

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2962

SPONSOR: Appropriations Subcommittee on Article V Implementation and Judiciary, Judiciary Committee, Senators Smith and Villalobos

SUBJECT: Judicial System

DATE: March 29, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews/Brown/Lang</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	<u>Martin</u>	<u>Martin</u>	<u>AAV</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

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

This bill corrects a number of glitches remaining from last year’s legislation, ch. 2003-402, L.O.F., HB 113-A (2003). The bill increases a number of filing fees, service charges and costs to fund the state court system from state dollars as required by the 1998 amendment to the state constitution. The bill also makes other substantive changes including:

- Provides that circuit court Article V indigent services committees are to establish the method for compensating court reporters.
- Provides a \$100 fee is to be collected from an attorney appearing pro hac vice.
- Authorizes local governments to contract with state attorneys and public defenders for local code enforcement.
- Provides for minimum qualifications for private court-appointed counsel and minimum compensation in a capital death penalty case.
- Authorizes counties which previously had increased fees and service charges to secure payment of bonds to finance court facilities to impose a surcharge to pay off bonds, and precludes the courts from waiving such surcharges.
- Clarifies the process for permitting collection agents to collect on delinquent court obligations.
- Provides a service charge on certain money judgments and settlement agreements.

- Provides for distribution of revenues attributed to an increase in the Revenue Sharing Trust Fund for Municipalities.
- Provides distributions to help pay for local or regional criminal justice selection centers or criminal justice access and assessment centers or certain criminal justice education and training programs.
- Provides funding for teen court and other juvenile delinquency programs.
- Provides for payments to be made by counties and state during transition to new allocation of costs.
- Provides exemptions to filing fees in certain reopened cases and additionally exempts judges, state attorneys, public defenders, capital collateral regional counsel and statewide guardian ad litem employees from service charges and fees.
- Requires clerks to distribute moneys electronically to certain entities.
- Increases fees to provide for court education and clerk education.
- Increases filing fee in Supreme Court and District Court of Appeal cases.
- Expands the use of a court cost to fund legal aid and public law libraries, and provides that counties must maintain funding for legal aid programs at specified amounts.
- Provides clarification regarding various entities' responsibility for funding services and programs.
- Creates the Judicial Information Integration Competency Center and provides for its composition and purpose.
- Appropriates \$500,000 from General Revenue Fund to the Justice Administrative Commission to fund the expenses associated with the Judicial Information Integration Competency Center.

This bill substantially amends the following sections of the Florida Statutes:

s. 25.241, s. 25.383, s. 25.384, s. 27.02, s. 27.34, s. 27.40, s. 27.42, s. 27.51, s. 27.52, s. 27.5303, s. 27.5304, s. 27.54, s. 27.562, s. 28.24, s. 28.2401, s. 28.2402, s. 28.241, s. 28.245, s. 28.246, s. 28.345, s. 28.35, s. 28.36, s. 28.37, s. 29.005, s. 29.006, s. 29.007, s. 29.008, s. 29.016, s. 34.01, s. 34.041, s. 34.191, s. 35.22, s. 40.29, s. 40.32, s. 44.108, s. 45.031, s. 55.10, s. 55.141, s. 57.085, s. 61.14, s. 61.181, s. 125.69, s. 125.69, s. 129.02, s. 142.01, s. 218.245, s. 318.14, s. 318.15, s. 318.18; s. 318.21; s. 321.05, s. 327.73, s. 372.72, s. 382.023, s. 384.288, s. 392.68, s. 394.473, s. 395.3025, s. 397.334, s. 588.20, s. 713.24, s. 721.83, s. 744.3678, s. 766.104, s. 849.19, s. 849.22, s. 849.44, s. 903.26, s. 925.09, s. 938.17, s. 938.29, s. 938.35, s. 939.18, .

This bill creates the following section of the Florida Statutes:

s. 29.0085, s. 29.0051, s. 50.0711, s. 55.312,

This bill repeals the following sections of the Florida Statutes:

s. 11.75, s. 40.30

This bill redesignates the following section of the Florida Statutes:

Chapter 40.

II. Present Situation:

Overview

In 1998, a proposal by the Constitution Revision Commission to amend Article V of the Florida Constitution was adopted by the voters. The essence of Revision 7 to Article V provides for a funding reallocation and cost-shifting of the state court system among the state, the 67 counties and users of the system. Specifically, the pertinent part reads as follows:

SECTION 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 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.

(d) The judiciary shall have no power to fix appropriations.

Article XII, section 25 of the Florida Constitution directed the Legislature to commence funding Revision 7 beginning in the 2000-2001 fiscal year and required Revision 7 to be fully effectuated by July 1, 2004.¹ Thus, Revision 7 must be fully implemented coincident with the July 1, 2004 state fiscal year.

Implementation
State Court System

¹ See also s. 29.003, F.S.

Chapter 2003-402, Laws of Florida established the statutory framework for implementation of Revision 7. That bill defined the elements of the state court system, state attorney offices, public defender offices, and court-appointed counsel.²

Clerks of the Circuit and County Courts

Clerks of the circuit courts are elected constitutional officials. *See* Art. VIII, s. 1, *Fla. Const.* However, the duties of the clerks are set forth by special or general law. *See* Art V, s. 16, *Fla. Const.* The duties of the clerk may be divided between two officers, one serving as the clerk of court and the other serving as the county financial officer (i.e., clerk for the board of county commissioners, auditor, recorder and custodian of all county funds).

Although the duties of the clerk of the circuit court are set out through numerous statutory chapters to include issuance of marriage licenses, recording of plats, and collection or administration of fines and court charges imposed for a variety of criminal and non-criminal violations, their primary duties are set forth in ch. 28, F.S. The clerk of the court is the official recorder of all instruments. *See* s. 28.222, F.S.; Art. VIII, s. 1, *Fla. Const.*

According to the Florida Association of Court Clerks and Comptroller, Inc., the clerks' offices are funded either as "*fee clerks*" or "*budget clerks*". The *fee clerks* are funded primarily or solely by service charges, fees, and court costs or specific appropriations from the county government. The *budget clerks* submit an annual budget to the county and are funded in the same manner as any other department of the county government. The clerks collect numerous fees, service charges, and court costs related to the functions of the judicial system. These funds are distributed in accordance with the statute, court rule, local court rule, or ordinance which authorized the charge. Fee clerks retain those amounts authorized by law to cover operating costs and budget clerks deposit the funds collected into county accounts.

Pursuant to the constitutional amendment, ch. 2003-402 provides that funding for the court-related functions of the offices of the clerks of the circuit and county courts are to be provided by adequate and appropriate filing fees, service charges and costs.³

Counties

Pursuant to the constitutional amendment, county funding of court related functions is provided in s. 29.008, F.S.

Article V Indigent Services Advisory Board [Board]

The Board was created by the Legislature to advise it in establishing qualifications and compensation standards for the expenditure of state funds for those providing state-funded due process services for indigents in the judicial system.⁴ Pursuant to the law, the Board submitted its report to the Legislature in early 2004.⁵ The Board made recommendations regarding the following subjects: 1) expert witnesses; 2) court interpreters; 3) court-appointed counsel; and 4) court reporters.⁶

² *See* s. 29.001(1) and s. 29.004 through s. 29.007, F.S.

³ *See* s. 29.001(2), F.S.

⁴ s. 29.014(1), F.S.

⁵ Final Report, Article V Indigent Services Board, Jan. 6, 2004.

⁶ *Id.* at 7-9.

Circuit Article V Indigent Services Committees [circuit committee]

The Legislature required that a circuit committee be established in each judicial circuit.⁷ Each circuit committee is composed of: the chief judge of the circuit, or designee; a public defender; an experienced private criminal defense attorney; and an experienced civil trial attorney. Each circuit committee is charged with: 1) managing the appointment and compensation of court-appointed counsel within a circuit available to represent indigent defendants in conflict cases pursuant s. 27.40, F.S., and s. 27.5303, F.S., by applying the eligibility and performance standards set by the Legislature, if any, after receiving recommendations from the Board; 2) maintaining a registry of private counsel available and qualifying to represent indigents in conflict cases; and 3) developing a schedule of standard fees and expense allowances for the various categories of cases consistent with standards adopted by the Legislature, if any, after receiving recommendations from the Board.⁸

III. Effect of Proposed Changes:

The bill makes the changes noted in the table below:

Entities Affected	Effect(s) of Proposed Changes	Statutory Section(s)	Other Persons or Entities Affected
Clerks	Clarifies that the responsibility of the clerk in determining indigence is a ministerial function.	27.52	Indigent Defendants
	Increases by \$3 per page the service charge for recording instruments by the clerk of the court. Of the \$3 increase, 10 cents will be used to fund the clerks' comprehensive case information system, \$1.90 will be used to fund the information technology needs of the clerks statewide, and \$1 will be used to fund the information technology needs of the state courts. The total charge for recording an instrument will be \$9 for the first page and \$7.50 for each additional page. The average number of pages recorded per document is three pages, according to the Florida Association of Court Clerks and Comptroller, Inc.	28.24	
	Modifies the filing fee and authorizes additional costs for contesting local ordinance violations. The filing fee is reduced from \$200 to \$10, and a court cost of \$40 is required to be paid by the non-prevailing party for violations contested in court.	28.2402	Counties/ Municipalities/ Violators
	Increases the additional filing fee for the Court Education Trust Fund from \$2.50 to \$4, with 50 cents distributed to the Clerk of Court Operations Conference for clerk education functions.	28.241	
	Imposes filing fees for reopening cases in county court; Provides exemptions.	Circuit court - 28.241[current	Plaintiff

⁷ s. 27.42, F.S.

⁸ *Id.* at (2)

Entities Affected	Effect(s) of Proposed Changes	Statutory Section(s)	Other Persons or Entities Affected
		law, \$50]; county court - 34.041 [current law, \$50]	
	Authorizes clerk in each county to establish court docket fund from a \$1 service charge added to filing fees on circuit court actions used to pay for publication of court filings in local newspapers.	50.0711	
	Authorizes the clerks or collection agent to recover collection costs not to exceed 40% of balance owed, including the addition of costs and fees of collection.	28.246 34.191 938.29	Clerks/Collection Agents/Delinquent Payers
	Requires moneys collected by clerks to be distributed in accordance with law in effect at the time funds are collected; clarifies that clerks are authorized to distribute to state entities and the courts electronically through the Department of Revenue.	28.245	
	Authorizes clerks to offset processing costs for partial payments by collecting up to \$4 per month as a service charge.	28.246	
	Modifies reporting requirements for court assessments and collections to require the clerk to separately identify the amount assessed as community service, the amount reduced to a judgment or lien and the amount satisfied by time served.	28.246	
	Deletes Clerk's Conference authority to adjust maximum fines, fees, service charges & costs based on Consumer Price Index, and deletes the requirement that the conference publish a fee schedule.	28.35	
	Clarifies revenues for clerk's budget.	28.36	
	Requires clerk's remittance of excess fee revenue to county for the period 10-1-03 to 06-30-04.	28.37	County
	Equipment and furnishings owned by county but in office of clerk of court are transferred to state. Certain computer related items are excluded from transfer to state.	29.008	County/State
	Clarifies appellate filing fees for county court cases appealed to circuit court.	34.041	Litigants
	Clarifies remittance to Department of Revenue for deposit into General Revenue Fund.	34.041	Clerk/State
	Increases Court Education Trust Fund additional filing fee in county court civil filings from \$2.50 to \$4.00, \$.50 of which goes to clerks for clerk education programs.	34.041	Clerk
	Clarifies and revises procedures for payment of due process services; Clerks to pay for jurors and ordinary witnesses; JAC pays for expert witnesses, court reporters, interpreters and court-appointed counsel.	40.29	
	Deletes obsolete language and inserts conforming language relating to procedures for payment of due process services.	40.32	

Entities Affected	Effect(s) of Proposed Changes	Statutory Section(s)	Other Persons or Entities Affected
	Increases service charges in forced judicial sales [increase from \$40 to up to \$60]	45.031	Litigants
	Increases service charge for delinquency fee on support payments [increase from \$5 to up to \$7.50].	61.14	Litigants
	Increases service charge for driver's license reinstatement [increase from up to \$37.50 to up \$47.50] and provides for partial distribution [\$10] to Highway Safety Operating Trust Fund.	318.15	
	Redirects county court costs for driving without license into clerk's fine and forfeiture fund.	318.14	
	Redirects county fine and forfeitures arising from forfeited bail bonds into clerk's fine and forfeiture fund.	321.05	
	Changes 'Fee' to 'Service Charge' relating to lien certificates; correct cross-reference.	55.10, 55.141	
	Adds new service charge to settlements in excess of \$100,000; Provides for distribution of funds collected thereunder.	55.312	Litigants/State
	Make permanent an additional fee on certain child support cases.	61.181	
	Clarifies clerk's fine and forfeiture fund to include criminal traffic; clarifying exclusion of funds pursuant to s. 318.18(11)(a)	142.01	
	Increases failure-to-pay penalty [increase from \$12 to \$18] and clarifies that \$6 of \$18 is to be deposited into clerk's fine and forfeiture fund; provides for \$.50 distribution of traffic court cost to the Florida Department of Law Enforcement to fund Criminal Justice Selection Center Training programs and provides for \$2.50 additional court cost distributed to counties to fund criminal justice education and training; Deletes obsolete language for funding Criminal Justice training and school crossing guards now redirected to clerk's fine and forfeiture fund; redirects fines and forfeitures relating to fines, fees, and forfeitures of bail bonds to clerk's fine and forfeiture fund; Deletes language which provided for a percentage distribution of civil penalties to various entities that exceeded 100 percent.	318.18; 318.21; 321.05	Law Enforcement
	Increases dismissal fees for boating infractions from \$5 to up to \$7.50; Increases court costs for swimming or nonmoving boating infractions by 50%.	327.73	Litigants
	Redirects county fines, penalties or forfeiture of bail relating to wildlife violations into clerk's fine and forfeiture fund.	372.72	
	Changes reference to circuit court to "clerk of circuit court" for disposition of 43% of specified fee for court cost in divorce matters.	382.023	
	Corrects proper terminology from "fee" to "service charge" as relates to transfer of liens to security (conforms with changes in	713.24	

Entities Affected	Effect(s) of Proposed Changes	Statutory Section(s)	Other Persons or Entities Affected
	the bill).		
	Modifies the provisions governing consolidation of timeshare foreclosures. No more than 15 timeshare estates may be joined within the same foreclosure action. In addition, the clerk of the circuit court may charge an additional \$5 filing fee for each timeshare estate joined in an action; Deletes the authority of the clerk of court to charge a separate filing fee for each defendant in a consolidated foreclosure.	721.83	Litigants
	Increases service charge from \$25 to not to exceed \$37.50 for pleadings in medical negligence cases.	766.104	Litigants
	Redirects county fine and forfeiture fund into clerk's fine and forfeiture fund as relates to money and value of confiscated gambling machines.	849.19	County; Litigants
	Redirects proceeds of forfeited property under gambling laws from county fine and forfeiture fund to clerk's fine and forfeiture fund.	849.44	County
	Redirects forfeited bail bond dollars from county fine and forfeiture funds to clerk's fine and forfeiture fund.	903.26	
	Provides that Inventory Audit Fee for guardianship may be waived only upon a showing of insufficient funds in ward's estate.	744.365	
	Provides that financial return audit fee for guardianship may be waived only upon showing of insufficient funds in ward's estate.	744.3678	
Counties/ Municipalities	Authorizes counties/municipalities to enter into contracts for local ordinance prosecution.	27.34	State Attorneys
	Authorizes counties/municipalities to contract with the public defenders to provide indigent representation in local ordinance cases.	27.54	Public Defenders
	Authorizes additional surcharge to continue revenue streams to certain counties used to bond certain court facility projects. Court may not waive surcharge.	28.2401 28.241 34.041 318.18	
	Clarifies county responsibility for multi-task equipment and support staff; Excludes clerks equipment and telephonic infrastructure and computer equipment from transfer to the state on 7/1/05.	29.008	
	Includes sign language interpretation in list of auxiliary aids to be provided by the county to persons who are not entitled to have such services provided them by the state to comply with constitutional requirements.	29.008	
	Clarifies that the local requirement for providing legal aid programs, which was part of HB 113A last year, is funded in part by the \$150 court cost on convictions currently authorized in s. 939.18, F.S.; requires, to the extent possible, a maintenance of effort on the part of the	29.008	

Entities Affected	Effect(s) of Proposed Changes	Statutory Section(s)	Other Persons or Entities Affected
	counties to continue funding the legal aid programs as they were funded during the local fiscal year ended September 30, 2003; counties with populations of less than 75,000 are no longer exempt from this requirement		
	Deletes county prosecutor authority and substitutes state attorney authority to prosecute in the name of the state; authorizes county to contract with public defenders regarding local ordinance defense.	125.69	Public Defenders, State Attorneys
	Deletes obsolete reference to county fine and forfeiture fund under s. 142.01	129.02	
	Includes a hold harmless provision for revenue sharing, such that individual municipalities' increase in revenue sharing is to be distributed in proportion to loss from half-cent sales tax.	218.245	
	Eliminates county authority but retains municipality authority to levy parking surcharge to pay for school crossing guard program.	318.21	
	Eliminates reference to county general revenue or fine and forfeiture fund as source of funds for county to use to pay for court-related fees, mileage, and charges relating to sexually transmitted disease cases.	384.288	
	Eliminates reference to county general revenue or fine and forfeiture fund as source of funds for county to use to pay for court-related fees, mileage, and charges relating to enforcement of tuberculosis control cases.	392.68	
	Replaces county with state responsibility for funding attorney's fees and expert witness fees for indigents in Baker Act cases.	394.473	State
	Authorizes counties to use funds from state agencies, and other grants to fund drug court treatment programs	397.334	
	Eliminates reference to county fine and forfeiture fund as source of funds for county to use to pay for costs associated with impounding, serving notice, care, feeding, etc. of livestock at large.	588.20	
	Eliminates reference to county fine and forfeiture fund as source of funds for county to use to pay for sheriffs and clerk costs as related to the enforcement of gambling laws.	849.22	
	Eliminates reference to county fine and forfeiture fund as source of funds for county to use to pay for autopsies.	925.09	
	Provides for optional county authority through local ordinance to assess \$3 court assessment to fund teen court programs and other juvenile delinquency prevention programs.	938.17	
	Authorizes the county to recover 40% of total recovery of collections.	938.35	
	Provides county responsibility for payment of due-process services rendered before		

Entities Affected	Effect(s) of Proposed Changes	Statutory Section(s)	Other Persons or Entities Affected
	7/1/04, and state responsibility for payment of due-process services rendered on or after 7/1/04.		
Courts	Increases filing fee in the Supreme Court from \$250 to \$400, and provides that \$100 of the filing fee be deposited into the courts' Grants and Donations Trust Fund to fund court improvements as authorized in the General Appropriations Act.	25.241	
	Directs each circuit Article V indigent services committee to establish compensation schedule for court reporters and to set court reporter fee schedule; Clarifies that court reporting services provided through state employee models are not subject to the fees and methods established by the circuit Article V indigent services committees.	25.383	
	Deletes obsolete language that related to use of courts' contingency fund for court-appointed counsel.	29.016	
	Creates the Judicial Information Integration Competency Center composed of representatives of the courts, counties, state attorneys, public defenders, clerks of circuit court, sheriffs and Florida Department of Law Enforcement; steering committee along with two 18 member workgroups subordinate to steering committee will develop recommendations for Legislature on integrating data and information systems throughout state courts system. Appropriates \$500,000 from General Revenue Fund for costs associated with the center.	29.0085	state attorneys public defenders clerks sheriffs counties
	Authorizes courts, state attorneys, public defenders, and court-appointed conflict counsel to enter into contractual agreements to share costs associated with court reporting services, foreign language translators and interpreters, court experts and all other due process costs.		state attorneys public defenders private counsel
	Authorizes court to recover, from those with ability to pay, reasonable costs of state funded services that are available to all litigants, as determined by Trial Court Budget Commission; authorizes county to recover costs of services, and provides that chief judge of circuit is to determine fees paid for such local requirements.		
	Imposes \$100 Pro Hac Vice fee for appearances in county court, circuit court, district court of appeal and Supreme Court; and provides for deposit of fees into General Revenue Fund.	34.041, 28.241, 25.241, 35.22	Private Counsel, Litigants, State
	Increases filing fee in District Courts of Appeal from \$250 to \$350 and provides that \$100 of filing fee be deposited into courts' Grants and Donations Trust Fund, used to fund court improvements as authorized in the General Appropriations	35.22	

Entities Affected	Effect(s) of Proposed Changes	Statutory Section(s)	Other Persons or Entities Affected
	Act. [When combined with the \$50 collected by clerk of circuit court for appeals filed in DCA, total fee for a DCA appeal will be \$400, equal to the fee in the Supreme Court.]		
	Provides access to confidential court records for state attorney, statewide prosecutor, public defender, guardian ad litem, capital collateral regional counsel, and courts if entitled by law.	28.24	State Attorney, Statewide Prosecutor, Public Defender, Appointed Counsel, Clerk
	Increases Court Education Trust Fund service charge from \$2.50 to \$4.00, and provides that \$.50 of fee goes to clerks for clerk education programs. Deletes from s. 25.384, F.S., the authorization to use the Court Education Trust Fund for clerk education.	28.241 25.384 28.2401	Clerk
	Reduces the fee that will be collected after July 1, 2004 by the clerk of the circuit court for appeals to the district court of appeal [reduces from \$250 to \$50, which is what is currently charged].	28.241	Clerk
	Extends to judges exemption from clerk's fees and charges, along with state attorneys, public defenders, capital collateral regional counsel and statewide guardian ad litem employees.	28.345	Clerk, State Attorneys, Public Defenders, Capital Collateral Regional Counsel and Statewide Guardian Ad Litem employees
	Updates reference to Florida Rules of Family Law; Updates reference to Rules of Court regarding filing fees in civil actions.	34.01	
	Provides an add-on fee to county court cases to fund Court Education Trust Fund (\$3.50 of the \$4 additional fee).	34.041	Litigants
	Authorizes courts to charge fee for mediation services, set by the trial court budget commission in accordance with Supreme Court guidelines to fund mediation services.	44.108	
	Clarifies that \$1 mediation fee is supplemental to other fees and charges assessed.	44.108	
	Redirects the receipt of funds for the foster care citizen review panels from the state courts to the Justice Administrative Commission.	318.21	
Appointed Counsel: Public Defenders- CCRC-Private Counsel	Enumerates qualifications for court-appointed counsel (pursuant to Indigent Services Advisory Board recommendations).	27.40	
	Collapses "mental health professional" category into a general "witness" category to be paid by state, and clarifies public defender representation in cases other than criminal.	29.006	
	Changing 'Waiver' to 'Deferral' to reflect new statutory framework for court costs and fees imposed on prisoners.	57.085	
	Clarifies that circuit Article V indigent	27.42	

Entities Affected	Effect(s) of Proposed Changes	Statutory Section(s)	Other Persons or Entities Affected
	<p>services committee is also required to maintain private attorney registry even when procuring counsel through a competitive bid; adds the state attorney to the circuit Article V indigent services committee, since under this bill that committee is now charged with determining fees for court reporter services; requires the circuit Article V indigent services committees to develop maximum fees and expense allowances for due process services so that the Justice Administrative Commission will be able to review invoices with clear payment limits.</p>		
	<p>Provides that public defender can defend local ordinance violation if ancillary to state prosecution unless judge files an order of no imprisonment; authorizes the public defender to represent indigent defendants charged with any violation of a local ordinance if it is punishable by imprisonment; clarifies that public defenders with appellate divisions will handle appeals arising from circuit courts or district courts of appeal to the state or federal courts.</p>	27.51	
	<p>Provides that for indigence determination, the clerk must notify the court if a person cannot complete the affidavit of indigence due to incapacity; clarifies that the clerk's determination of indigence is a ministerial function; clarifies that only one fee may be imposed for all court-related services.</p>	27.52	
	<p>Provides standards for public defender conflict of interest determination, and removes court from requirement to use such standards; references Indigent Services Advisory Board Report.</p>	27.5303	
	<p>Amends compensation for court-appointed counsel to conform to Indigent Services Advisory Board recommendations; provides that court-appointed counsel may file a motion for partial compensation for costs and services rendered to date in a case if there is a particular financial hardship upon counsel.</p>	27.5304	
	<p>Provides that the circuit Article V indigent services committees shall develop a schedule of recommended costs for judges to consider when they assess court costs for defendants represented by the public defender or conflict attorney.</p>	938.29	
	<p>Provides for additional court cost of up to \$150 for persons found guilty of any criminal offense such that funds generated from assessment may be used to pay for legal aid programs and local public law libraries. Currently, funds from the assessment may be used only for providing and maintaining court facilities.</p>	939.18	

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	Requires that cash balances within county funds previously established to fund specific court-related programs shall continue to fund those programs after July 1, 2004 (to include teen court programs where cash balances could potentially fund the programs through state FY 2004-05).		
State Attorneys/ Public Defenders/ Statewide Prosecutors	Authorizes state attorney to prosecute local ordinances if state attorney has a contract for full reimbursement or as the parties agree.	27.02	Counties
	Clarifies that state attorneys and public defenders may expend state funds for purchase of computer systems and technology staff, per current practice.	27.34 27.54	
	Provides that 25 percent of funds collected from public defender liens for attorney costs shall be deposited in the Indigent Criminal Defense Trust Fund of the public defenders; with the remainder deposited into the General Revenue Fund of the state.	27.562	Clerks
	Eliminates expert witness subcategory of "mental health professionals" and includes them with general witness and expert witness category for payment by the state; clarifies that state attorney may be representing the State in cases other than criminal.	29.005	
State of Florida	Requires the state to pay for statewide prosecutor trial expenses; (\$75,000 per year is included in the Senate budget proposed for 2004-05.)	29.0051	
	Clarifies the State's share of initial filing fees for county court cases [first share of \$50 and one third of excess share applications].	34.041	
	Requires the State to pay for witness costs in cases handled by a private court-appointed attorney; also provides that fees for court appointed counsel pretrial consultation fees and travel expenses are to be paid in accordance with circuit Article V indigent service committee policies.	29.007	
Misc.	Eliminates obsolete cross-references for fees for copies of patient records.	395.3025	
	Redesignates title to chapter 40 from "Jurors and Payment of Jurors and Witnesses" to "Juries; Payment of Jurors and Due Process Costs".	Chapter 40	

Entities Affected	Effect(s) of Proposed Changes	Statutory Section(s)	Other Persons or Entities Affected
Transition	--County pays: 1) Bills submitted for due process services if services rendered before 7-1-04; 2) Flat fee per case contracts & service agreements for court appointed counsel made before 7-1-04. --Except for the above, state pays for services rendered on or after 7-1-04; county pays for services rendered before 7-1-04.		Counties/State
	Clarifies that counties must provide equipment and furnishings after July 1, 2005 for facilities occupied by the courts, state attorneys, and public defenders; Counties must pay for long distance, pagers, cell phones, fax and video teleconferencing equipment.	29.008	Counties/State
Repealers	Repeals: s. 11.75, relating to the creation of the Joint Legislative Committee on Article V; s.40.30 relating to state courts administrator endorsement of requisition.	11.75 40.30	
Effective Date	Provides an effective date of July 1, 2004.		

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Municipalities

Chapter 2003-402, L.O.F., increased the distribution to municipalities from the Revenue Sharing Trust Fund. This was done to compensate for a reduction in half cent sales tax distribution for municipalities. The bill revises s. 218.245, F.S., to change the method used to distribute the increase in the Revenue Sharing Trust Fund to mirror the distribution formula used in the half cent sales tax distribution. The fiscal impact in total remains revenue neutral but ensures that individual municipalities will receive the same funding as they would have under the half cent sales tax distribution.

General Public

The additional \$3 service charge on documents recorded by the clerk of the court will have a negative impact on the general public. According to the Florida Association of Court Clerks and Comptroller, Inc., the average number of pages per document recorded by the clerks is three pages. The \$3 increase brings the total charge to \$9 for the first page, and \$7.50 for each additional page, for a total charge of \$24 for a three page document. The total funds projected to be collected annually from the \$3 increase is \$81.3 million.

Court System Users

Court system users will be negatively impacted by numerous provisions of this bill that raise clerk of the court service charges. There is insufficient data available to estimate the individual or total impacts from any or all of the service charges that are increased by 50 percent in this bill. As part of the analysis conducted for ch. 2003-402, L.O.F., it was estimated that raising all service charges by 50 percent would increase revenues to the clerks by over \$41.7 million per year, using data that was available in the aggregate for all service charges combined. That analysis assumed that all service charges specified in law were raised. However, subsequent research revealed that many service charges in law had been overlooked.

Court system users will also be negatively impacted by the additional surcharges authorized in this bill for counties with bond issues that were secured with court revenues. Counties that imposed by ordinance increased fees or service charges under various sections of law to secure payment of bonds issued to finance state court facilities will be authorized to again impose by ordinance surcharges to pay for those bonds issued before July 1, 2003. Provisions in s. 28.2401, s. 28.241, s. 34.041 and s. 318.18, F.S., provide for such surcharges. Since these provisions are permissive, the total impact on court system users is indeterminate.

The addition of the Court Education Trust Fund fee on county court cases in s. 34.041, F.S., will not result in a change for court system users because that fee is already charged for county court cases, but was omitted from the law in error when ch. 2003-402, L.O.F., was enacted. However, the increases in the Court Education Trust Fund fees contained in the bill from \$2.50 to \$4.00 will negatively impact users. Approximately \$1.2 million more is expected to be paid as a result of these increases, according to filing data provided by the Office of the State Courts Administrator.

The case reopening fee added to county court cases will require court system users to pay an additional \$50, but the total impact of this fee change is unknown due to a lack of data and the fact that guidelines for what constitutes a reopening of a case have changed since enactment of ch. 2003-402, L.O.F.

Increasing the filing fees by \$100 to \$350 in the District Courts of Appeal and by \$150 to \$400 in the Supreme Court is expected to cost system users approximately \$674,500 more each year for DCA clerk fees and \$37,000 more each year for Supreme Court clerk fees, according to information provided by the Office of the State Courts Administrator.

Offsetting these increases is the \$200 decrease in the \$250 fee to be paid to the clerk of the circuit court when filing an appeal in the DCA's, bringing the total fees paid for DCA cases down from \$500 (\$250 paid to the clerk of the circuit court and \$250 paid to the clerk of the DCA) to \$400 (\$50 paid to the clerk of the circuit court and \$350 paid to the clerk of the DCA). Although the \$250 fee paid to the clerk of the circuit court for DCA appeals would not have gone into effect until July 1, 2004, the \$200 decrease in that amount represents a \$1,389,000 cost avoidance to future users. The bill's net impact to users is therefore a savings of \$714,500 annually for DCA filings (\$1,389,000 savings in circuit court clerk fees less the \$674,500 increase in DCA clerk fees) and an increase of \$37,000 annually for Supreme Court filings.

Court system users who choose to pay their fines and costs under the terms of a payment plan may be required by the clerk to pay an additional \$4 per month for each month they make payments. The total impact of this on users statewide on an annual basis is indeterminate.

New authorization in s. 44.108, F.S., for the courts to charge for mediation services from those with ability to pay will negatively impact court system users. The courts have estimated they will generate \$2,229,292 annually from these fees.

Driver's License Reinstatement

Persons seeking to have their drivers licenses reinstated will pay an additional \$10 pursuant to the increase in the service charge in s. 318.15, F.S. effective July 1, 2004. The annual impact of this is approximately \$2.6 million.

Pro Hac Vice Fee

The imposition of a \$100 fee charged to attorneys appearing pro hac vice is a negative but indeterminate impact. The number of annual appearances wherein this fee will be charged is unknown.

B. Private Sector Impact:

Private Court Appointed Counsel

Private attorneys are currently paid by the counties when the court finds that the public defender assigned to a case has a conflict of interest in representing the defendant. The impact of changes to s. 27.5303 (1) (d), F.S., on the private sector may be positive or negative and cannot be determined. The bill requires the use of a uniform set of standards to determine any conflict of interest on the part of the public defender. To the extent that these new standards result in fewer instances of conflicts of interest and fewer appointments of private counsel, the private sector would be negatively impacted. To the extent that these new standards result in more instances of conflicts of interest and a greater number of appointments of private counsel, the private sector would be positively impacted.

Private attorneys appointed by the court to represent indigent persons in court proceedings under the Baker Act as well as expert witnesses are currently reimbursed by

the county at rates that vary by judicial circuit. The bill amends s. 394.473, F.S., to clarify that such attorneys and expert witnesses will be compensated by the state. To the extent that the state rates differ from those paid by the county, private attorneys and experts could be either negatively or positively impacted.

Recovery and Cost of Collection

Several sections of this bill restore the authority for collection agencies to recover the cost of collection which was deleted by ch. 2003-402, L.O.F., effective July 1, 2004. While the fiscal impact of this is unknown, the effect is to allow current cost recoveries now being received by private entities to continue past July 1, 2004.

C. Government Sector Impact:

LOCAL GOVERNMENT IMPACTS

Additional Recording Service Charge

The additional \$3 service charge authorized in s. 28.24, F.S., will provide \$54.2 million for the clerks of the circuit court (\$2 of the \$3 increase). Of this amount, \$2.7 million is distributed to the Florida Association of Court Clerks and Comptroller, Inc., to fund development and statewide implementation of the clerks' Comprehensive Case Information System, and the remaining \$51.5 million is distributed to the Public Records Modernization Trust Fund to pay for the local information technology needs of the clerk's court-related functions. This represents a positive impact for not only the clerks but also for the counties since these funds will directly supplant the funds that counties are required to provide for information technology pursuant to s. 29.008, F.S. The projected annual information technology costs for the clerks is projected by the Florida Association of Court Clerks and Comptroller, Inc., to be \$65.8 million. The provision of the \$51.5 million from this additional service charge leaves a funding liability of \$14.3 million for counties to provide for the clerks.

In addition, the \$1 of the \$3 increase that is distributed to the state courts represents a \$27.1 million positive impact for counties as well, since these funds are projected by the state courts to be sufficient to pay for the trial courts' information technology needs that the counties are responsible for providing.

Bonding

Counties that imposed by ordinance increased fees or service charges under various sections of law to secure payment of bonds issued to finance state court facilities will be authorized to again impose by ordinance surcharges to pay for those bonds issued before July 1, 2003. Provisions in s. 28.2401, s. 28.241, s. 34.041 and s. 318.18, F.S., provide for such surcharges. While it is indeterminate how many counties will avail themselves of these provisions, it is expected that the minimum revenues that will be raised will be approximately \$7 million per year in Miami-Dade. These provisions will result in positive fiscal impacts to those counties that are eligible by virtue of having previously issued bonds secured by court surcharges and now choose to impose an ordinance pursuant to these provisions. It is unknown how many other counties are eligible to implement these provisions.

Fine and Forfeiture Funds

There are various sections of this bill wherein fine and forfeiture funds currently accruing to the counties are being redirected to the clerks of the court to fund their court-related functions. As part of the analysis conducted for ch. 2003-402, L.O.F., it was estimated that redirecting all fine and forfeitures to the clerks would result in approximately \$116 million being shifted. That analysis was done using aggregate data for all fine and forfeiture revenues combined, as was also done with service charge increases. Data on all the individual fine and forfeiture receipts was not and is not available. Subsequent research revealed that a number of sources of county fine and forfeiture receipts were overlooked in the law. This bill redirects the fine and forfeiture receipts from those sources to the clerks of the court. The counties are therefore negatively impacted by these changes, and the clerks are positively impacted, but the total dollar impacts are indeterminate. However, the result of making these changes should be to make the previously forecasted fiscal impacts of ch. 2003-402, L.O.F., more accurate.

Criminal Justice Selection Centers/Local Criminal Justice Education and Training

The impact of changes to s. 318.18, F.S., will be positive for local governments. Providing the 50 cent allocation of court costs for selection centers and the \$2.50 additional court cost for local criminal justice education and training should generate approximately \$12 million statewide, assuming about 4 million traffic violations per year.

Teen Court/Delinquency Prevention Programs

The fiscal impact of revisions to s. 938.17, F.S., relating to teen court and other juvenile delinquency prevention programs cannot be determined. The bill is permissive and allows counties to adopt an ordinance for the imposition of \$3 court costs on a variety of judgments in order to fund a teen court or other juvenile delinquency prevention programs. However, a survey conducted by the Florida Association of Court Clerks and Comptroller, Inc., in October, 2003 showed that 44 counties had enacted a local ordinance to collect an additional \$3 court cost for Teen Court pursuant to s. 938.19, F.S. The total funds collected for Teen Court annually in these 44 counties was \$7.9 million. It is reasonable to expect that the provisions of this bill that allow for a broader use of these funds for other delinquency prevention programs will encourage counties to pass local ordinances and collect funds exceeding the \$7.9 million collected previously for Teen Court.

Court Cost for Court Facilities

The \$150 additional court cost for court facilities authorized in s. 939.18, F.S., currently generates revenue for counties of approximately \$26.4 million, according to data provided by the Florida Association of Court Clerks, Inc. The expansion of the permitted uses of these funds for legal aid programs and public law libraries may induce more assessments to be made by judges, but the fiscal impact of the changes included in the bill is indeterminate.

STATE GOVERNMENT IMPACTS**Pro Hac Vice**

The increase in funds that will accrue to the state General Revenue Fund due to the imposition of a \$100 fee charged to attorneys appearing pro hac vice is indeterminate. The number of annual appearances wherein this fee will be charged is unknown.

Conflict Counsel

The impact on the state from changes to s. 27.5303 (1) (d), F.S., is indeterminate. Both the effect of the new standards for conflicts of interest for public defenders and the differences in the cost between the public defender and the private attorneys are unknown.

Public Defender Liens

Changes to s. 27.562, F.S., direct 25 percent of the revenues received from the attorney costs assessed under s. 938.29, F.S., to the Indigent Criminal Defense Trust Fund of the public defenders. Under the law that was to become effective July 1, 2004, all those funds, except for the \$40 application fee, would have been deposited into the state General Revenue Fund. According to the 2002 data submitted by counties in their Annual Financial Reports, \$2.9 million in revenue statewide was received by counties in that year pursuant to this statute. Assuming this figure will remain around \$3 million during state Fiscal Year 2004-05, \$750,000 would be diverted from the General Revenue Fund to the public defenders' Indigent Criminal Defense Trust Fund. Funds received in the trust fund could not be expended except as authorized in the General Appropriations Act.

Proponents of this change contend that this redirection of funds will actually provide a positive fiscal impact to the state because public defenders will have an incentive to assist in identifying defendants with assets from whom costs may be recovered over time. While this may be a reasonable assumption, the actual fiscal impact is indeterminate.

Additional Recording Service Charge

The additional \$3 service charge for recording documents by the clerk of the circuit court authorized in s. 28.24, F.S., will provide \$27.1 million (\$1 of the \$3 increase) for the state courts to fund the information technology needs of the trial courts. While these funds will be deposited into the court Grants and Donations Trust Fund, the funds may not be expended except as authorized in the General Appropriations Act. It is estimated that these funds will be sufficient to fully fund the trial courts annual information technology needs.

Local Ordinance Violations

The revisions to the local ordinance filing fee in s. 28.2402, F.S., may or may not result in a positive fiscal impact to the state. As part of the analysis conducted for ch. 2003-402, L.O.F., it was estimated that a \$200 filing fee for local ordinances would raise almost \$26 million in annual revenues for the clerks, which in turn contributed to the \$81 million annual share of revenues going to the state. It is now estimated that the projected revenues will not materialize due to the negative cost benefit that local governments would experience were they to pay a \$200 fee for ordinance violations when the penalty revenues are far less than \$200. Therefore, by lowering the fee to \$10 for each violation filed with the court, with an additional \$40 cost paid by the non-prevailing party for

contested cases, the revenue expected statewide can be estimated at \$1.7 million, assuming 90 percent of the cases are uncontested in court. Whether or not this represents a net positive fiscal impact to the state depends entirely on how many local governments would have actually paid the \$200 filing fee, and for how many cases they would have been willing to pay it.

Filing Fees for Appeals

The provision in s. 28.241, F.S., to remit \$50 from each \$250 appeals filing fee collected by the clerk of the circuit court to the state General Revenue Fund will have no fiscal impact on the state during FY 2004-05. Although the full \$250 appeal fee now accrues to the clerk, excess funds not needed by the clerks then accrue to the state. Therefore, to the extent the state is projected to receive excess fee revenue from the clerks over the amount collected from appeal fees, the state is already benefiting in part from the collection of the appeal fees. Remitting the \$50 directly to the state when the fee is collected also reduces the revenues to the clerks, which directly reduces the excess revenues remitted to the state after clerks' budget needs are met. However, at some time in the future, if there are no excess revenues collected by the clerks, then this provision secures an additional \$65,000 per year for the state, based on approximately 1,300 appeal fees being filed per year.

Increasing the filing fees by \$100 to \$350 in the District Courts of Appeal and by \$150 to \$400 in the Supreme Court is expected generate approximately \$674,500 more each year for DCA filings and \$37,000 more each year for Supreme Court filings, according to information provided by the Office of the State Courts Administrator. Of these increases, all of the \$674,500 DCA increase and \$24,667 of the Supreme Court increase will benefit the courts' Grants and Donations Trust Fund. \$12,333 from the Supreme Court increase (\$50 of the \$150 increase) will benefit the state General Revenue Fund.

Offsetting these increases is the \$200 decrease in the \$250 fee to be paid to the clerk of the circuit court when filing an appeal in the DCA's, bringing the total fee paid for DCA cases to \$400 (\$50 paid to the clerk of the circuit court and \$350 paid to the clerk of the DCA). Although the \$250 DCA fee would not have gone into effect until July 1, 2004, the \$200 decrease in the amount paid to the clerk of the circuit court represents a \$1,389,000 loss of future revenue. All of this amount would have contributed to the excess revenues collected by the clerks that would have been remitted to the state General Revenue Fund. The bill's net impact from these two appellate fees is therefore a loss of \$1,376,667 from the General Revenue Fund (\$1,389,000 DCA fee loss plus \$12,333 Supreme Court fee gain) and an increase of \$699,167 for the courts' Grants and Donations Trust Fund (\$674,500 from DCA fees and \$24,667 from Supreme Court fees).

Court Education Trust Fund

The addition of the Court Education Trust Fund fee to county court cases in s. 34.041, F.S., represents no change in revenue for the courts. This revenue is already being received by the courts because the fee is currently being collected in practice on all county cases. However, according to information provided by the Office of the State Courts Administrator the increases in the Court Education Trust Fund fees contained in the bill from \$2.50 to \$4.00 will generate approximately \$798,920 more revenue for the

courts, and \$399,460 for the clerks' education programs, based on the clerks receiving 50 cents of the \$1.50 increase.

Reopen Fee

The case reopening fee added to county court cases will require court system users to pay an additional \$50, but the total impact of this fee change is unknown due to a lack of data and the fact that guidelines for what constitutes a reopening of a case have changed since enactment of ch. 2003-402, L.O.F. This will provide a positive fiscal impact to the state as these revenues will contribute to the excess revenues to be remitted to the state by the clerks.

Private Court Appointed Counsel

Private attorneys appointed by the court to represent indigent persons in court proceedings under the Baker Act and expert witnesses are currently reimbursed by the county at rates that vary by judicial circuit. The bill clarifies that such attorneys and expert witnesses will be compensated by the state. The rates at which private attorneys and expert witnesses are paid cannot be estimated at this time as they may vary by circuit.

Service Charge on Settlements

The service charge on settlements in excess of \$100,000 imposed in s. 55.312, F.S., will have a positive but indeterminate impact on state revenue. There is no historical data available to estimate the amount of settlements that would be subject to this provision. Further, it is expected that the volatility inherent in these settlements from year to year may make future estimates based on historical data speculative at best. However, if sufficient revenue is generated, up to \$5 million will be available for the Florida Access to Civil Legal Assistance Program administered by the Department of Community Affairs.

Driver's License Reinstatement

Persons seeking to have their drivers licenses reinstated will pay an additional \$10 pursuant to the increase in the service charge in s. 318.15, F.S., effective July 1, 2004. The annual impact of this is approximately \$2.6 million, but this does not represent increased revenue to the Department of Highway Safety and Motor Vehicles. This is because SB 26A from the 2003A legislative session raised the fee by \$10 to \$35 effective on July 1, 2003, with the \$10 increase in revenue directed to the DHSMV. Chapter 2003-402, L.O.F., increased the same service charge by \$12.50 to \$37.50 effective July 1, 2004, with the revenue directed to the clerks. This latter revision, as of July 1, 2004, effectively overwrites the revision made by SB 26A. Therefore, in order to preserve both the revenue generated for DHSMV and the revenue generated for the clerks, this bill raises the service charge to \$47.50, with \$10 directed to DHSMV. Yet neither the DHSMV nor the clerks should receive significantly more revenue than they would have received in the absence of this bill. However, without the provision in this bill, the DHSMV would automatically lose \$2.6 million per year effective July 1, 2004.

Criminal Justice Selection Centers

The impact of some of the changes to s. 318.18, F.S., will be negative for state government. Providing the \$0.50 allocation of current court cost receipts for selection

centers should generate approximately \$2 million statewide accruing to the benefit of the selection centers, assuming about 4 million traffic violations per year. However, this also represents an equal loss of revenue to the clerks of the court, which in turn directly impacts the amount of excess fee revenue that the clerks will remit to the state. This loss to the General Revenue Fund is expected to be \$2 million.

Statewide Prosecutor's Trial Costs

The provision in s. 29.0051, F.S., requiring the state to pay for the trial expenses of the statewide prosecutor is expected to cost the state General Revenue Fund approximately \$75,000 per year. This amount has been included in the Senate's proposed budget for FY 2004-05.

Judicial Information Integration Competency Center

\$500,000 from the General Revenue Fund is appropriated in this bill for the staffing and expenses associated with the creation of this entity.

Mediation Fees

New authorization provided in s. 44.108, F.S., for the courts to charge for mediation services from those with the ability to pay will generate an additional \$2,229,292 annually for mediation programs, according to projections made by the Office of the State Courts Administrator.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.