



# The Florida Senate

Interim Project Report 98-61

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Committee on Ways and Means

Senator Donald C. Sullivan, Chairman

## IMPROVING THE COLLECTION OF FINES, FEES AND FORFEITURES

### SUMMARY

If Revision 7 to the Florida Constitution, as proposed by the 1997 Constitutional Revision Commission (CRC), is approved by Florida voters this coming November, then a greater share of the court system costs will be borne by the state. One of the factors which will significantly impact the level of state funding required to fully support the clerks of the court will be the extent to which the clerks collect assessed fines and fees and charges. This study explores strategies for increasing the percentage of assessed obligations actually collected in order to minimize the cost impact on the state for future court system costs. Recommendations focus on further research which should be conducted in view of recent changes in law authorizing the use of collection agents and collection court programs, as well as the advent of a new program being initiated to collect court obligations via automated telephone systems. Additionally, recommendations address how the state should calculate its' obligations for clerks' operations to account for collection efforts or results.

### BACKGROUND

If Revision 7 to the Florida Constitution, as proposed by the 1997 Constitutional Revision Commission (CRC), is approved by Florida voters this coming November, then a greater share of the court system costs will be borne by the state. Revision 7, entitled *Local Option for Selection of Judges and Funding of State Courts*, provides in part that the state shall be required to be solely responsible for funding the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel. Some of the costs now borne primarily by counties which will become state responsibilities include court reporting/recording costs, public defender conflict case costs, expert witness fees, deposition costs, and court interpreter costs. In addition, the clerks of the circuit and county courts are to be funded by filing fees and service

charges set by law, yet the state is to be responsible for any reasonable court-related costs of the clerks not fully funded by such fees and charges. It is this specific aspect of proposed state funding that gives rise to this study.

The proposed language to be added to Article V, Section 14 of the Florida Constitution includes: "*Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.*"

A strict reading of this language could lead to the conclusion that the state's obligation with regard to funding for clerks functions is to be calculated by documenting those cases in which fees and charges were required by law but were not assessed due to constitutional prohibitions, such as in the case of indigency. If so, then state funding would simply consist of paying those required fees and charges as set by law. However, the stated intent of one of the proposers of this revision, Alan Sundberg, as recorded in the May 5, 1998 CRC Journal, seems to assume a more broadly defined obligation: "*It is the intent of the proposers that the legislature, when developing the schedule of filing fees, service charges and costs, adopt: (1) a procedure to fund the offices of the clerks of the circuit and county courts when filing fees, service charges and costs are insufficient to cover the court-related salaries, costs and expenses of the offices of the clerks of the circuit and county courts in a given fiscal year; and (2) a procedure for the disposition of filing fees, service charges and costs retained by the offices of the clerks of the circuit and county courts which, at the end of any fiscal year, exceed the court-related salaries, costs and expenses of the offices of the clerks of the circuit and county courts during the preceding fiscal year.*"

In recent discussions with various legislative staff, court staff and local government representatives, it is generally assumed that “insufficient fees and charges” relates to actual collections, not to projected required assessments. Therefore, one of the factors which will significantly impact the level of state funding required to fully support the clerks of the court will be the extent to which the assessed fines and fees and charges are received by the clerks.

In the past, questions have been raised regarding the efficiency of these collection efforts. While statewide data on fines and fees assessed does not exist, a 1992 report by the Office of the Auditor General (report no. 11780) found from a sample of nine circuits that only 43 percent of all assessed fines and fees were collected. That study documented that collections for county court cases averaged 74 percent, traffic court cases averaged 79 percent, and circuit court collections were only 5 percent of assessed fines and fees.

A related 1991 study by the Office of the Auditor General (report no. 11757) also determined from a sample that judges assessed all required fees in only 34 percent of all cases, and that the dollar amount of fees assessed was only 49 percent of what was required by law. One of the impediments to proper assessments in the past was that the statutory requirements were scattered throughout many different chapters of the statutes, making it difficult for judges to determine what was required. This was addressed by 1997 legislation (Chapter 97-271, Laws of Florida) which consolidated and categorized all of the provisions relating to court costs in a new Chapter 938, Florida Statutes. While the imposition of fees and charges by judges will obviously have a great impact on revenues collected, that issue is outside the scope of this study, and deserves separate treatment.

This study explores strategies for increasing the percentage of assessed obligations actually collected in order to minimize the cost impact on the state for future court system costs.

## METHODOLOGY

Since past efforts established that the amount of assessed fines and fees actually collected is significantly lower than that assessed, this study focused on developing new strategies to improve collections. Meetings were held with representatives of the Florida Association of Court Clerks & Comptrollers (FACC), state courts staff, Joint Legislative Committee on

Intergovernmental Relations staff, representatives of the Florida Association of Counties, and substantive committee staff. Available data and previous studies on the issue were reviewed, and research was conducted on several of the current local efforts aimed at increasing collections.

## FINDINGS

### RECENT LEGISLATION

During the 1998 legislative session, this issue was addressed by several bills focused on increasing the collection of fines and fees. Senate Bill 200 (Chapter 98-84, Laws of Florida) authorized counties as of July 1, 1998 to use private attorneys or collection agencies to collect fines and other costs imposed by a court which remain unpaid for 90 days or more. The governing body of the county must determine that such collection is cost effective, must abide by applicable procurement regulations, and may recover the cost of collection from the defendant not to exceed 40 percent of the total fines and costs owed. This authorization is codified as new section 938.35, Florida Statutes, which is within the chapter which governs court costs.

Committee Substitute for Committee Substitute for House Bill 1589 (Chapter 98-258, Laws of Florida) also created statutory authorization nearly identical to that in SB 200, but created it as section 34.191, Florida Statutes, which is within the chapter governing county courts.

A survey conducted by the FACC in December 1997 showed that nine of the 31 responding counties already use a collection agent for some aspects of fee and fine collections. As of this writing, FACC staff have not identified any additional counties considering use of a collection agent as a result of the recent legislation.

Committee Substitute for House Bill 1381 (Chapter 98-247, Laws of Florida) created the Comprehensive Court Enforcement Program, a civil proceeding designed to recover court costs and fines imposed in conjunction with a criminal conviction, but which were not collected via the criminal proceedings. According to the bill, the program may be implemented as supplementary proceedings in any judicial circuit by the chief judge of that circuit. The newly created Section 938.30, Florida Statutes, authorizes the court to require a person ordered to pay an obligation to appear and be examined under oath concerning the person’s ability to pay the obligation. The court may reduce a person’s court-

ordered financial obligation, or may enter judgements against the person and may order the person to comply with payment schedules. The law also authorizes the court to refer any such proceeding to a special master. Any past-due cases which have been reduced to judgement by the court may also be referred by the county commission to a collection agent.

According to staff of the Office of the State Courts Administrator, no new collection programs have yet been implemented as a result of the recent legislation, but at least 11 circuits are now investigating this option. (They are the 1st, 3rd, 4th, 6th, 7th, 9th, 11th, 14th, 16th, 19th, and 20th circuits.) Three circuits had already implemented a form of collections court prior to the recent legislation: they are the 2nd, 8th, and 15th circuits. These three will be described below.

Although the final version of CS/HB 1381 did not *require* the courts to conduct the collection program, earlier versions of the bill did. In December of 1997, the FACC surveyed the clerks of the circuit courts requesting comments on the proposed bill. Of the 31 responses received, at least 25 of the respondents expressed concern about the increased costs to operate the program and the added operational requirements which would be placed on the clerks of the courts. Some also commented that the program would not be cost effective, either because they anticipate the operational costs to be too substantial or because those persons who do not pay are generally persons without the ability to pay for reasons such as indigency or incarceration.

### **PALM BEACH COUNTY COLLECTIONS COURT**

One of the models for CS/HB 1381 was the implementation of the Palm Beach County Collections Court developed primarily by Palm Beach County Court Judge Cory J. Ciklin. The Florida Supreme Court approved the Palm Beach County Local Rule 8 on May 2, 1996 establishing the circuit-wide collections court. Based on the provisions of section 56.29, Florida Statutes relating to civil proceedings supplementary, an order to pay fines and court costs may be converted to a civil judgement, and the defendant may then be ordered to appear before the collections court for a hearing to determine ability to pay and to set a payment schedule. According to Judge Ciklin, private attorneys are employed as special masters to hold the collections court hearings, and are paid \$20 per hour for two days each week. Since implementation in January of 1997, the

collections court has been handling only misdemeanor cases in the county court. (Felony cases were to be included in the program beginning in September of 1998, and traffic infractions are handled separately through a collection agency.)

Although the court clerk's data for Palm Beach cannot provide a calculation of the percentage of obligations collected pre and post the implementation of the program, Judge Ciklin indicated that monthly average collections since the program began rose from \$25,000 to \$43,000. He also indicated that since January of 1998, the percent of obligations collected rose from 34 percent to 43 percent. Simple extrapolation using Judge Ciklin's estimates produces an added \$216,000 per year in collections due to the collections court program ( $\$43,000 - \$25,000 \times 12$  months).

Aside from the cost of the special masters cited above, Judge Ciklin estimates that the program increased the workload requirements on the clerk's office by about one full time equivalent employee. Some of the initial barriers to implementation cited by the clerk's staff included adjusting to the volume of new paperwork required, adjustments to the automated payment system, programming changes to the clerk's computer system such as creating a new docket case, and various minor technical glitches. Other costs not documented but certainly present include the cost of using added courtrooms, security provided by sheriff's officers, and court reporting/recording for the added hearings. It can be seen that the total added costs must to some extent offset the added revenues estimated above. One factor to consider, however, is that this program has yet to be applied to the circuit court felony cases, which the Auditor General's previously cited report estimated to have only a 5 percent collection rate statewide. As mentioned earlier, the Palm Beach program will be including felony cases as of the fall of 1998.

### **SECOND JUDICIAL CIRCUIT COLLECTION PROCESS - "THE PAYMENT PROGRAM"**

In August of 1997, Chief Judge N. Sanders Sauls of the Second Judicial Circuit signed an administrative order instituting a collection effort for fines and statutory court costs imposed in county and circuit criminal cases. If placed in the program by a judge, a defendant must sign an agreement specifying (1) the payment schedule he or she will comply with to pay all obligations to the

court, and (2) a schedule of court appearances the defendant must make if they do not comply with the payment schedule. If they make all payments as scheduled, they do not need to appear on the scheduled hearing dates. During the third week of each month, hearings are held for all those defendants in arrears, and for those not appearing a writ for their arrest is issued.

By April of 1998, Judge Sauls had already credited the program with increasing the collections by more than \$500,000. According to staff of Judge Sauls Office, the first year results of the program, as of September 30, 1998 show that fine collections rose from \$475,302 during fiscal year 1997 to \$1,307,296 during fiscal year 1998, an increase of \$831,994. Court cost collections for the same period also rose from \$491,786 to \$877,649, an increase of \$385,863. The combined increase of over \$1.2 million easily offsets the added cost of the two extra staff and other court costs to run the program.

#### **EIGHTH JUDICIAL CIRCUIT COLLECTION PROCESS - "THE COMPLIANCE SYSTEM"**

About five years ago, County Judge Peter Sieg was instrumental in setting up a process to improve the collection of fines, fees, and costs from misdemeanants in the Eighth Judicial Circuit. Each person convicted of a misdemeanor owing such obligations is placed on probation for a period of six months, and is given a court date set for three months into the probation. If the person pays what is owed before the three month deadline, they need not appear on the court date. If they do not pay and do not appear, an arrest warrant is issued and they are jailed with bail set at the amount owed. The process also involves a computer generated reminder being sent to each person two months into the probation term. The hearings for these cases are held on one day of each month, and about 50 cases show up each month. According to Judge Sieg, this process increased collections from approximately \$225,000 to almost \$500,000 within the first year of the program. About two months ago, a similar process was initiated for felony cases which are under probation supervision.

#### **PAYMENT BY TELEPHONE**

On August 11, 1998, the Florida Association of Court Clerks Service Corporation (FACCSC) signed a service agreement with Concord Communications, Inc. (CCI) for a computerized Telephone Integrated Systems Services program (TISS) designed to collect fines, fees and user payments. While the FACCSC signed the master agreement on behalf of the various clerks of the courts and county comptrollers, each clerk and local government entity may enter into a Local Participation Agreement to take advantage of this service. CCI will provide access to pay-per-call telephone service through a 1-800 and/or 1-900 telephone number that can be used to make payments for court fees, fines, or other obligations. Payors calling the numbers will have their obligations incorporated as part of their phone bill, or may use Visa, MasterCard, or Discover credit cards to complete the transaction. A \$5.50 fee will also be added to their bill to cover the cost of the phone transaction. Of the \$5.50 fee, fifty cents will be paid to the FACCSC and used to assist the clerks with any added communications costs required for them to use the new system. The remaining \$5.00 is retained by CCI.

This TISS program may be used to collect traffic fines, other court fines and fees, probation and parole fees, child support payments, and any other obligations which would be collected by the clerk of the court. As of this writing, 18 counties have demonstrated enough interest in using this system to have CCI conduct on-site proposal development, and three of those counties have signed agreements with CCI: Hillsborough, Charlotte, and Gulf counties. Hillsborough County is expected to be the first one to go online in October 1998.

No studies or projections are available to gauge the expected outcome of using the TISS program. However, the Florida Department of Highway Safety and Motor Vehicles (DHSMV) has been using this type of pay-per-call system provided in part by CCI since January of 1997 for driver license renewals. That procedure has been given positive reviews by both citizen users and DHSMV staff from the respective viewpoints of convenience and workload reduction. But whether use of the system by the courts will actually increase the percentage of assessments collected remains to be demonstrated.

## DISCUSSION

Florida appears to be at a new juncture on this issue with the opportunities afforded by recent legislation and the encouraging first year results of at least three collection court programs. The general expectation of court clerks has been that the added proceeds derived from special court collection efforts would not offset the necessary added workload and cost. Some clerks and judges have also expressed the philosophical concern that collection efforts should be an Executive Branch domain, and are not consistent with the ministerial role of the clerks. Both of these premises should be reexamined.

In addition, the use of private collection agencies has not been widely recommended due to the perception that collection of non-traffic obligations would not be profitable for a private entity. This assumption should also be reexamined. Also, the first years' results of the TISS program should be carefully researched.

One of the most daunting barriers to analyzing these options is the lack of data relating assessments to collections. Except for the sample data collected for the 1992 study by the Auditor General cited previously, no information exists to quantify the total fines, fees, and other costs assessed by the courts.

## RECOMMENDATIONS

1. The Legislature should reexamine whether use of collection agents and collection court programs should be required rather than remain permissive in view of the success of those programs in Palm Beach and Leon Counties. As part of this effort, a work group should be established to develop and implement a methodology for evaluating the new and existing programs once data becomes available and for developing a more refined statewide core program model. This workgroup should, at a minimum, include staff of the Legislative Committee on Intergovernmental Relations, the Office of the Comptroller, the Office of the State Courts Administrator, the FACC, the Florida Association of Counties, and staff from committees of jurisdiction in the House of Representatives and the Senate.

2. The Legislature, in cooperation with the FACC, should develop quarterly reporting requirements for counties electing to use the TISS payment program in order to provide minimum data with which the impact of the program on collections can be evaluated. To the maximum extent possible, this should be accomplished by tracking the program with the reports accessible from the contract provider as specified in the master service agreement between CCI and the FACCSC. However, some initial data collection from the year prior to implementation of the program may be necessary on the part of the clerks of the court for baseline comparisons. The Legislature should consider using staff from the Office of the Comptroller and from the Office of Program Policy and Government Accountability to assist the clerks in this effort.

3. When developing the methodologies for calculating the state's financial obligations under CRC Revision 7 relating to funding of clerks of the court, the Legislature should consider including a disincentive factor for any circuits which can not demonstrate a proactive approach to collection of fees, fines, and other court costs. Alternatively, the Legislature should consider discounting the state's contribution for any clerk's funding to the extent that the percent of specified fees, fines, and other court costs collected is below certain thresholds for that given jurisdiction. If this latter alternative is chosen, then methods of data collection will need to be implemented to capture assessments.

4. The Legislature should require the Office of

Program Policy and Government Accountability to conduct an updated review of judicial practices relating to the imposition of fines, fees, and other court costs required or allowed by law. This review should be conducted in collaboration with the Office of the State Courts Administrator, and should focus on developing strategies for ensuring reasonable judicial compliance with requirements in law.

**COMMITTEE(S) INVOLVED IN REPORT** (*Contact first committee for more information.*)

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**MEMBER OVERSIGHT**

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