approved by the Chief
 398 Financial Officer pursuant to paragraph (e) for the purpose of
 399 making the certification in paragraph (e). As part of this
 400 process, the corporation shall:

401 1. Calculate the minimum amount of revenue necessary for
 402 each clerk of the court to efficiently perform the list of
 403 court-related functions specified in paragraph (3)(a). The
 404 Florida Clerks of Court Operations Corporation shall apply the
 405 workload measures appropriate for determining the individual
 406 level of review required to fund the clerk's budget.

407 2. Prepare a cost comparison of similarly situated clerks
 408 of the court, based on county population and numbers of filings,
 409 using the standard list of court-related functions specified in
 410 paragraph (3)(a).

411 3. Conduct an annual base budget review and an annual
 412 budget exercise examining the total budget of each clerk of the
 413 court. The review shall examine revenues from all sources,
 414 expenses of court-related functions, and expenses of non-court-
 415 related functions as necessary to determine that court-related
 416 revenues are not being used for non-court-related purposes.
 417 Funds paid by a clerk to join or be a member of any group or
 418 organization shall be separately listed and the benefits
 419 received from any such group or organization described in
 420 detail. The review and exercise shall identify potential

421 targeted budget reductions in the percentage amount provided in
 422 Schedule VIII-B of the state's previous year's legislative
 423 budget instructions, as referenced in s. 216.023(3), or an
 424 equivalent schedule or instruction as may be adopted by the
 425 Legislature.

426 4. Identify those proposed budgets containing funding for
 427 items not included on the standard list of court-related
 428 functions specified in paragraph (3) (a).

429 5. Identify those clerks projected to have court-related
 430 revenues insufficient to fund their anticipated court-related
 431 expenditures pursuant to s. 28.36.

432 (g) ~~(f)~~ Developing and conducting clerk education programs.

433 (h) ~~(g)~~ Publishing a uniform schedule of actual fees,
 434 service charges, and costs charged by a clerk of the court
 435 pursuant to general law.

436 (i) By August 1 of each year, submitting to the
 437 Legislative Budget Commission, as provided in s. 11.90, its
 438 proposed budget and the information described in paragraph (f),
 439 as well as the approved budgets for each clerk of the court and
 440 the corporation. By October 1 of each year, the Legislative
 441 Budget Commission shall consider the submitted budgets and shall
 442 approve, disapprove, or amend the corporation's budget and shall
 443 approve, disapprove, or amend and approve the total of the
 444 clerks' combined budgets or any individual clerk's budget. If
 445 the Legislative Budget Commission fails to approve or amend the
 446 corporation's budget or the clerks' combined budgets by October
 447 1, the clerk shall continue to perform the court-related
 448 functions based upon the clerk's approved budget for the

449 previous county fiscal year.

450 (3) (a) The list of court-related functions that clerks may
 451 fund from filing fees, service charges, court costs, and fines
 452 is perform are limited to those functions expressly authorized
 453 by law or court rule. Those functions include the following:
 454 case maintenance; records management; court preparation and
 455 attendance; processing the assignment, reopening, and
 456 reassignment of cases; processing of appeals; collection and
 457 distribution of fines, fees, service charges, and court costs;
 458 processing of bond forfeiture payments; payment of jurors and
 459 witnesses; payment of expenses for meals or lodging provided to
 460 jurors; data collection and reporting; processing of jurors;
 461 determinations of indigent status; and reasonable administrative
 462 support costs to enable the clerk of the court to carry out
 463 these court-related functions.

464 (b) The list of functions that clerks may not fund from
 465 filing fees, service charges, court costs, and fines includes
 466 ~~state appropriations include:~~

- 467 1. Those functions not specified within paragraph (a).
- 468 2. Functions assigned by administrative orders which are
 469 not required for the clerk to perform the functions in paragraph
 470 (a).
- 471 3. Enhanced levels of service which are not required for
 472 the clerk to perform the functions in paragraph (a).
- 473 4. Functions identified as local requirements in law or
 474 local optional programs.

475 (4) The corporation shall ~~prepare a legislative budget~~
 476 ~~request for the resources necessary to perform its duties,~~

477 ~~submit the request pursuant to chapter 216, and be funded~~
 478 pursuant to a contract with the Chief Financial Officer. Funds
 479 shall be provided to the Chief Financial Officer for such
 480 purpose as appropriated by general law. Such funds shall be
 481 available to the corporation for the performance of the duties
 482 and responsibilities as set forth in this section as a budget
 483 entity in the General Appropriations Act. The corporation may
 484 hire staff and pay other expenses from such funds ~~state~~
 485 ~~appropriations~~ as necessary to perform the official duties and
 486 responsibilities of the corporation as described in this section
 487 ~~by law.~~

488 (5) Certified public accountants conducting audits of
 489 counties pursuant to s. 218.39 shall report, as part of the
 490 audit, whether or not the clerks of the courts have complied
 491 with the requirements of this section and s. 28.36. ~~In addition,~~
 492 ~~each clerk of court shall forward a copy of the portion of the~~
 493 ~~financial audit relating to the court-related duties of the~~
 494 ~~clerk of court to the Supreme Court.~~ The Auditor General shall
 495 develop a compliance supplement for the audit of compliance with
 496 the budgets and applicable workload performance standards
 497 certified by the corporation.

498 Section 7. Section 28.36, Florida Statutes, is amended to
 499 read:

500 28.36 Budget procedure.—There is established a budget
 501 procedure ~~for preparing budget requests for funding~~ for the
 502 court-related functions of the clerks of the court.

503 (1) Only those functions on the standard list developed
 504 pursuant to s. 28.35(3)(a) may be funded from fees, service

505 charges, court costs, and fines retained by the clerks of the
 506 court. For the county fiscal year beginning October 1, 2012, and
 507 for each county fiscal year thereafter, each clerk of the court
 508 shall prepare a budget request for court-related expenditures
 509 ~~that the last quarter of the county fiscal year and the first~~
 510 ~~three quarters of the next county fiscal year.~~ The proposed
 511 ~~budget~~ shall be prepared, summarized, and submitted by the clerk
 512 in each county to the Florida Clerks of Court Operations
 513 Corporation in the manner and form prescribed by the corporation
 514 to meet the requirements of law. ~~Each clerk shall forward a copy~~
 515 ~~of his or her budget request to the Supreme Court.~~ The budget
 516 requests must be provided to the corporation by June ~~October~~ 1
 517 of the each year before the year of the budget.

518 ~~(2) Each clerk shall include in his or her budget request~~
 519 ~~a projection of the amount of court-related fees, service~~
 520 ~~charges, and any other court-related clerk fees which will be~~
 521 ~~collected during the proposed budget period. If the corporation~~
 522 ~~determines that the proposed budget is limited to the standard~~
 523 ~~list of court-related functions in s. 28.35(3)(a) and the~~
 524 ~~projected court-related revenues are less than the proposed~~
 525 ~~budget, the clerk shall increase all fees, service charges, and~~
 526 ~~any other court-related clerk fees and charges to the maximum~~
 527 ~~amounts specified by law or the amount necessary to resolve the~~
 528 ~~deficit, whichever is less.~~

529 (2)-(3) Each proposed budget shall further conform to the
 530 following requirements ~~clerk shall include in his or her budget~~
 531 ~~request the number of personnel and the proposed budget for each~~
 532 ~~of the following core services:~~

533 (a) On or before June 1 of each fiscal year, the proposed
 534 budget shall be prepared, summarized, and submitted by the clerk
 535 in each county to the corporation in the manner and form
 536 prescribed by the corporation. The proposed budget must provide
 537 detailed information on the anticipated revenues available and
 538 expenditures necessary for the performance of the standard list
 539 of court-related functions of the clerk's office developed
 540 pursuant to s. 28.35(3)(a) for the county fiscal year beginning
 541 the next October 1.

542 (b) The proposed budget must be balanced, such that the
 543 total of the estimated revenues available must equal or exceed
 544 the total of the anticipated expenditures. Such revenues include
 545 cash balances brought forward from the previous fiscal period;
 546 revenue projected to be received from fees, services charges,
 547 court costs, and fines for court-related functions during the
 548 fiscal period covered by the budget; and supplemental revenue
 549 that may be requested pursuant to subsection (4). The
 550 anticipated expenditures must be itemized as required by the
 551 corporation, pursuant to contract with the Chief Financial
 552 Officer.

553 (c) The proposed budget may include a contingency reserve
 554 not to exceed 10 percent of the total budget, provided that, in
 555 the aggregate, the proposed budget does not exceed the limits
 556 prescribed in paragraph (4)(b).

- 557 ~~(a) Circuit criminal.~~
- 558 ~~(b) County criminal.~~
- 559 ~~(c) Juvenile delinquency.~~
- 560 ~~(d) Criminal traffic.~~

- 561 | ~~(e) Circuit civil.~~
- 562 | ~~(f) County civil.~~
- 563 | ~~(g) Civil traffic.~~
- 564 | ~~(h) Probate.~~
- 565 | ~~(i) Family.~~
- 566 | ~~(j) Juvenile dependency.~~

567 |

568 | ~~Central administrative costs shall be allocated among the core-~~

569 | ~~services categories.~~

570 | (3)(4) If a clerk of the court estimates that available

571 | funds plus projected revenues from fines, fees, service charges,

572 | and costs for court-related services are insufficient to meet

573 | the anticipated expenditures for the standard list of court-

574 | related functions in s. 28.35(3)(a) performed by his or her

575 | office, the clerk must report the revenue deficit to the

576 | corporation in the manner and form prescribed by the corporation

577 | pursuant to contract with the Chief Financial Officer. The

578 | corporation shall verify that the proposed budget is limited to

579 | the standard list of court-related functions in s. 28.35(3)(a).

580 | (a) If the corporation verifies that the proposed budget

581 | is limited to the standard list of court-related functions in s.

582 | 28.35(3)(a) and a revenue deficit is projected, a clerk seeking

583 | to retain revenues pursuant to this subsection shall increase

584 | all fees and service charges and any other court-related clerk

585 | fees and charges to the maximum amounts specified by law or the

586 | amount necessary to resolve the deficit, whichever is less. If,

587 | after increasing fees, service charges, and other court-related

588 | clerk fees and charges to the maximum amounts specified by law,

PCB JUAS 12-03

ORIGINAL

2012

589 a revenue deficit is still projected, the corporation shall,
590 pursuant to the terms of the contract with the Chief Financial
591 Officer, certify a revenue deficit and notify the Department of
592 Revenue that the clerk is authorized to retain revenues, in an
593 amount necessary to fully fund the projected revenue deficit,
594 which he or she would otherwise be required to remit to the
595 Department of Revenue for deposit into the department's Clerks
596 of the Court Trust Fund pursuant to s. 28.37. If a revenue
597 deficit is projected for that clerk after retaining all of the
598 projected collections from the court-related fines, fees,
599 service charges, and costs, the Department of Revenue shall
600 certify the amount of the revenue deficit to the Executive
601 Office of the Governor and request release authority for funds
602 appropriated for this purpose from the department's Clerks of
603 the Court Trust Fund. Notwithstanding the provisions of s.
604 216.192 relating to the release of funds, the Executive Office
605 of the Governor may approve the release of funds appropriated to
606 resolve projected revenue deficits in accordance with the
607 notice, review, and objection procedures set forth in s. 216.177
608 and shall provide notice to the Chief Financial Officer. The
609 Department of Revenue shall request monthly distributions from
610 the Chief Financial Officer in equal amounts to each clerk
611 certified to have a revenue deficit, in accordance with the
612 releases approved by the Governor.

613 (b) If the Chief Financial Officer finds the court-related
614 budget proposed by a clerk includes functions not included in
615 the standard list of court-related functions in s. 28.35(3)(a),
616 the Chief Financial Officer shall notify the clerk of the amount

617 of the proposed budget not eligible to be funded from fines,
 618 fees, service charges, and costs for court-related functions and
 619 shall identify appropriate corrective measures to ensure budget
 620 integrity. The clerk shall immediately discontinue all
 621 ineligible expenditures of court-related funds for non-court-
 622 related functions, reimburse the Clerks of the Court Trust Fund
 623 for any previously ineligible expenditures made for non-court-
 624 related functions, and implement any corrective actions
 625 identified by the Chief Financial Officer ~~The budget request~~
 626 ~~must identify the service units to be provided within each core~~
 627 ~~service. The service units shall be developed by the~~
 628 ~~corporation, in consultation with the Supreme Court, the Chief~~
 629 ~~Financial Officer, and the appropriations committees of the~~
 630 ~~Senate and the House of Representatives.~~

631 (4) (a) ~~(5)~~ The Legislative Budget Commission may approve
 632 increases to the maximum annual budgets approved for individual
 633 clerks of the court pursuant to this section for court-related
 634 functions, if:

635 1. The additional funding is necessary to pay the cost of
 636 performing new or additional functions required by changes in
 637 law or court rule. Before the Legislative Budget Commission may
 638 approve an increase in the maximum annual budget of any clerk
 639 under this subparagraph, the corporation must provide the
 640 Legislative Budget Commission with a statement of the impact of
 641 the proposed budget changes on state revenues and evidence that
 642 the respective clerk of the court is meeting or exceeding the
 643 established performance standards for measures on the fiscal
 644 management, operational efficiency, and effective collection of

645 finances, fees, services charges, and court costs; or
 646 2. The additional funding is necessary to pay the cost of
 647 supporting increases in the number of judges or magistrates
 648 authorized by the Legislature. Before the Legislative Budget
 649 Commission may approve an increase in the maximum annual budget
 650 of any clerk under this subparagraph, the corporation must
 651 provide the Legislative Budget Commission with a statement of
 652 the impact of the proposed budget changes on state revenues;
 653 evidence that the respective clerk of the court is meeting or
 654 exceeding the established performance standards for measures on
 655 the fiscal management, operational efficiency, and effective
 656 collection of fines, fees, service charges, and court costs; and
 657 a proposed staffing model, including the cost and number of
 658 staff necessary to support each new judge or magistrate.
 659 (b) The total amount of increases approved by the
 660 Legislative Budget Commission for each county fiscal year may
 661 not exceed an amount equal to 1 percent of the maximum annual
 662 budgets approved pursuant to this section for all clerks, in the
 663 aggregate, for the same county fiscal year ~~The budget request~~
 664 ~~must propose a unit cost for each service unit. The corporation~~
 665 ~~shall provide a copy of each clerk's budget request to the~~
 666 ~~Supreme Court.~~
 667 (5)(6) The corporation may submit proposed legislation to
 668 the Governor, the President of the Senate, and the Speaker of
 669 the House of Representatives no later than November 1 in any
 670 year for approval of clerk budget request amounts exceeding the
 671 restrictions in this section for the next October 1. If proposed
 672 legislation is recommended, the corporation shall also submit

673 supporting documentation with sufficient detail to identify the
 674 specific proposed expenditures that would cause the limitations
 675 to be exceeded for each affected clerk and the estimated fiscal
 676 impact on state revenues shall review each individual clerk's
 677 ~~prior year expenditures, projected revenue, proposed unit costs,~~
 678 ~~and the proposed budget for each of the core services~~
 679 ~~categories. The corporation shall compare each clerk's prior-~~
 680 ~~year expenditures and unit costs for core services with a peer~~
 681 ~~group of clerks' offices having a population of a similar size~~
 682 ~~and a similar number of case filings. If the corporation finds~~
 683 ~~that the expenditures, unit costs, or proposed budget of a clerk~~
 684 ~~is significantly higher than those of clerks in that clerk's~~
 685 ~~peer group, the corporation shall require the clerk to submit~~
 686 ~~documentation justifying the difference in each core services~~
 687 ~~category. Justification for higher expenditures may include, but~~
 688 ~~is not limited to, collective bargaining agreements, county~~
 689 ~~civil service agreements, and the number and distribution of~~
 690 ~~courthouses served by the clerk. If the expenditures and unit~~
 691 ~~costs are not justified, the corporation shall recommend a~~
 692 ~~reduction in the funding for that core services category in the~~
 693 ~~budget request to an amount similar to the peer group of clerks~~
 694 ~~or to an amount that the corporation determines is justified.~~

695 ~~(7) The corporation shall complete its review and~~
 696 ~~adjustments to the clerks' budget requests and make its~~
 697 ~~recommendations to the Legislature and the Supreme Court by~~
 698 ~~December 1 each year.~~

699 ~~(8) The Chief Financial Officer shall review the proposed~~
 700 ~~unit costs associated with each clerk of court's budget request~~

701 ~~and make recommendations to the Legislature. The Chief Financial~~
 702 ~~Officer may conduct any audit of the corporation or a clerk of~~
 703 ~~court as authorized by law. The Chief Justice of the Supreme~~
 704 ~~Court may request an audit of the corporation or any clerk of~~
 705 ~~court by the Chief Financial Officer.~~

706 ~~(9) The Legislature shall appropriate the total amount for~~
 707 ~~the budgets of the clerks in the General Appropriations Act. The~~
 708 ~~Legislature may reject or modify any or all of the unit costs~~
 709 ~~recommended by the corporation. If the Legislature does not~~
 710 ~~specify the unit costs in the General Appropriations Act or~~
 711 ~~other law, the unit costs recommended by the corporation shall~~
 712 ~~be the official unit costs for that budget period.~~

713 ~~(10)(a) Beginning in the 2010-2011 fiscal year, the~~
 714 ~~corporation shall release appropriations to each clerk~~
 715 ~~quarterly. If funds in the Clerks of Court Trust Fund are~~
 716 ~~insufficient to provide a release in a quarter in a single~~
 717 ~~release, the corporation may release partial amounts for that~~
 718 ~~quarter so long as the total of those partial amounts does not~~
 719 ~~exceed that quarter's release. If funds in the Clerks of Court~~
 720 ~~Trust Fund are insufficient for the first quarter release, the~~
 721 ~~corporation may make a request to the Governor for a trust fund~~
 722 ~~loan pursuant to chapter 215. The amount of the first three~~
 723 ~~releases shall be based on one quarter of the estimated budget~~
 724 ~~for each clerk as identified in the General Appropriations Act.~~

725 ~~(b) The corporation shall estimate the fourth quarter's~~
 726 ~~number of units to be performed by each clerk. The amount of the~~
 727 ~~fourth quarter release shall be based on the approved unit cost~~
 728 ~~times the estimated number of units of the fourth quarter with~~

PCB JUAS 12-03

ORIGINAL

2012

729 ~~the following adjustment: the fourth-quarter release shall be~~
730 ~~adjusted based on the first three quarter's actual number of~~
731 ~~service units provided as reported to the corporation by each~~
732 ~~clerk. If the clerk has performed fewer service units in the~~
733 ~~first three quarters of the year compared to three quarters of~~
734 ~~the estimated number of service units in the General~~
735 ~~Appropriations Act, the corporation shall decrease the fourth-~~
736 ~~quarter release. The amount of the decrease shall equal the~~
737 ~~amount of the difference between the estimated number of service~~
738 ~~units for the first three quarters and the actual number of~~
739 ~~service units provided in the first three quarters times the~~
740 ~~approved unit cost.~~

741 ~~(c) No adjustment for the fourth-quarter release shall be~~
742 ~~made if the clerk has performed more units than the estimate for~~
743 ~~the first three quarters.~~

744 ~~(d) If the clerk performs fewer units in the fourth~~
745 ~~quarter than estimated by the corporation, the corporation shall~~
746 ~~decrease the first-quarter release for the clerk in the next~~
747 ~~fiscal year by the amount of the difference between the~~
748 ~~estimated number of service units for the fourth quarter and the~~
749 ~~actual number of service units performed in that quarter times~~
750 ~~the approved unit cost.~~

751 ~~(e) The total of all releases to the clerks of court may~~
752 ~~not exceed the amount appropriated in the General Appropriations~~
753 ~~Act. If, during the year, the corporation determines that the~~
754 ~~projected releases of appropriations for service units will~~
755 ~~exceed the estimate used in the General Appropriations Act and~~
756 ~~result in statewide expenditures greater than the amount~~

757 ~~appropriated by law, the corporation shall reduce all service~~
 758 ~~unit costs of all clerks by the amount necessary to ensure that~~
 759 ~~service units are funded within the total amount appropriated to~~
 760 ~~the clerks of court. If such action is necessary, the~~
 761 ~~corporation shall notify the Legislative Budget Commission. If~~
 762 ~~the Legislative Budget Commission objects to the adjustments,~~
 763 ~~the Legislative Budget Commission shall adjust all service unit~~
 764 ~~costs by the amount necessary to ensure that projected units of~~
 765 ~~service are funded within the total amount appropriated to the~~
 766 ~~clerks of court at its next scheduled meeting.~~

767 ~~(11) The corporation may submit proposed legislation to~~
 768 ~~the Governor, the President of the Senate, and the Speaker of~~
 769 ~~the House of Representatives relating to the preparation of~~
 770 ~~budget requests of the clerks of court.~~

771 Section 8. Section 28.365, Florida Statutes, is created to
 772 read:

773 28.365 Procurement.—The clerks of the court are subject to
 774 the procurement requirements and limitations of chapter 287 for
 775 expenditures made pursuant to the budget provided for in ss.
 776 28.35 and 28.36.

777 Section 9. Section 28.37, Florida Statutes, is amended to
 778 read:

779 28.37 Fines, fees, service charges, and costs remitted to
 780 the state.—

781 (1) Pursuant to s. 14(b), Art. V of the State
 782 Constitution, selected salaries, costs, and expenses of the
 783 state courts system and court-related functions shall be funded
 784 from a portion of the revenues derived from statutory fines,

785 fees, service charges, and costs collected by the clerks of the
 786 court.

787 (2) Beginning July 1, 2012, except as otherwise provided
 788 in ss. 28.241 and 34.041, one-third of all fines, fees, service
 789 charges, and court costs collected by the clerks of the court
 790 each month shall be remitted to the Department of Revenue for
 791 deposit into the Clerks of the Court Trust Fund, unless the
 792 remaining two-thirds of such fines, fees, service charges, and
 793 court costs collected is less than one-twelfth of the clerks'
 794 total budget. If the collections are insufficient to remit one-
 795 third to the department, the clerks shall submit that portion of
 796 one-third of the collections that is in excess of one-twelfth of
 797 the clerks' total budget for the performance of court-related
 798 functions to the Department of Revenue for deposit into the
 799 department's Clerks of the Court Trust Fund. Such collections do
 800 not include funding received for the operation of the Title IV-D
 801 child support collections and disbursement program. The clerk of
 802 the court shall remit the revenues collected during the previous
 803 month due to the state on or before the 10th day of each month.
 804 The Department of Revenue shall make a monthly transfer to the
 805 General Revenue Fund of the funds in the department's Clerks of
 806 the Court Trust Fund that are not needed to resolve clerk of the
 807 court revenue deficits, as specified in s. 28.36.

808 (3) Beginning January 1, 2013, and each January 1
 809 thereafter for the previous county fiscal year, the clerk of the
 810 court shall remit to the Department of Revenue for deposit in
 811 the General Revenue Fund the cumulative excess of all fines,
 812 fees, service charges, and court costs retained by the clerks of

813 | the court, plus any funds received by the clerks of the court
 814 | from the department's Clerks of the Court Trust Fund under s.
 815 | 28.36(4) (a), that exceed the amount needed to meet the approved
 816 | budget amounts established under s. 28.36.

817 | (4) The Department of Revenue shall collect any funds that
 818 | the Florida Clerks of Court Operations Corporation determines
 819 | upon investigation were due on January 1 but not remitted to the
 820 | department.

821 | (5)~~(2)~~ Except as otherwise provided in ss. 28.241 and
 822 | 34.041, all court-related fines, fees, service charges, and
 823 | costs are considered state funds and shall be remitted by the
 824 | clerk to the Department of Revenue for deposit into the Clerks
 825 | of the Court Trust Fund within the Department of Revenue Justice
 826 | ~~Administrative Commission~~. However, 10 percent of all court-
 827 | related fines collected by the clerk shall be deposited into the
 828 | clerk's Public Records Modernization Trust Fund to be used
 829 | exclusively for additional clerk court-related operational needs
 830 | and program enhancements.

831 | Section 10. Subsection (1) of section 28.43, Florida
 832 | Statutes, is amended to read:

833 | 28.43 Adoption of rules relating to ss. 28.35, 28.36, and
 834 | 28.37.—

835 | (1) The Department of Revenue may adopt rules necessary to
 836 | carry out its responsibilities in ss. 28.35, 28.36, and 28.37.
 837 | The rules shall include forms and procedures for transferring
 838 | funds from the clerks of the court to the Clerks of the Court
 839 | Trust Fund within the Department of Revenue Justice
 840 | ~~Administrative Commission~~.

841 Section 11. Paragraph (b) of subsection (1) of section
 842 34.041, Florida Statutes, is amended, and paragraph (a) of that
 843 subsection is published, to read:

844 34.041 Filing fees.—

845 (1)(a) Upon the institution of any civil action, suit, or
 846 proceeding in county court, the party shall pay the following
 847 filing fee, not to exceed:

848 1. For all claims less than \$100 \$50.

849 2. For all claims of \$100 or more but not more than \$500
 850 \$75.

851 3. For all claims of more than \$500 but not more than
 852 \$2,500 \$170.

853 4. For all claims of more than \$2,500 \$295.

854 5. In addition, for all proceedings of garnishment,
 855 attachment, replevin, and distress \$85.

856 6. Notwithstanding subparagraphs 3. and 5., for all claims
 857 of not more than \$1,000 filed simultaneously with an action for
 858 replevin of property that is the subject of the claim \$125.

859 7. For removal of tenant action \$180.

860

861 The filing fee in subparagraph 6. is the total fee due under
 862 this paragraph for that type of filing, and no other filing fee
 863 under this paragraph may be assessed against such a filing.

864 (b) The first \$80 of the filing fee collected under
 865 subparagraph (a)4. shall be remitted to the Department of
 866 Revenue for deposit into the General Revenue Fund. The next \$15
 867 of the filing fee collected under subparagraph (a)4., and the
 868 first \$10 of the filing fee collected under subparagraph (a)7.,

869 shall be deposited in the State Courts Revenue Trust Fund. One-
 870 third of any filing fees collected by the clerk each month under
 871 this section in excess of the first \$95 collected under
 872 subparagraph (a)4. shall be remitted to the Department of
 873 Revenue for deposit into the department's Clerks of the Court
 874 Trust Fund, unless the remaining two-thirds of the filing fees
 875 collected is less than one-twelfth of the clerk's total budget.
 876 If the filing fees collected are insufficient to remit one-third
 877 to the department, the clerk shall submit that portion of one-
 878 third of the fees collected that is in excess of one-twelfth of
 879 the clerk's total budget for the performance of court-related
 880 functions to the Department of Revenue for deposit into the
 881 department's Clerks of the Court Trust Fund. An additional
 882 filing fee of \$4 shall be paid to the clerk. The clerk shall
 883 transfer \$3.50 to the Department of Revenue for deposit into the
 884 Court Education Trust Fund and shall transfer 50 cents to the
 885 Department of Revenue for deposit into the department's Clerks
 886 of the Court Trust Fund ~~within the Justice Administrative~~
 887 ~~Commission~~ to fund clerk education. Postal charges incurred by
 888 the clerk of the county court in making service by mail on
 889 defendants or other parties shall be paid by the party at whose
 890 instance service is made. Except as provided in this section
 891 herein, filing fees and service charges for performing duties of
 892 the clerk relating to the county court shall be as provided in
 893 ss. 28.24 and 28.241. Except as otherwise provided in this
 894 section herein, all filing fees shall be retained as fee income
 895 of the office of the clerk of the circuit court ~~remitted to the~~
 896 ~~Department of Revenue for deposit into the Clerks of the Court~~

897 | ~~Trust Fund within the Justice Administrative Commission.~~ Filing
 898 | fees imposed by this section may not be added to any penalty
 899 | imposed by chapter 316 or chapter 318.

900 | Section 12. Subsection (5) of section 43.16, Florida
 901 | Statutes, is amended to read:

902 | 43.16 Justice Administrative Commission; membership,
 903 | powers and duties.—

904 | (5) The duties of the commission shall include, but are
 905 | not ~~be~~ limited to, the following:

906 | (a) The maintenance of a central state office for
 907 | administrative services and assistance when possible to and on
 908 | behalf of the state attorneys and public defenders of Florida,
 909 | the capital collateral regional counsel of Florida, the criminal
 910 | conflict and civil regional counsel, and the Guardian Ad Litem
 911 | Program, ~~and the Florida Clerks of Court Operations Corporation.~~

912 | (b) Each state attorney, public defender, and criminal
 913 | conflict and civil regional counsel and, the Guardian Ad Litem
 914 | Program, ~~and the Florida Clerks of Court Operations Corporation~~
 915 | shall continue to prepare necessary budgets, vouchers that
 916 | represent valid claims for reimbursement by the state for
 917 | authorized expenses, and other things incidental to the proper
 918 | administrative operation of the office, such as revenue
 919 | transmittals to the Chief Financial Officer and automated
 920 | systems plans, but will forward such items ~~same~~ to the
 921 | commission for recording and submission to the proper state
 922 | officer. However, when requested by a state attorney, a public
 923 | defender, a criminal conflict and civil regional counsel, or the
 924 | Guardian Ad Litem Program, the commission will either assist in

925 the preparation of budget requests, voucher schedules, and other
 926 forms and reports or accomplish the entire project involved.

927 Section 13. Paragraph (x) of subsection (2) of section
 928 110.205, Florida Statutes, is amended to read:

929 110.205 Career service; exemptions.—

930 (2) EXEMPT POSITIONS.—The exempt positions that are not
 931 covered by this part include the following:

932 (x) All officers and employees of the Justice
 933 Administrative Commission, Office of the State Attorney, Office
 934 of the Public Defender, regional offices of capital collateral
 935 counsel, offices of criminal conflict and civil regional
 936 counsel, and Statewide Guardian Ad Litem Office, including the
 937 circuit guardian ad litem programs ~~and the Florida Clerks of~~
 938 ~~Court Operations Corporation.~~

939 Section 14. Subsections (2) and (3) of section 142.01,
 940 Florida Statutes, are amended to read:

941 142.01 Fine and forfeiture fund; disposition of revenue;
 942 clerk of the circuit court.—

943 ~~(2) All revenues received by the clerk in the fine and~~
 944 ~~forfeiture fund from court-related fees, fines, costs, and~~
 945 ~~service charges are considered state funds and shall be remitted~~
 946 ~~monthly to the Department of Revenue for deposit into the Clerks~~
 947 ~~of the Court Trust Fund within the Justice Administrative~~
 948 ~~Commission.~~

949 (2) ~~(3)~~ Notwithstanding ~~the provisions of~~ this section, all
 950 fines and forfeitures arising from operation of the provisions
 951 of s. 318.1215 shall be disbursed in accordance with that
 952 section.

953 Section 15. Section 213.131, Florida Statutes, is amended
 954 to read:

955 213.131 Clerks of the Court Trust Fund within the
 956 Department of Revenue ~~Justice Administrative Commission~~.—The
 957 Clerks of the Court Trust Fund is created within the Department
 958 of Revenue ~~Justice Administrative Commission~~. Funds received by
 959 the department from the clerks of the court shall be credited to
 960 the trust fund as provided in chapter 2001-122, Laws of Florida,
 961 to be used for the purposes set forth in that act.

962 Section 16. Paragraph (qq) of subsection (1) of section
 963 216.011, Florida Statutes, is amended to read:

964 216.011 Definitions.—

965 (1) For the purpose of fiscal affairs of the state,
 966 appropriations acts, legislative budgets, and approved budgets,
 967 each of the following terms has the meaning indicated:

968 (qq) "State agency" or "agency" means any official,
 969 officer, commission, board, authority, council, committee, or
 970 department of the executive branch of state government. For
 971 purposes of this chapter and chapter 215, "state agency" or
 972 "agency" includes, but is not limited to, state attorneys,
 973 public defenders, criminal conflict and civil regional counsel,
 974 capital collateral regional counsel, ~~the Florida Clerks of Court~~
 975 ~~Operations Corporation~~, the Justice Administrative Commission,
 976 the Florida Housing Finance Corporation, and the Florida Public
 977 Service Commission. Solely for the purposes of implementing s.
 978 19(h), Art. III of the State Constitution, the terms "state
 979 agency" or "agency" include the judicial branch.

PCB JUAS 12-03

ORIGINAL

2012

980 Section 17. For the period of July 1, 2012, through
 981 September 30, 2012, the approved budget for the clerks of the
 982 circuit court shall be \$111,673,799. The Florida Clerks of Court
 983 Operations Corporation shall determine budget amounts for the
 984 individual clerks.

985 Section 18. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES TRUST FUND RE-CREATION STAFF ANALYSIS

BILL #: PCB JUAS 12-04 Capital Collateral Regional Counsel Trust Fund

SPONSOR(S): Justice Appropriations Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee		Miller <i>BM</i>	Jones Darity <i>J. Darity</i>

I. SUMMARY

The Capital Collateral Regional Counsel Trust Fund, FLAIR number 21-2-073, is administered by the Justice Administrative Commission. This fund was created effective July 1, 2009, by chapter 2009-62, Laws of Florida. This legislation re-creates the Capital Collateral Regional Counsel Trust Fund without modification, effective July 1, 2012, provided that it is enacted by three-fifths of the membership of both houses of the Legislature. This bill also repeals the provision for the scheduled termination of the trust fund.

II. SUBSTANTIVE ANALYSIS

A. PRESENT SITUATION:

1. MAJOR STATUTES THAT CONTROL THE TRUST FUND:

Section 19(f), Article III of the State Constitution requires that every trust fund be created or re-created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating that trust fund. The Constitution also provides that all newly created trust funds terminate not more than four years after the initial creation unless re-created. The Capital Collateral Regional Counsel Trust Fund was created in the Justice Administrative Commission effective July 1, 2009, by chapter 2009-62, Laws of Florida, in section 27.715, Florida Statutes and is scheduled to terminate on July 1, 2013.

2. BRIEF DESCRIPTION OF THE FUND'S USES OR PURPOSES:

This trust fund is used for the operational expenditures related to the Capital Collateral Regional Counsel.

3. MAJOR SOURCES OF REVENUE FOR THE FUND:

Moneys in the trust fund consist of federal reimbursements for representation of indigent persons in federal court by attorneys of the Capital Collateral Regional Counsel. The Capital Collateral Regional Counsel is required to seek such reimbursements pursuant to s. 27.702(3)(a), F.S.

4. TOTAL PROJECTED RECEIPTS INTO THE FUND AND CURRENT YEAR APPROPRIATIONS FROM THE FUND:

The total projected receipts into this fund for the current year are \$361,796 and current year appropriations from the fund are \$400,000.

B. EFFECT OF PROPOSED CHANGES:

This legislation re-creates the Capital Collateral Regional Counsel Trust Fund without modification, effective July 1, 2012. This bill also repeals the provision for the scheduled termination of the trust fund.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

This legislation has no fiscal impact on state agencies or state funds, on local governments as a whole or on the private sector. It simply re-creates, without modification, an existing state trust fund and continues the current use of the fund.

IV. COMMENTS

V. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to trust funds; re-creating the
 3 Capital Collateral Regional Counsel Trust Fund within
 4 the Justice Administrative Commission without
 5 modification; amending s. 27.715, F.S.; abrogating
 6 provisions relating to the termination of the trust
 7 fund to conform; providing an effective date.

8
 9 WHEREAS, the Legislature wishes to extend the life of the
 10 Capital Collateral Regional Counsel Trust Fund within the
 11 Justice Administrative Commission, which is otherwise scheduled
 12 to be terminated pursuant to constitutional mandate, and

13 WHEREAS, the Legislature has reviewed the trust fund before
 14 its scheduled termination date and has found that it continues
 15 to meet an important public purpose, and

16 WHEREAS, the Legislature has found that existing public
 17 policy concerning the trust fund sets adequate parameters for
 18 its use, NOW, THEREFORE,

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. The Capital Collateral Regional Counsel Trust
 23 Fund within the Justice Administrative Commission, FLAIR number
 24 21-2-073, which is to be terminated pursuant to Section 19(f),
 25 Article III of the State Constitution on July 1, 2013, is re-
 26 created.

27 Section 2. Section 27.715, Florida Statutes, is amended to
 28 read:

PCB JUAS 12-04

ORIGINAL

2012

29 | 27.715 Capital Collateral Regional Counsel Trust Fund.—

30 | ~~(1)~~ The Capital Collateral Regional Counsel Trust Fund is
 31 | created within the Justice Administrative Commission. Moneys
 32 | credited to the trust fund shall be used for the purpose of
 33 | funding the activities of the capital collateral regional
 34 | counsel.

35 | ~~(2) In accordance with s. 19(f)(2), Art. III of the State~~
 36 | ~~Constitution, the Capital Collateral Regional Counsel Trust Fund~~
 37 | ~~shall, unless terminated sooner, be terminated on July 1, 2013.~~
 38 | ~~Before its scheduled termination, the trust fund shall be~~
 39 | ~~reviewed as provided in s. 215.3206(1) and (2).~~



40 | Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JUAS 12-05 Correctional Privatization

SPONSOR(S): Justice Appropriations Subcommittee

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee		McAuliffe 	Jones Darity 

SUMMARY ANALYSIS

The Fiscal Year 2011-2012 General Appropriations Act contained proviso to privatize all Department of Corrections (DOC) facilities in South Florida. The proviso required the DOC to issue a request for proposals (RFP) for the operation of those facilities and bring the successful bid before the Legislative Budget Commission for approval of the contract. The proviso was subsequently challenged in court.

On September 30, 2011, the circuit court ruled that the proviso relating to privatization to be unconstitutional in violation of Article III, Sections 6 and 12 of the Florida Constitution. The court held that the proviso changed the statutory process for privatizing prison facilities set forth in s. 944.105, F.S. and other sections of statute. The order enjoined the department "from taking further steps to contract under the proviso or otherwise implement the privatization of the state correctional facilities in the 18 counties pursuant to proviso or otherwise." On October 31, 2011, the Attorney General filed a Notice of Appeal. The bill:

- Requires the Department of Management Services to competitively procure by single or multiple solicitations for the operation of correctional facilities and assigned correctional units in Manatee, Hardee, Indian River, Okeechobee, Highlands, St. Lucie, DeSoto, Sarasota, Charlotte, Glades, Martin, Palm Beach, Hendry, Lee, Collier, Broward, Miami-Dade and Monroe Counties, and provides that the contract must require a seven percent savings compared to Fiscal Year 2010-2011 costs. The procurement may not include the South Florida Reception Center which will continue to be operated by DOC, or the inmate health services in the South Florida institutions.
- Requires the Department of Management Services to issue the competitive solicitation no later than 60 days after the effective date of this act, and that proposals must be submitted no later than 60 days after the issuance of the solicitation.
- Includes numerous performance measures which must be included in the solicitation documents.
- Requires DOC to develop and remit a transition plan and recommended revisions to its operating budget to the Legislative Budget Commission. DOC also must submit a cost-benefit analysis which delineates their current costs of providing the services and the savings that would be generated by the transition plan yielding a minimum annual savings of seven percent.
- Requires that any contract between DMS and a contractor for the operation of prisons in South Florida must specifically provide that the contract is contingent upon approval of the Legislative Budget Commission.
- Provides that if DMS determines that the process has yielded responses that meet all the requirements of the bill, DMS may execute the contract. The contract may commence only after the contract has been reviewed and approved by the Legislative Budget Commission.
- Provides that current DOC employees affected by the privatization must be given first preference for employment by the selected contractor, and DOC must make reasonable efforts to find suitable job placements for those employees that wish to continue to be employed by the state.

Operating costs in Fiscal Year 2010-2011 for DOC in the affected South Florida Counties was \$418.7 million. However, that number has not been adjusted for prison closures, inmate health services procurement, state employee retirement contributions, and reductions to DOC's budget that have occurred since 2010. The total cost savings from privatization cannot be determined definitively until the adjustments to the 2010-2011 operating costs have been made by DOC and a vendor has been selected and the vendor costs are known. See "FISCAL COMMENTS."

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb05.JUAS.DOCX

DATE: 1/23/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

South Florida Region

DOC currently operates 11 major institutions as well as six work camps, one reentry center, and three road prisons in South Florida, formerly referred to as Region IV. The DOC has approximately 3,800 employees in this region, with total operating costs of \$418.7 million for Fiscal Year 2010-2011. Each major institution in this region is listed below, together with the type of inmates housed in each, the general custody level served, and the 2010-2011 reported average inmate population for each facility. Correctional Institutions (includes annexes):

- Broward Correctional Institution (female; close custody; 701 inmates)
- Charlotte Correctional Institution (male; close custody; 838 inmates)
- Dade Correctional Institution (male; close custody; 1,526 inmates)
- Desoto Correctional Institution (male; close custody; 1,844 inmates)
- Everglades Correctional Institution (male; close custody; 1,593 inmates)
- Hardee Correctional Institution (male; close custody; 1,889 inmates)
- Homestead Correctional Institution (female; close custody; 672 inmates)
- Indian River Correctional Institution (male youth; close custody; 489 inmates)
- Martin Correctional Institution (male; close custody; 1,496 inmates)
- Okeechobee Correctional Institution (male; close custody; 1,619 inmates)
- South Florida Reception Center (male; close custody; 2,235)

The DOC plans on closing Broward and Indian River Correctional Institutions as part of the department's prison consolidation plan.

Department of Management Services

Chapter 957, F.S., charges the Department of Management Services, Bureau of Private Prison Monitoring (Bureau) with issuing contracts, establishing operating standards, and monitoring compliance of the state's private prisons. The Bureau is responsible for entering into contracts for the design, construction, and operation of privately operated correctional facilities. The Bureau may not enter into a contract unless it determines that the contract or series of contracts in total for the facility will result in cost savings to the state of at least seven percent under the DOC's costs. Once the savings is determined, the Bureau enters into a contract with a private vendor to operate the facility for an agreed daily per diem. The per diem includes the cost of all facility operations and the cost of the contract manager employed by DMS. The Bureau currently oversees the operational contracts for seven facilities: Bay, Blackwater River, Gadsden, Graceville, Lake City, Moore Haven, and South Bay correctional facilities.

Section 957.04(1) and (2), F.S., provides that all contracts entered into for the operation of private correctional facilities must maximize the cost savings of such facilities and also must:

- Be negotiated with the firm found most qualified.
- Indemnify the state and the department, including their officials and agents, against any and all liability, including, but not limited to, civil rights liability.
- Require that the contractor seek, obtain, and maintain accreditation by the American Correctional Association for the facility under that contract.
- Require that the proposed facilities and the management plans for the inmates meet applicable American Correctional Association standards and the requirements of all applicable court orders and state law.
- Establish operations standards for correctional facilities subject to the contract.

- Require the contractor to be responsible for a range of dental, medical, and psychological services; diet; education; and work programs at least equal to those provided by the department in comparable facilities.
- Require the selection and appointment of a full-time contract monitor. The contract monitor must be appointed and supervised by the Department of Management Services. The contractor is required to reimburse the Department of Management Services for the salary and expenses of the contract monitor.
- Be for a period of three years and may be renewed for successive two-year periods thereafter. However, the state is not obligated for any payments to the contractor beyond current annual appropriations.

Section 957.05, F.S., provides that each contractor operating private correctional facilities is liable in tort with respect to the care and custody of inmates under its supervision and for any breach of contract, and sovereign immunity may not be raised by a contractor.

The section also provides that employees of such contractors must meet or exceed the requirements for DOC employees or the training requirement of the American Correctional Association. Correctional officers employed by DOC are all certified by the Criminal Justice Standards and Training Commission.

OPPAGA Private Prison Review

Florida's seven existing private prisons contracts and former contracts were procured for their ability to achieve and maintain costs at least seven percent below DOC's average per diem cost. Florida law requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to evaluate private vendors' performance in operating the state's privately operated prisons. For those vendors contracted by DMS, s. 957.11, F.S., directs OPPAGA to evaluate the performance of the private contractor at the end of the contract, and make recommendations to the Legislature on whether to continue the contract.

In a study conducted by OPPAGA in 2010¹ on the performance of the contracts for Bay, Moore Haven, Graceville, and Gadsden private prisons, each with contract terms expiring on June 30, 2010, OPPAGA noted the following cost savings:

- Bay Correctional Institution – 7.5 percent
- Moore Haven Correctional Institution – 12.8 percent
- Graceville Correctional Institution – 22.1 percent
- Gadsden Correctional Institution – 28.3 percent

In the OPPAGA study conducted in 2009² on contract performance for South Bay and Lake City private prisons, the following cost savings were reported:

- South Bay Correctional Institution – 14 percent
- Lake City Correctional Institution – 11 percent

In each of the OPPAGA studies on the private prisons, contract performance was determined to be satisfactory. Both reports noted three areas that contributed to the cost savings achieved by the private prisons: reduced retirement benefits paid to private correctional officers, lower administrative costs, and lower costs for inmate rehabilitative programs such as adult education, vocational training and substance abuse treatment.

2011-2012 Privatization of Region IV

¹ Office of Program Policy Analysis and Government Accountability Research Memorandum: Private Prisons Exceed Savings Requirements, April 20, 2010.

² Office of Program Policy Analysis and Government Accountability Research Memorandum: Private Prisons Exceed Savings Requirements; Need to Improve Prison Security and Inmate Family Contact Practices, April 17, 2009.

The Fiscal Year 2011-2012 General Appropriations Act contained proviso to privatize all Department of Corrections (DOC) facilities in South Florida. The proviso required:

- Adherence to all applicable federal, state and local laws and DOC rules;
- DOC to continue to classify inmates;
- Each facility's average daily population and medical and psychological grade population percentages will remain the same as 2009-10;
- A contract commencement date of January 1, 2012;
- The contract to specify performance measures and levels of expected performance by the contractor;
- DOC to remit a transition plan and recommended revisions to its operating budget to the Legislative Budget Commission by December 1, 2011;
- DOC to submit a cost-benefit analysis showing a savings of at least seven percent.

The proviso provided that upon approval by the Legislative Budget Commission DOC could award the contract.

On July 13, 2011 a complaint for declaratory judgment and injunctive relief was filed in the Second Judicial Circuit.³ The complaint alleged that the proviso relating to privatization violated Article III, Section 12 of the Florida Constitution which provides that "[l]aws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject." According to the complaint, "[c]ontrary to Florida Constitutional prohibitions against the enactment and change of substantive law by way of an appropriations act, the subject proviso language attempts to enact or alter substantive law and legal standards that control or should control the privatization of any state correctional facility."

On September 30, 2011, the court issued a final declaratory and injunctive judgment which declared the proviso relating to privatization to be unconstitutional in violation of Article III, Sections 6⁴ and 12 of the Florida Constitution. The court held that the proviso changed the statutory process for privatizing prison facilities set forth in s. 944.105, F.S. and other sections of statute. The order enjoined the department "from taking further steps to contract under the proviso or otherwise implement the privatization of the state correctional facilities in the 18 counties pursuant to proviso or otherwise." On October 31, 2011, the Attorney General filed a Notice of Appeal.

Effect of the Bill

The bill provides that the Department of Management Services (DMS) in consultation with the Department of Corrections must competitively procure by single or multiple solicitations, the management and operation, exclusive of inmate health services⁵, of the correctional facilities and assigned correctional units, including annexes, work camps, road prisons and work release centers currently operated by the Department of Corrections in Manatee, Hardee, Indian River, Okeechobee, Highlands, St. Lucie, DeSoto, Sarasota, Charlotte, Glades, Martin, Palm Beach, Hendry, Lee, Collier, Broward, Miami-Dade and Monroe Counties, excluding the South Florida Reception Center and any correctional facility or assigned correctional unit that has been closed or scheduled for closure before June 30, 2012. The DOC will continue to operate the South Florida Reception Center.

The bill requires DMS to issue competitive procurement or competitive procurements no later than 60 days after the effective date of this act which is July 1, 2012. DMS must require that any proposal submitted in response to a such procurements must be submitted no later than 60 days after the issuance of the competitive procurement.

³ James Baiardi, John McKenna, Shanea Maycock and Florida Police Benevolent Association, Inc. v. Edwin Buss, In His Capacity as The Secretary of the Department of Corrections. Case No: 2011-CA-1838

⁴ Article III, Section 6 provides in part that "[e]very law shall embrace but one subject and matter properly connected therewith".

⁵ DOC has issued a request for proposals to privatize inmate medical services statewide including Region IV.

The bill provides that, notwithstanding s. 957.07, F.S.,⁶ each procurement which is issued by DMS must provide that the total cost of a responsive proposal to the department during the first year of the contract must result in actual cost savings to the state of at least seven percent of the costs incurred by the state for the 2010-2011 fiscal year for the provision of the services at the correctional facilities and assigned correctional units included in the procurement document. The total costs to be incurred by the state in the second or subsequent years of the contract resulting from the procurements may increase by not more than the percentage increase in the per diem of state operated facilities; however, any such increase is contingent upon appropriation by the Legislature.

For each correctional facility and assigned correctional unit included in the procurement documents, the Department of Management Services must determine the costs incurred by the state for the 2010-2011 fiscal year using the average daily population of each correctional facility and assigned correctional unit during the 2010-2011 fiscal year and the direct and distributed inmate per diem cost for each correctional facility and assigned correctional unit during the 2010-2011 fiscal year, reduced for the three percent retirement contribution now required by state employees under chapter 121, by inmate medical costs, by the department's direct and personnel costs associated with inmate classification, and by \$57,223,895 (Incorrect estimate. Please see DRAFTING ISSUES OR OTHER COMMENTS) which is the South Florida facilities percentage share of the pertinent 2011-2012 fiscal year reductions to DOC.

At a minimum, the contract must require adherence to all applicable federal, state and local laws, as well as all rules adopted by DOC. The contract must also specifically provide that the contract is contingent upon approval of the Legislative Budget Commission.

The bill provides the privatized facilities must continue to operate at capacities set forth in s. 944.023, F.S.⁷ Funds received for these institutions from canteens, subsistence payments, and any other participation accounts will continue to be remitted to the General Revenue Fund. All activities regarding the classification of inmates will remain under the Department of Correction's supervision and direction as required by current law. Each facility's average daily population (ADP), as well as medical and psychological grade population percentages, must remain substantially unchanged from the ADP calculated for Fiscal Year 2010-2011.

The bill includes numerous performance measures which must be included in the procurement documents, and requires the contractor to provide the department with information concerning each performance measure for each separate correctional facility and assigned correctional unit for each month, calendar quarter, and year during the term of the contract, in the format specified by the department.

If after engaging in the competitive solicitation process, DMS determines that the process has yielded responses that meet all the requirements of the bill, DMS may execute the contract, which is contingent upon approval of the Legislative Budget Commission. The contract may commence only after the contract has been reviewed and approved by the Legislative Budget Commission.

The bill also provides DOC must develop and remit a transition plan and recommended revisions to its operating budget to the Legislative Budget Commission. The department also must submit a cost-benefit analysis which delineates the department's current costs of providing the services and the savings that would be generated by the transition plan yielding a minimum annual savings of seven percent. Additional budget amendments may be submitted during the 2012-2013 fiscal year as necessary for the proper alignment of budget and positions.

The bill provides that current employees of the DOC affected by the privatization must be given first preference for employment by the selected contractor, and DOC must make reasonable efforts to find suitable job placements for those employees that wish to continue to be employed by the state.

B. SECTION DIRECTORY:

⁶ Section 957.07, F.S., provides that contracts for the private operation of a prison must save at least seven percent over the public provision of a similar facility, and such savings must be certified by the Auditor General. Since DOC's costs to operate Region IV in 2010-11 are known the seven percent savings can be objectively determined making certification unnecessary.

⁷ Section 944.023, F.S., provides detailed design capacity factors that DOC must comply with.

Section 1. Provides for the privatization of prisons in certain South Florida Counties.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will create opportunities for private prison providers to expand their current business in Florida.

D. FISCAL COMMENTS:

Operating costs in Fiscal Year 2010-2011 for DOC in the affected South Florida Counties was \$418.7 million. However, that number has not been adjusted for prison closures, inmate health services procurement, state employee retirement contributions, and reductions to DOC's budget that have occurred since 2010.

Savings from privatization of the South Florida region can only be determined using the true costs of DOC to operate those facilities. In order to have operational costs that reflect the costs for DOC, the regions proportional share of the state employee retirement contribution, and the 2011-2012 reductions to DOC's budget would have to be determined. In the 2010-2011 fiscal year, DOC closed three prisons (Glades, Hendry and Brevard) in the region, and plans to close more this fiscal year (Broward and Indian River). The DOC's 2010-2011 operating budget will have to be adjusted to reflect those closings. Further, DOC is currently in the process of accepting bids from vendors to provide inmate health services in the South Florida Region (in addition to the rest of the state prison system). Until that procurement is concluded, the vendors bidding on the operation of the facilities in that region must provide a bid that does not include providing inmate health services. Therefore, the operating budget for the region will have to be adjusted to back out the costs of providing inmate health services.

The following is an estimation of the adjusted costs of DOC to operate the South Florida region:

Deductions		Comments
Health Services Costs	(89,712,272)	Actual Health Services costs for the region
Retirement Contribution	(11,679,672)	Actual 3% Retirement Contribution from the region
Classification in Region 4	(3,515,561)	Actual DOC costs for classification for the region
South Florida Reception Center	(40,083,073)	Actual operating costs for SFRC. The bill provides DOC will continue to operate.
Brevard	(12,948,955)	Actual facility operating costs for closed or closing facilities
Hendry	(7,672,730)	
Glades	(23,437,641)	
Indian River	(8,027,931)	
Broward	(2,523,371)	
Proportional Share of 11-12 DOC Reductions	(12,541,920)	Estimation of the regions share of 2011-12 reductions, less health services. The Region represent 22% of state operation costs. This calculation is 22% of the relevent reductions. This is an estimate that will need to be refined.
Adjusted Operation Costs	\$ 206,570,388	

These calculations are only an approximation of the adjusted costs for operating the South Florida region facilities and will need to be refined. These adjustments would be reflected in DOC's Fiscal Year 2011-2012 budget, however the bill requires the use of Fiscal Year 2010-2011 budget because those numbers are known. Using the above approximation, seven percent saving to the state would be \$14.5 million. However, the total cost savings from privatization cannot be determined definitively until a vendor has been selected and the vendor costs are known.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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 authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

An error was made calculating the South Florida institutions estimated proportional share of the 2011-2012 fiscal year reductions to the DOC. The revised estimate is \$12.5 million. The estimate will require further analysis to determine with specificity how reductions were enacted through DOC by region. The most accurate analysis would be completed at the conclusion of the fiscal year.

V. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to correctional privatization;
 3 creating s. 957.17, F.S.; requiring the Department of
 4 Management Services, in consultation with the
 5 Department of Corrections, to competitively procure
 6 management and operation of the correctional
 7 facilities and assigned correctional units for certain
 8 counties; providing an exception; specifying time
 9 periods; requiring responsive proposals to include
 10 specified cost savings; requiring adherence to
 11 specified laws; providing for operational capacities;
 12 specifying disposition of certain funds; providing for
 13 inmate classification; providing requirements for
 14 certain population figures; providing for specific
 15 performance measures and levels of expected
 16 performance for a contractor; requiring reports by the
 17 Department of Corrections; requiring development and
 18 submission of a transition plan and recommended
 19 operating budget revisions and a cost-benefit analysis
 20 to the Legislative Budget Commission by a specified
 21 date; providing requirements for such submissions;
 22 providing an employment preference for current
 23 employees of affected facilities; requiring the
 24 Department of Corrections to make reasonable efforts
 25 to find suitable job placements for certain of those
 26 employees; providing an effective date.

28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Section 957.17, Florida Statutes, is created to
31 read:

32 957.17 South Florida Region; privatization of correctional
33 facilities.-

34 (1) (a) The Department of Management Services, in
35 consultation with the Department of Corrections, shall
36 competitively procure by single or multiple solicitations the
37 management and operation, exclusive of inmate health services,
38 of the correctional facilities and assigned correctional units,
39 including annexes, work camps, road prisons, reentry centers,
40 and work release centers, currently operated by the Department
41 of Corrections in Manatee, Hardee, Indian River, Okeechobee,
42 Highlands, St. Lucie, DeSoto, Sarasota, Charlotte, Glades,
43 Martin, Palm Beach, Hendry, Lee, Collier, Broward, Miami-Dade,
44 and Monroe Counties, excluding the South Florida Reception
45 Center and any correctional facility or assigned correctional
46 unit that has been closed or scheduled for closure before June
47 30, 2012. The Department of Corrections shall continue to
48 operate the South Florida Reception Center.

49 (b) The Department of Management Services shall issue its
50 competitive solicitation or competitive solicitations no later
51 than 60 days after the effective date of this act. The
52 Department of Management Services shall require that any
53 proposal submitted in response to a competitive solicitation be
54 submitted no later than 60 days after the issuance of the
55 competitive solicitation.

56 (2) Notwithstanding s. 957.07, the competitive
 57 solicitation document issued by the Department of Management
 58 Services must provide that the total cost of a responsive
 59 proposal to the Department of Management Services during the
 60 first year of the contract must result in actual cost savings to
 61 the state of at least 7 percent of the costs incurred by the
 62 state for the 2010-2011 fiscal year for the provision of the
 63 services at the correctional facilities and assigned
 64 correctional units included in the competitive solicitation. For
 65 each correctional facility and assigned correctional unit
 66 included in the competitive solicitation, the Department of
 67 Management Services shall determine the costs incurred by the
 68 state for the 2010-2011 fiscal year using the average daily
 69 population of each correctional facility and assigned
 70 correctional unit during the 2010-2011 fiscal year and the
 71 direct and distributed inmate per diem cost for each
 72 correctional facility and assigned correctional unit during the
 73 2010-2011 fiscal year, reduced for the 3 percent retirement
 74 contribution now required by state employees under chapter 121,
 75 by inmate medical costs, by the Department of Corrections'
 76 direct and personnel costs associated with inmate
 77 classification, and by \$57,223,895, which is the South Florida
 78 facilities' share of the pertinent 2011-2012 fiscal year
 79 reductions to the Department of Corrections. The total costs to
 80 be incurred by the state in the second or subsequent years of
 81 the contract resulting from the competitive procurement may
 82 increase by not more than the percentage increase in the per

83 diem of state-operated facilities; however, any such increase is
 84 contingent upon appropriation by the Legislature.

85 (3) (a) At a minimum, except as provided in this section,
 86 the contract must require adherence to all applicable federal,
 87 state, and local laws, as well as all rules adopted by the
 88 Department of Corrections. The contract must also specifically
 89 provide that the contract is contingent upon Legislative Budget
 90 Commission approval.

91 (b) Facilities operated under contract as provided in this
 92 section shall continue to operate at capacities set forth in s.
 93 944.023.

94 (c) Funds received for facilities operated under contract
 95 as provided in this section from canteens, subsistence payments,
 96 and any other participation accounts shall continue to be
 97 remitted to the General Revenue Fund.

98 (d) All activities regarding the classification of inmates
 99 shall remain under the supervision and direction of the
 100 Department of Corrections as required by current law.

101 (e) Each facility's average daily population (ADP), as
 102 well as medical and psychological grade population percentages,
 103 shall remain substantially unchanged from the ADP calculated for
 104 the 2010-2011 fiscal year.

105 (4) Any contract resulting from a competitive solicitation
 106 must include specific performance measures and levels of
 107 expected performance for the contractor in order to ensure
 108 contractor performance and accountability, and require the
 109 contractor to provide the Department of Management Services with
 110 information concerning each performance measure for each

111 separate correctional facility and assigned correctional unit
 112 for each month, calendar quarter, and year during the term of
 113 the contract in the format specified by that department.

114 (a) The required performance measures must include, but
 115 are not limited to:

116 1. The number of batteries committed by inmates on one or
 117 more persons.

118 2. The number of reportable incidents sent to the Office
 119 of the Inspector General of the Department of Corrections for
 120 investigation.

121 3. The number and percent of random inmate drug tests that
 122 are negative.

123 4. The percent of inmate work squad slots vacant.

124 5. The number of escapes.

125 6. The number of inmates assessed as needing substance
 126 abuse treatment.

127 7. The number of transition checklists completed.

128 8. The number of release plans completed, including
 129 confirmed placement of released inmates.

130 9. The number of appropriately assessed inmates enrolled
 131 in substance abuse treatment.

132 10. The number of inmates who successfully complete drug
 133 abuse education or treatment programs.

134 11. The number of inmates enrolled in substance abuse
 135 programs.

136 12. The number of appropriately assessed inmates enrolled
 137 in literacy programs.

138 13. The number of inmates who successfully complete

- 139 literacy programs.
- 140 14. The number of appropriately assessed inmates enrolled
- 141 in General Education Development (GED) programs.
- 142 15. The number of inmates receiving a GED.
- 143 16. The number of appropriately assessed inmates enrolled
- 144 in special education programs.
- 145 17. The number of appropriately assessed inmates enrolled
- 146 in vocational education programs.
- 147 18. The number of inmates completing vocational education
- 148 programs.
- 149 19. The average increase in grade level achieved by
- 150 inmates participating in education programs per 3-month
- 151 instructional period.
- 152 20. The average increase in grade level achieved by
- 153 inmates participating in educational programs per 3-month
- 154 instructional period.
- 155 21. The number of inmates released who completed the
- 156 required 100-hour transition course.
- 157 (b) For work release centers, the required performance
- 158 measures must also include, but are not limited to:
- 159 1. The percent of employment of inmates.
- 160 2. The illegal substance use by inmates.
- 161 3. The victim restitution paid by inmates.
- 162 4. Compliance by inmates without contact orders.
- 163 (5) The Department of Corrections shall provide reports to
- 164 the chairs of the legislative appropriations committees
- 165 regarding the performance of each contractor which include, but
- 166 are not limited to, information regarding each required

167 performance measure in each contract resulting from the
168 competitive solicitation for each contractor and for each
169 correctional facility and assigned correctional unit.

170 (6) If after engaging in the competitive solicitation
171 process the Department of Management Services determines that
172 the process has yielded responses that meet all the requirements
173 of this section, the department may execute the contract. The
174 contract must specifically provide that the contract is
175 contingent upon Legislative Budget Commission approval. The
176 Department of Corrections shall develop and submit a transition
177 plan and recommended revisions to its operating budget to the
178 Legislative Budget Commission. The Department of Corrections
179 must also submit a cost-benefit analysis that delineates its
180 current costs of providing the services and the savings that
181 would be generated by the transition plan yielding a minimum
182 annual savings of 7 percent. Upon approval by the Legislative
183 Budget Commission, any contract previously executed by the
184 Department of Management Services pursuant to this section shall
185 commence as provided in the contract. Additional budget
186 amendments may be submitted during the 2012-2013 fiscal year as
187 necessary for the proper alignment of budget and positions.

188 (7) Each current employee of the Department of Corrections
189 at the designated correctional facility and assigned
190 correctional unit who is affected by the privatization must be
191 given first preference for continued employment by the
192 contractor selected as a result of a competitive solicitation.
193 The Department of Corrections shall make reasonable efforts to

PCB JUAS 12-05

ORIGINAL

2012

194 | find suitable job placements for those employees who wish to
195 | continue to be employed by the state.

196 | Section 2. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB JUAS 12-05 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing PCB: Justice Appropriations
2 Subcommittee

3 Representative McBurney offered the following:
4

5 **Amendment**

6 Remove lines 44-48 and insert:

7 and Monroe Counties, excluding any correctional facility or
8 assigned correctional unit that has been closed or scheduled for
9 closure before June 30, 2012. The procurement shall exclude the
10 South Florida Reception Center and the South Florida Reception
11 Center South Unit. The procurement shall include all other
12 correctional units assigned to the South Florida Reception
13 Center.
14

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB JUAS 12-05 (2012)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing PCB: Justice Appropriations
2 Subcommittee
3 Representative McBurney offered the following:
4

5 **Amendment**

6 Remove lines 56-79 and insert:

7 (2) Notwithstanding s. 957. 07, any contract awarded shall
8 include pricing that achieves no less than a 7 percent savings
9 for all operations and maintenance of each correctional facility
10 and assigned correctional units, excluding inmate health
11 services, from the 2011-2012 fiscal year expenditures for said
12 facility or facilities. Prior to the issuance of an intent to
13 award, the Auditor General shall certify that the successful
14 bidder or bidders has achieved the savings set forth in this
15 section. No contract shall be awarded absent such certification.
16 The total costs to
17

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB JUAS 12-05 (2012)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing PCB: Justice Appropriations
2 Subcommittee

3 Representative McBurney offered the following:

4
5 **Amendment**

6 Remove lines 101-104 and insert:

7 (e) Each facility's medical and psychological grade
8 population percentages shall remain substantially unchanged from
9 those calculated for the 2011-2012 fiscal year.