

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 2007 (PCB AP-34A) State Judicial System
SPONSOR(S): Appropriations
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Appropriations</u>	<u>40 Y, 0 N</u>	<u>DeBeaugrine</u>	<u>Baker</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

In November 1998, voters approved Revision 7 to Article V of the Florida Constitution. Article V establishes the judicial branch of government. According to the ballot summary, Revision 7 “allocates state court system funding among the state, counties, and users of courts.” Revision 7 must be “fully effectuated” by July 1, 2004.

This bill furthers the implementation of Revision 7 and reflects many of the recommendations of the House Select Committee on Article V. The bill includes the following provisions:

- prohibits state attorneys and public defenders from spending state funds for county obligations;
- requires local governments to reimburse the state for prosecution and defense of local laws;
- exempts certain actions from the application of the reopened case fee and extends fee to county court;
- reduces filing fees paid by counties and municipalities for filing ordinance violations from \$200 to \$10; decrease county ordinance revenue redirected to the clerks from 100% to 30%; redirects 30% of municipal ordinance revenue to the clerks; redirects approximately 15% of municipal traffic fines from cities to the clerks of court and, ultimately, the state;
- revises structure and role of the Clerks of Court Conference;
- reduces marriage license fees and increases divorce filing fees to increase funding for domestic violence programs;
- allows counties to impose a \$15 surcharge on traffic violations for facilities;
- increases filing fees by \$1.50 to enhance education for the judicial branch and clerks;
- requires county funding for long distance, wireless and other communications services;
- withholds revenue sharing funds from counties not complying with funding responsibilities;
- creates the Article V Technology Board to develop recommendations for achieving system integration;
- includes a hold harmless for municipal revenue sharing changes enacted in the Article V bill from 2003;
- provides for suspension of a driver’s license for failure to pay financial obligations;
- and, allows a county-option court cost for court innovations and local programs.

Based on available data, the bill would appear to increase General Revenue by approximately \$10 million over previous estimates. Counties and municipalities will experience an overall benefit from reduction of filing fees for local ordinance violations. Counties will experience an additional benefit from changes to a provision in the existing Article V bill that will otherwise redirect all fine revenue from local law violations to the Clerks of the Court and, ultimately, the state. Counties are also authorized to approve an additional court cost to support various local programs and judicial initiatives. Please see section II for further details.

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

STORAGE NAME: h2007.ap.doc
DATE: April 27, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input checked="" type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

In accordance with the constitutional directive in section 14 of Article V, the bill provides additional fee authority to clerks to fund their court-related functions. However, it also provides exemptions from the application of the fee on reopened cases.

B. EFFECT OF PROPOSED CHANGES:

The bill would further the implementation of Constitutional Revision 7,¹ approved by the voters in November 1998. According to the ballot summary, Revision 7 “allocates state court system funding among the state, counties, and users of courts.”

Voter approval of Revision 7 to Article V in November 1998, presented the Legislature with a host of implementation issues to address before July 1, 2004, the date by which the Revision must be “fully effectuated.” The Legislature has responded to Revision 7 in stages, beginning with passage of SB 1212 in 2000 (Chapter 2000-237, Laws of Florida) and, most recently, with passage of HB 113-A (Chapter 2003-402, L.O.F.) in Special Session “A” in 2003.

Under Revision 7, state revenues must be used to fund the “state courts system,” less salaries, costs and expenses necessary to meet “local requirements.” The Legislature has defined the state courts system for state funding purposes. The state courts system includes judges, jurors, court reporters to

¹ Art. V, s. 14 Funding.--

(a) All justices and judges shall be compensated only by state salaries fixed by general law. Funding for the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel, except as otherwise provided in subsection (c), shall be provided from state revenues appropriated by general law.

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), 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.

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.

(c) No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts performing court-related functions.

Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

the extent necessary to meet constitutional requirements, auxiliary aids and services necessary to assure access to the courts, foreign language interpreters, master and hearing officers, and case management. The state also must continue to fund the offices of the state attorneys and public defenders, other than for facilities, communications services, and functions considered to be “local requirements” of the state courts system. Additionally, the state must continue to pay the salaries of justices and judges. Finally, to the extent user fees in an amount sufficient to fund the court-related functions performed by the clerks of county and circuit court are constitutionally precluded, state revenues must be used to supplement user fee revenues.

Counties too have specific funding responsibilities: (1) “reasonable and necessary salaries, costs, and expenses” of the “state courts system” to meet “local requirements” as determined by general law; (2) the cost of facilities for the trial courts, state attorneys and public defenders, including the costs of construction, leasing, maintenance, security and utilities; (3) “communications services,” defined by the Legislature as including “telephone services and equipment; and computer systems and equipment, including computer hardware and software, network connections... necessary for an integrated computer system to support the state courts system, offices of the state attorney and public defender, and offices of the Clerk.”

System users—e.g., private individuals, businesses and governmental entities—have funding responsibilities as well. Revision 7 provides for funding the court-related functions of clerks’ offices from filing fees, service charges, and costs, except to the extent user fees in a sufficient amount to fund these costs are constitutionally precluded. User fees also may be a source of funding for selected salaries, costs, and expenses of the “state courts system.”

During Special Session “A” in 2003, the Legislature passed HB 113-A (Chapter 2003-402, L.O.F.) to implement Revision 7. Among the changes directed in the bill were the following:

- delineate state and county funding responsibilities, including defining “local requirements”;
- remove certain mandates imposed on circuits;
- permit state attorneys to prosecute ordinance violations only when ancillary to a state charge;
- create contingency funds to alleviate deficits in due process appropriations categories;
- establish a process for selecting and compensating court-appointed counsel;
- create cost containment mechanisms, including an Article V Indigent Services Advisory Board;
- increase the maximum allowable filing fees and service charges and permit clerks of court to impose these charges within these maximum amounts to fund court-related functions;
- increase clerks share of court-related revenue they collect to 2/3;
- earmark county fine and forfeiture funds for use by the clerks of court;
- revise amounts of state taxes shared with local governments;
- impose numerous court-related charges by operation of law rather than by court order;
- undertake an analysis of county court-related expenditure and revenue data for FY 2001-02; direct clerks to report certain assessment and collection amounts beginning July 1, 2003; and
- require clerks to maintain accounts receivable and accept partial payments and prioritize clerk disbursement of partial payments;
- create a Clerk of Court Operations Conference and establish responsibilities;

In 2004, the Select Committee on Article V approved a set of recommendations in a final report issued on April 1, 2004. That report included numerous adjustments to the Article V implementation legislation enacted in 2003.

PROPOSED CHANGES

This bill continues the implementation of Constitutional Revision 7 to Article V of the Florida Constitution and incorporates many of the recommendations of the House Select Committee on Article V. The bill would:

- modify provisions relating to the determination of indigent status;
- prohibit state attorneys and public defenders from spending state funds for county obligations;
- require counties and municipalities to reimburse state attorneys and public defenders for services rendered in prosecuting or defending persons charged with local ordinance violations;
- exempt certain actions from the application of the reopened case fee and extend the fee to county court;
- authorize clerks to impose a per month charge or set-up fee for establishing payment plans;
- reduce, from \$200 to \$10, the fee paid by counties and municipalities for filing ordinance violations in the circuit or county courts;
- increase filing fees in civil matters by \$1.50 to enhance educational funding for the Judicial Branch and the clerks;
- reduce marriage license fees and increase divorce filing fees to increase funds available for domestic violence centers by approximately \$2.5 million;
- allows counties to levy a surcharge of up to \$15 on traffic violations to secure financing for court facilities;
- decrease county share of ordinance revenues directed to the clerks from 100 percent to 30 percent and direct 30 percent of municipal ordinance revenues to the clerks;
- decrease municipal share of traffic fine revenue by approximately 15%;
- revise county funding obligations relating to communication services and facilities;
- direct the Department of Revenue to withhold revenue sharing funds from counties not complying with funding responsibilities;
- create the Article V Technology Board to develop recommendations for achieving system integration;
- hold municipalities harmless as to the impact of revenue sharing changes enacted in the Article V bill from 2003;
- revise the oversight, roles, and responsibilities of the Clerks of Court Operations Conference;
- modify provisions relating to the requisition and payment of due process costs;
- authorize a county-option court cost for court innovations, legal aid, law libraries, teen courts and other juvenile alternative programs while repealing an existing court cost that is imposed at the discretion of the judge;
- assign funding responsibilities for services rendered before and after July 1, 2004;
- direct the Office of the State Courts Administrator to distribute a manual of court-assessments;
- make numerous technical and conforming changes;
- provide for a \$1 additional filing fee for a court docket fund to procure publication of legal notices;
- provide appropriations for the Clerk of Court Operations Conference and oversight by the Chief Financial Officer, for clerks that are projected to have deficiencies, and for meeting cash-flow problems that may arise in clerks offices during July and August.

A. Courts and clerks

1. Clerk of Court Operations Conference. Creates the conference as a public corporation to conduct budget reviews pursuant to a contract with the Chief Financial Officer. The Chief Financial Officer would function in an oversight capacity. (Section 22)

2. Clerk expenditures/functions. For purposes of the budget review conducted by the Clerks of Court Operations Conference for the Chief Financial Officer, the bill limits the functions for which clerks may

spend court-related charges to those expressly authorized by law or court rule. Those functions must include the following: case maintenance; records management; court preparation and attendance; processing the assignment, reopening and reassignment of cases; processing appeals; collecting and distributing of fines, fees, service charges and court costs; processing bond forfeiture payments; paying jurors and witnesses; data collecting and reporting; processing jurors; determining indigence; and providing reasonable administrative support to enable the clerk of the court to carry out these court-related functions. The bill further identifies functions that the clerks may not fund from filing fees, service charges, court costs, and fines. (Section 22)

3. Indigence determinations. Substantially reorganizes section to improve clarity. Clarifies that the application fee for due process services may only be charged once in a single action, not for each service requested. Eliminates submission of the financial affidavit from persons who are not able to do so due to incapacity. Permits clerks to contract with third parties to make indigence determinations. Assigns first \$40 of any funds collected from an indigent defendant to be applied to the application fee. (Section 9)

5. Assessment report. Designates an additional category for reporting assessments that are not imposed as "otherwise not assessed." Removes requirement for judges to report the maximum amount of discretionary costs and fines that could have been assessed; limits requirement to total amount assessed. Provision is also made for the clerk to separately identify amounts assessed pursuant to 938.30 as community service, assessed by reducing the amount to a lien or judgment, amounts satisfied by time served, or other if the information is provided to the judge. (Section 20)

6. Partial payments/payment plans. Permits clerks to impose a monthly service charge for partial payments under a payment plan at a rate of \$5 per month, or a one-time up-front administrative processing fee of up to \$25. (Sections 15,20)

7. Third party collections. Restores, but in revised form, authority for collection agents retained by the clerk to receive a recovery fee of up to 40 percent of the delinquent amount in addition to the delinquent amount. Before exercising this authority, however, the clerk must have attempted to collect the amounts owed through a collections court, collections docket, or other collections process established by the court. Conforms similar provision applicable to the board of county commissioners and extends similar authority to municipalities. (Sections 20, 83)

8. Reopened case fee. Exempts certain specified actions, motions, and other filings from payment of the fee imposed on reopened cases. (Sections 18, 31). Extends clerk authority to impose the optional reopened case fee to county court filings at a rate not to exceed \$25 for claims of not more than \$500, and \$50 for those in excess of \$500. (Section 31)

9. Court Education Trust Fund. Increases the \$2.50 filing fee for the Court Education Trust Fund by \$1.50, 50 cents going to clerk education programs. (Sections 16, 18, 31)

10. Payment process for due process expenditures. Revises the process for payment of certain due process costs. Requires the clerks to continue to pay jurors and ordinary witnesses from funds advanced by the state. Other due process costs shall be paid through either the Justice Administrative Commission or the Office of the State Courts Administrator. (Sections 37,38,39)

11. Court Docket Fund. Establishes a \$1 addition to circuit civil filing fees to be used to pay for the cost of publication of the fact of the filing of any civil case. Funds generated by this filing fee are to be disbursed to the designated record newspaper which must publish legal notices without further compensation. The designated record newspaper is to be chosen by a majority of the circuit judges and may be changed at the end of each fiscal year. (Section 43)

11. Driver's license suspensions. Provides for suspension of a driver's license for failure to pay financial obligations for any criminal offense. (Section 62)

B. State attorneys and public defenders

1. Prosecution of local ordinance violations. Restores the authority of state attorneys to prosecute local ordinance violations. If a state attorney prosecutes such violations, they must do so pursuant to a contract for reimbursement at a rate of \$50 per hour. As an alternative to hourly billing, the bill permits counties and municipalities to fund one or more positions within the office of the state attorney to handle these prosecutions in increments of one quarter of a full-time equivalent (FTE) position. For each position assigned, provides for reimbursement at a rate of \$50, multiplied by the number of hours constituting a full time equivalent (FTE) position. (Sections 4, 5)

2. Defense of local ordinance violations. Permits counties to contract with public defenders for representing indigent persons charged with ordinance violations requiring court-appointed counsel. If they choose to contract with counties, they must do so pursuant to a contract for reimbursement at a rate of \$50 per hour. As an alternative to hourly billing, permits counties and municipalities to fund one or more positions within the office of the public defender to handle these cases in increments of one quarter of a FTE position. For each position assigned, provides for reimbursement at a rate of \$50 multiplied by the number of hours constituting a full-time equivalent position. (Sections 8, 12, 49)

3. Use of state funds for county obligations. Prohibits state attorneys and public defenders from expending state-appropriated funds on county funding obligations under s. 29.008, F.S. Makes exceptions for expenditures in limited circumstances. Delays prohibition until January 1, 2005. (Sections 5, 12)

4. Disposition of proceeds collected for attorneys fees collected pursuant to public defender lien provisions. Provides that first \$40 collected pursuant to a public defender lien shall go to the Indigent Criminal Defense Trust Fund. Of the remainder, 25% shall go to the Indigent Criminal Defense Trust Fund and 75% shall go to General Revenue. (Sections 9 and 13)

C. Counties and municipalities

1. Cost recovery through local government filing fees. Replaces the \$200 filing fee for local ordinance violations filed with the clerk, with a fee of \$10 per filing and a 30 percent share of revenues received from local ordinance violations to recover costs incurred by clerks and the court system. This results in a reduction for counties from the current 100 percent share. Imposes mandatory costs of \$40 on nonprevailing parties in a contested action. (Section 17, 32)

2. Communications services. Eliminates requirement for counties to transfer certain equipment to the state effective July 1, 2004. The bill provides that counties are responsible for all telephone service, wireless and other communications services. The bill clarifies that the addition of sign language interpretation of auxiliary aids under county funding obligations refers to services required under the federal Americans with Disabilities Act rather than required due process services funded by the state. Permits counties to reject purchases not in compliance with standards adopted by the board. Also specifies that county-funded support staff located in the courts, state attorneys and public defenders are included in the definition of communications services as it relates to computer networks, systems and equipment. (Section 27)

3. Facilities. Amends definition of "facility" for purposes of describing county funding obligations to include facilities "housing legal materials for the general public." (Section 27) Allows counties to impose a \$15 surcharge on civil and criminal traffic infractions for securing payment of debt service on bonds issued by the county to finance state court facilities. (Section 58)

4. Municipal revenue sharing hold harmless. Revises distribution of funds from the municipal revenue sharing program to insure that individual municipalities are not adversely affected by changes to the ½ cent sales tax distribution adopted in HB 113-A (Chapter 2003-402, L.O.F.) in 2003. (Section 54)

5. Revenue sharing holdback. Directs the Department of Revenue to withhold revenue sharing funds from counties not complying with funding responsibilities under s. 29.0008, F.S. Directs the state to apply any withheld funds to fund these obligations on behalf of the county. (Section 27)

6. Requirement to transfer motor vehicles to state attorneys. Requires counties to transfer vehicles provided by the counties to state attorneys to the state at no charge on July 1, 2004. (Section 26)

7. Legal aid programs maintenance of effort. Provides that the local requirement for counties to fund legal aid programs is to be at a level equal to or greater than the amount provided from filing fees and surcharges to legal aid programs for county fiscal year 2002-03. (Section 27)

8. Expanded use of funds for civil traffic infraction hearing officer programs. Adds court facilities, personnel and general courthouse expenses to the allowable use of funds provided for civil traffic hearing officer programs. (Section 60)

9. Municipal traffic fine revenue. Reduces municipalities' share of traffic fine revenue from 56.4 percent to 48 percent with the 8.4% redirected to the clerks' fine and forfeiture funds. These funds will ultimately be deposited into the state General Revenue fund.

D. Programs and services

1. Court innovations. Provides county-option funding source in the form of a 34 percent share of a court cost. (Section 84)

2. Legal aid. Provides county-option funding source in the form of a 22 percent share of a court cost. (Section 84)

3. Law libraries. Provides county-option funding source in the form of a 22 percent share of a court cost. (Section 84)

4. Teen courts and juvenile alternative programs. Provides county-option funding source in the form of a 22 percent share of a court cost. (Section 84)

5. Drug courts. Permits counties to use drug treatment funds and other service dollars provided through state executive branch agencies as part of the drug court funding component. (Section 63)

6. Cash balances for optional programs. Provides that cash balances within county funds established to provide dedicated funding for specific court-related programs (e.g., teen courts) be used for these programs until the funds are depleted. (Section 90)

7. Domestic violence centers. Decreases the portion of the marriage license fee directed to the Domestic Violence Trust Fund from \$30 to \$25 and increases the portion of the filing fee for dissolution of marriage directed to this trust fund from \$18 to \$55. The resulting increase in revenue would go to domestic violence centers funded through the Department of Children and Family Services. (Sections 14,73)

E. Appropriations

1. Clerks of Court Conference. The bill appropriates \$2.5 million from the Administrative Trust Fund in the Department of Financial Services to pay the costs associated with the operations of the conference and the oversight role of the Chief Financial Officer.

2. Clerk deficiency funds. The bill appropriates \$20 million from the Clerks of the Court Trust Fund in the Department of Revenue to fund revenue deficits projected for certain clerks of the court.

3. Clerks of Court cash flow. The bill appropriates \$4 million from funds resulting from early imposition of the filing fee for reopened cases for the purpose of addressing cash flow problems that may arise during the initial transition period. This appropriation is from the Clerks of the Court Trust Fund in the Department of Revenue.

E. Other

1. Circuit Article V Indigent Services Committees. Clarifies that the Justice Administrative Commission will provide staff support for these committees. (Section 7)

2. Exemptions from court-related fees and charges imposed by clerks. Includes state agencies and Guardian Ad Litem programs among those entities exempt from paying court-related fees and charges imposed by clerks. (Section 21)

3. Article V Technology Board. Creates a ten-member Article V Technology Board for the purpose of proposing solutions to achieve system integration and data exchange across multiple state and county systems involving multiple users at both the state level and within each judicial circuit in line with the existing statutory requirement to achieve an integrated system by a proposed revised date of July 1, 2006. Requires recommendations be submitted to the Legislature by February 1, 2005. (Section 28)

4. Due process cost sharing. Authorizes the state courts, state attorneys, and public defenders to engage in cost sharing arrangements for due process costs. (Section 91)

5. Payment responsibility after July 1, 2004. Provides that payment responsibility for due process costs will be determined based on the date the service is provided. As a result, counties will be responsible for due process services rendered prior to July 1, 2004, and the state beginning July 1. Provides an exception by assigning funding responsibility to counties for counsel appointed under a flat-fee-per-case payment prior to July 1, 2004. (Section 93)

6. Court assessment manual. Directs the Office of the State Courts Administrator to disseminate a manual of court-related assessments organized by county and type of action. (Section 94)

7. Miscellaneous fee changes. Includes several fee adjustments inadvertently omitted or overlooked in the overall adjustment in clerk fee authority contained in HB 113-A (Chapter 2003-402, L.O.F.), the Article V implementation bill from the 2003 Session. For example, the fee a clerk may charge for failure to pay the amount of delinquent child support would increase from \$5 to \$7.50. Authorizes the Supreme Court to impose a fee of up to \$100 on attorneys appearing pro hac vice before the Supreme Court and district courts of appeals. Extends same authority for clerks of court for those attorneys appearing pro hac vice in circuit and county court. (Various sections)

8. Miscellaneous technical and conforming changes, and repeal of obsolete sections. Replaces numerous references to the county fine and forfeiture fund to reflect the redesignation of the fund as the clerk fine and forfeiture fund of the clerks. Conforms additional provisions to revenue deposited into the fine and forfeiture fund. Repeals the Joint Legislative Committee on Article V. (Various sections)

9. Redirection of funds for Florida foster care review panels. Redirects \$300,000 from civil traffic penalties deposited into the state courts Grants and Donations Trust Fund to the same trust fund in the Justice Administrative Commission. This shift has been tentatively adopted by the conference committee on the General Appropriations Act.

C. SECTION DIRECTORY:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

General Revenue:

The Revenue Estimating Conference projected a total FY 2004-05 increase to state General Revenue of \$184.1 million to General Revenue to result from the changes adopted by 2003-402, LOF (HB 113A). This includes \$116.2 million from provisions related to changes in state revenue sharing programs and \$67.9 million from changes to court-related fees, fines and service charges. The \$67.9 million from changes to court-related fees, fines and service charges is a ten month figure that is expected to generate \$81.5 million on a twelve month basis. These amounts are included in the official estimate of available revenue which is used in the state planning and budgeting process.

The conference met again on April 17, 2004 and made an informal adjustment of the portion of the revenue estimate attributable to court-related fees, fines and service charges based on the results of a revenue simulation project currently being conducted by the Clerks of the Court. The new estimate is approximately \$72 million on an annual basis. This is just over \$9 million less than the original estimate.

Many of the provisions in the bill correct inadvertent omissions in HB 113A as it relates to increasing and redirecting certain fees, fines, service charges and other court-related revenue. Although there will be an indeterminate impact from these provisions, they are expected to be minor.

The bill revises the percentage of civil traffic infractions that go to municipalities from 56.4% to 48%. This revision would result in approximately \$10 million going into the Clerks of Court Trust Fund, and, ultimately state General Revenue.

The bill reduces the current \$200 filing fee for local ordinance violations to \$10, with an additional charge of \$40 assessed to the non-prevailing party in contested cases. This would reduce revenue by approximately \$24.4 million. Offsetting this loss is a 30% shift of fines resulting from local ordinances and special law violations into the Clerks of Court Trust Fund. The impact of the 30% shift is estimated to be roughly \$18.1 million from counties and \$1.4million from municipalities. In addition, the bill applies the filing fee on reopened cases to county court actions which is estimated by the Florida Association of Court Clerks to generate \$4.7 million.

The bill redirects 25% of funds associated with public defender liens from the General Revenue fund to the Indigent Criminal Defense Trust Fund. The 2000-01 data from the Uniform Chart of Accounts shows \$2.4 million of local revenue resulting from public defender liens statewide. This would result in a loss of \$600,000 to General Revenue if the same level of collections materializes for the state. The estimate developed by the revenue estimating conference, however, does not take this revenue source into account.

Other provisions of the bill seek to provide incentives and strengthen tools for collecting court-related revenues (e.g. driver license suspension, assignment to collection agency, share proceeds of collections with the agency). The impact of these provisions is indeterminate but is expected to enhance efforts to collect court-related revenue, some of which will ultimately accrue to the General Revenue fund.

Trust Funds:

State Courts

The bill authorizes counties to impose a \$60 court cost upon conviction of a felony, misdemeanor or criminal traffic law. The 34% share going to the state courts has the potential to generate \$12.1 million that would be deposited into the Grants and Donations Trust Fund if all counties pass the ordinance and set the cost at \$60. The remaining revenue generated from this court cost will be retained at the local level.

The bill provides for a \$100 fee to attorneys who appear pro hac vice before the appellate courts. These funds would be deposited into the Grants and Donations Trust Fund. The courts provide data suggesting that there are 2,000 such appearances yearly suggesting \$200,000 per year. There is no breakout, however, as to which courts the attorneys appear before. Therefore, data are not available to estimate the impact of these provisions by fund.

The bill requires the Supreme Court to set fees as necessary to cover the costs of a certification program for court reporters. The courts estimate a first-year cost of \$376,150 that would have to be covered by fees that are deposited into the Grants and Donations Trust Fund.

The bill expands the application of a \$2.50 filing fee for court education programs to county court filings. This simply codifies existing practice and will not increase revenue to the Court Education Trust Fund. The bill, however, increases this filing fee by \$1.50 with \$1.00 going to the Court Education Trust Fund. This is expected to generate an additional \$800,000 into the trust fund to be used for Judicial Branch education activities.

State Attorneys

The bill requires State Attorneys to enter into contracts with counties or municipalities who wish to use the courts for the prosecution of local ordinances or special laws. The contract amount must be for \$50 per hour and funds would be deposited into the Grants and Donations Trust Fund. This equates to \$92,700 per year for a full-time equivalent attorney. In addition, the bill provides that 25% of all recoveries from individuals who are found to have been improperly determined to be indigent are directed into the Grants and Donations Trust Fund. Data are not available to estimate the impact of these provisions.

Public Defenders

The bill requires Public Defenders to enter into contracts with counties or municipalities who wish to use the public defender to defend local ordinance or special law violations where there is a liberty interest at stake. The contract amount must be for \$50 per hour and funds would be deposited into the Grants and Donations Trust Fund. This equates to \$92,700 per year for a full-time equivalent attorney. Data are not available to estimate the impact of this provision.

The bill also directs 25% of all funds collected pursuant to the public defender lien provisions into the Indigent Criminal Defense Trust Fund. Based on Uniform Chart of Accounts data on local collections from this source during 2000-01, this will result in an increase of \$600,000 to the trust fund.

Other

The provisions of the bill that increase divorce filing fees and decreases marriage license fees is expected to generate an additional \$2.5 million for the Domestic Violence Trust Fund to support domestic violence center operations.

2. Expenditures:

The current conference agreement on the General Appropriations Act provides \$235.7 million for increased state responsibilities under Article V. Major funding requirements that these appropriations address were established in 2003-402, LOF (HB 113A).

The bill makes several corrections to state statutes to specifically assign state funding responsibility for certain due process and other costs pursuant to ss. 29.001, 29.004, 29.005, 29.006 and 29.007 of the Florida Statutes. There is no impact expected from these changes beyond what has been anticipated and funded in the conference agreement. Other provisions will have a more direct impact on state expenditures.

Increased State Expenditure Requirements

With the exception of ordinary witnesses and jurors, the bill shifts the responsibility for paying due process costs from counties to the Justice Administrative Commission. The conference agreement provides 55 FTE and \$3.1 million for these new responsibilities as well as \$68,293 for increased rent and moving expenses to house the additional personnel.

The Justice Administrative Commission estimates that \$34,000 will be needed to accommodate travel costs resulting from the responsibility to staff the local Article V Services Advisory Boards.

There would be additional workload on the Chief Financial Officer associated with its responsibility to oversee the work products of the Clerks of Court Operations Conference. The department has estimated a need for 5 FTE and \$500,000. There is an appropriation in the bill for 5 FTE and \$2.5 million from the Administrative Trust Fund in the Department of Financial Services for these functions.

There would be travel and other support costs associated with the Article V Technology Board. The estimated support costs are \$500,000.

There may be an impact from a provision in the bill to remove a current \$200 cap on compensation for arbitrators. Data are not available to estimate the impact.

State Savings

Effective January 1, 2005, the bill would prohibit the use of state funds by state attorneys and public defenders for items that are county responsibilities. Exceptions are for advance funding to address unforeseen circumstances and must be reimbursed by the county. House Appropriations staff identified \$12.2 million for State Attorneys and \$6.6 million in recurring appropriations for items determined to be county responsibilities. The current conference agreement reprioritizes \$4.3 million of these funds.

The bill provides that it is a county responsibility for funding long distance telephone service in addition to wireless communications, cell phones, pagers, video teleconferencing equipment and line charges. Data are not available to estimate the amount of state savings.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Counties

The bill will generally increase revenue available to counties through changes to a provision of the existing law that would shift all county fines from ordinance and special law violations from counties to the Clerks of the Court (which would ultimately accrue to the state). This represents an estimated \$40 million gain to counties.

In addition, there are potential revenues of \$23.5 million statewide from the 66% share of the \$60 court cost on criminal offenses that would be retained by counties that choose to impose the cost. These funds would be used to support Legal Aid programs (\$7.8 million potential), law libraries (\$7.8 million potential) and teen court and other juvenile alternative programs (\$7.8 million potential).

Counties are also authorized to levy a surcharge of \$15 on traffic violations to fund principal and interest on bonds for courthouse facilities. According to data from the Department of Highway Safety and Motor Vehicles, there were 3,705,158 traffic citations statewide for 2002. Of the total, approximately 28% were dismissed. Assuming 95% collections, the total potential revenue is \$37 million statewide.

In addition, counties would be able to recoup the cost of prosecuting local ordinance violations from offenders in instances where they prevail. Data to estimate the impact of this provision are not available.

The bill provides that state revenue sharing shall be withheld from counties that do not comply with the funding responsibilities for county governments as established in s. 29.008, F.S. If counties comply with county funding requirements, there will be no impact from this provision. There are no data available to indicate the impact that may be associated with non-compliance.

The bill corrects omissions from 2003-402, LOF to redirect revenue from forfeiture of bail bonds from the counties to the Clerks of the Court. Similar provisions are made for fines resulting from wildlife violations, boating infractions and fines and forfeitures arising from activities by the Highway Patrol. Data are not available to estimate the impact of these provisions.

The bill removes the repeal of a 4% addition to charges assessed to obligors through the child support program. This currently generates a little more than \$1 million annually for Clerks of the Court which would continue indefinitely unless repealed by the Legislature.

Municipalities

Municipalities that use the state courts to prosecute local ordinances and special laws will pay 30% of any resulting fine revenue to the clerk of the court. The Florida Clerks of Court Association estimates a total impact of \$1.4 million based on an average fine amount of \$75. The impact will be offset by a reduction in local ordinance filing fees (see expenditure section).

In addition, the bill reduces the amount of revenue that will be disbursed to municipalities from civil traffic infractions from 53.6% to 48%. This has a potential impact on municipalities of approximately \$10 million.

In addition, provision is made in the bill to correct the inadvertent negative impact on some municipalities that would otherwise result from the changes in state revenue sharing with local governments. The bill corrects this situation by apportioning each municipality's share of the

increased revenue from changes to the municipal revenue sharing program at the same proportion that the municipality would have otherwise received from the half-cent distribution.

2. Expenditures:

Counties

The bill reduces the \$200 filing fee for local ordinance violations from \$200 to \$10. This is estimated to result in a gain of \$9.2 million to counties.

Counties will be required to fund the cost of long-distance and other communications services. Total county expenditures for all communications services for the courts are reported by the Florida Association of Counties to be \$11.2 million. The portion of this amount that is attributable to new responsibilities, however, is not separately identified. Thus, data are not available to estimate the impact of this change.

Counties that choose to use the courts to prosecute local ordinance and special law violations will be required to reimburse the state at \$60 per hour for attorney time. The statewide impact of this requirement is not known. Counties would be able to recoup these costs in instances where they are the prevailing party (see revenue section above).

Counties will no longer be required to process bill payment services for due process costs. While data are not available to predict the direct impact of savings to counties, the Judicial Appropriations conference subcommittee has agreed to provide \$3.1 million to provide for these services that would otherwise be assigned to the counties (through the Clerks' "county-side" operations) by 2003-402, LOF.

Municipalities

Municipalities are projected to gain up to \$15.4 million from reduction of the \$200 local ordinance filing fee to \$10. Based on data from the Florida Association of Court Clerks, the 30% redirection of local ordinance revenue will result in a \$1.4 million offset of this amount and the provisions relating to municipal traffic would result in an offset of \$10 million. This results in a net gain to municipalities of \$4 million.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There would be an indeterminate impact due to increased fines, fees and service charges that would be offset by limiting the application of the filing fee for reopening a circuit civil case. The Florida Association of Court Clerks estimate total collections of \$4.7 million from application of the reopen fee to county civil court filings. In addition, the potential exists for up to \$35.6 million to be collected through the additional court cost that is authorized in s. 939.185, F.S. and up to \$37 million to be collected through the additional surcharge on civil and criminal traffic infractions.

D. FISCAL COMMENTS:

The reader is cautioned to be mindful of data limitations and the need to make assumptions regarding behavior of local and state governments and court system users in arriving at the estimated impact of the various provisions of this bill.

According to information provided by the state courts, other states, most notably California, have undergone similar transitions and experienced unforeseen costs. In addition, revenues failed to materialize at predicted levels in California. Such discrepancies are due to limitations in data and unpredictable changes in behavior that affect the underlying assumptions used in forecasting impacts. Although there is a revenue simulation project underway by the Clerks that is providing a seemingly solid basis for projecting revenue impact, there is a possibility that changes in behavior upon actual

implementation of the provisions of this bill will affect the validity of the results. Also, the clerks' model has not tracked data specific to the changes contemplated in this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

a. Applicability of Municipality/County Mandates Provision:

Any requirements for counties or cities to spend funds or take action requiring the expenditure of funds is more than offset through corresponding reductions in expenditures or authority to increase revenues. The bill does not reduce the authority of local governments to raise revenues in the aggregate or reduce the percentage of a state tax shared with cities or counties.

b. Other:

The purpose of this bill is to implement the changes required by 1998 Revision 7 to the Florida Constitution. Particularly, Section 14(b) of Article V requires that as of July 1, 2004:

all funding for the offices of the clerks of the circuit and county courts performing court-related functions... 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.

Further, subsection (c) establishes that:

No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law."

PCB AP-04-34 finalizes the legislative framework for this shift in responsibility for funding of the state courts system.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is granted to the Department of Revenue to adopt rules relating to the budget review procedures and the forms and procedures for transferring funds from the clerks of the court to the Clerks of the Courts Trust Fund pursuant to ss. 28.35, 28.36, and 28.37.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

There were a series of amendments adopted in the Subcommittee on Judicial Appropriations on April 14, 2004. These amendments were engrossed into the PCB considered by the full Committee on Appropriations on April 23, 2004. In addition to technical corrections, the following substantive changes were adopted:

- Adds Guardian Ad Litem programs to list of public entities exempt from court-related fees and charges and entitled to receive copies of public records from the clerks of court at no charge.
- Removes requirement for clerks to report on amount of discretionary fees, service charges and costs waived or otherwise not assessed.
- Adds requirement for clerk of court to separately report amounts assessed as community service pursuant to 938.30, assessed by reducing a financial obligation to a judgment or lien, satisfied by time served or other if the information is provided to the clerk by the judge.
- Adds requirement that motor vehicles provided to state attorneys by counties be transferred to the state at no charge effective July 1, 2004.
- Adds county-funded support staff located in the offices of the circuit court, county courts, state attorneys, and public defenders to the portion of the definition of communications services related to computer networks, systems and equipment.
- Provides additional specificity to the definition of legal aid programs as a local requirement. Specifically the amendment requires that counties fund legal aid programs at a level equal to or greater than the amount provided from filing fees and surcharges to legal aid programs from October 1, 2002 to September 30, 2003.
- Provides authorization for a \$1 service charge on filing fees on all civil actions, suits or proceedings filed in circuit court for disbursement to the designated record newspaper in the county. The record newspaper is designated by an order of a majority of the circuit court judges and may be changed at the end of the fiscal year by a majority vote of the circuit court judges. A newspaper that receives proceeds from the court docket fund is required to publish a variety of legal notices without further compensation.
- Redirects the portion of civil traffic fines designated for Florida foster care citizen review panels from the Grants and Donations Trust Fund in the courts to the Grants and Donations Trust Fund in the Justice Administrative Commission.
- Provides that funds provided for civil traffic hearing officer programs may be used for providing and maintaining court facilities, personnel and other general courthouse expenses.

The bill was heard by the full Appropriations committee on April 23, 2004 and a strike-all amendment was adopted. Major provisions are as follows:

- **Reimbursement for ordinance prosecution/defense.** Proposed reimbursement rate for state attorneys and public defenders prosecuting local ordinance violations for counties and municipalities reduced from \$60 to \$50 per hour. Permits state attorneys and public defenders to agree to a different rate in counties under 50,000 population.
- **Court education.** Increases funding for the Court Education Trust Fund from \$2.50 per filing to \$4 per filing, with clerks receiving 50 cents of the amount.
- **Clerks Operation Conference.** Revises status, oversight and operation of the Clerks Conference. Gives the Chief Financial Officer oversight role. Provides for specific appropriations for the Clerks Operations Corporation and the Chief Financial Officer (\$2.5M); appropriations to fund clerk deficits (\$20M); and appropriations to make certain revenues generated during 2003 (reopened case fee) available to clerks to alleviate cash-flow problems that may arise in July/August of this year as a result of the funding transition.
- **Program funding (teen courts, etc.).** Takes the \$150 court cost currently available to fund facilities and redirects it to fund judicial innovations, law libraries, teen courts, and legal aid. However, several changes from PCB: increases the amount from \$50 to \$60, and revises the allocation of funds to reflect additional revenues generated from the increase.
- **Local facility bonds.** Permits counties to levy a surcharge of up to \$15 on traffic violations to fund principal and interest on bonds for courthouse facilities. Authority granted to all counties. Also provides additional bonding capacity.

- **Domestic violence centers.** Decreases the marriage license fee and increases the marriage dissolution fee to provide additional funds for domestic violence centers (\$2.5M)
- **Revenue sharing holdback.** Includes additional specificity on the revenue sharing holdback provision.
- **Excess clerk revenues.** Revised provisions relating to the disposition of excess fee revenues held by clerks on July 1, 2004. Provides for retention by clerk until January 1, 2005, for the purpose of paying outstanding bills for due process services rendered.
- **Cost recovery for clerk services for municipalities.** Decreases the municipal share of certain revenues from civil traffic violations to offset revenue shortfalls resulting from reduction of a \$200 filing fee imposed in 2003 on cities and counties for ordinance violations.
- **Clerks of Court budget limitations.** Removes provision that would have allowed certain clerks to increase their 2004-05 budgets to 105% of prior year budget. All clerks will be limited to 103%.

This analysis is drafted to the bill as amended and filed.