

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1935 CS PCB JU 05-10 Continuing Implementation of Constitutional Revision 7 to Article V  
**SPONSOR(S):** Judiciary Committee; Simmons  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2542

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Committee	12 Y, 0 N	Birtman	Hogge
1) Justice Appropriations Committee	11 Y, 0 N, w/CS	DeBeaugrine	DeBeaugrine
2) Justice Council	8 Y, 0 N, w/CS	Birtman	De La Paz
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### 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 was to be "fully effectuated" by July 1, 2004.

This bill furthers the implementation of Revision 7 and includes the following major provisions:

- Reorganizes the statutory determination of indigency provisions; creates a civil determination of indigency provision; and revises asset limitations in current law for presumption of indigency
- Creates a provision allowing due process costs for persons who are determined to be indigent for costs;
- Delineates the appointment and funding responsibilities for competency experts;
- Specifies that 56.4% of the remainder of any civil penalties received by a county court for violations that occurred within the unincorporated area of a county having a consolidated government are to be deposited into the fine and forfeiture fund;
- Extends from 2006 to 2007 the deadline for clerks to assume responsibility for redaction of social security numbers in court records;
- Allows the state to fund mental health professionals required in civil cases as an element of court-appointed counsel;
- Allows trial court administrators to recover expenditures for state-funded services that have been furnished to users who have the ability to pay;
- Repeals the Article V Indigent Services Advisory Board effective July 1, 2006;
- Directs the chief judge to coordinate the provision of all court-related functions within a circuit and determine priorities for the court-related functions provided by the clerks;
- Establishes the conditions under which a clerk may discontinue performance of functions performed in support of the trial court; and
- Allows counties to use up to 25% of a surcharge imposed on civil traffic infractions to support law libraries.

The fiscal impact is indeterminate.

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

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**DATE:** 4/26/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – the bill provides a distinct provision to determine indigency for civil applicants who are attempting to access the court system.

Provide limited government – the bill abolishes the Statewide Indigent Services Advisory Board effective July 1, 2006. The bill creates a new “indigent for costs” designation for individuals that are able to retain a private attorney or wish to represent themselves but are unable to pay for associated services such as expert witnesses. The bill creates a new civil indigent status and prescribes a process for the clerk of the court to use to determine eligibility.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Determination of indigency**

###### Present situation:

Indigency is currently determined pursuant to the provisions of section 27.52, F.S. A determination of indigency is required prior to the appointment of a public defender, private court-appointed counsel, or the provision of state-funded due process services. Generally, the applicant is required to pay a \$40 application fee to the clerk, who makes an initial determination of indigency based on statutory criteria, which also require the clerk to examine additional factors that create a presumption of indigency. One such factor is ownership of any real or personal property. An applicant who is determined to not be indigent can seek court review of the clerk’s determination. The current statute does not provide any guidelines for the judicial determination.

###### Proposed changes:

The bill retains the same general scheme, with the following modifications:

- The clerk is required to make the initial determination based on information provided by the applicant on a form developed by the Florida Clerk of Courts Operations Conference with final approval by the Supreme Court.
- The bill provides criteria for the court to consider when an applicant seeks review of the clerk’s determination of non-indigency. The factors (whether the applicant has been released on bail of \$5000 or more; whether a bond has been posted; and whether private counsel was retained) are currently examined by the clerk, and the existence of any of the factors creates a presumption of non-indigency. The bill removes the presumption, but requires the court to review the same factors. The bill also provides that an individual who has \$2,500 in real or personal property or a vehicle worth \$5,000 is not presumed indigent.
- The bill creates a first degree misdemeanor penalty for knowingly providing false information in seeking a determination of indigent status.

##### **Indigent for costs**

###### Present situation:

Both the US and Florida constitution require that defendants be afforded with certain due process protections, including the right to have the assistance of counsel. <sup>1</sup> Current law in Florida is to provide

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<sup>1</sup> The Sixth Amendment to the U.S. Constitution provides that in all criminal prosecutions, the accused shall enjoy the right to . . . be informed of the nature and cause of the accusation; be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense. Further the 14<sup>th</sup> Amendment to the U.S. Constitution (both the due process and equal protection provisions) require that in criminal trials, a state may not discriminate against a defendant on account of poverty. Griffin v. Illinois, 351 U.S. 12 (1956). Similarly, Article I, section 16 of the Florida Constitution

for the right to counsel for indigent defendants through the public defenders or court-appointed counsel in cases where the public defender would have an ethical conflict.

There are indigent defendants, however, who are able to secure the service of an attorney (either with their own money, from friends or family, or from a volunteer attorney) while other indigent defendants represent themselves. While these defendants do not need or desire an attorney, they often seek to access public funding for services, such as expert witnesses, that are often associated with a legal defense. There is no statutory authorization or specific funding provided in the state budget to provide such non-attorney services to indigent defendants outside of the public defender system established by law. Despite the absence of funding and statutory authority, there is anecdotal evidence that courts are determining such defendants to be "indigent for costs" and ordering the Justice Administrative Commission to pay for these associated costs.

Current law requires the clerk to enroll any person seeking to defer payment of fees, service charges, costs, or fines imposed by law, in a payment plan corresponding to the individual's ability to pay.<sup>2</sup>

#### Proposed changes:

The bill allows a determination of "indigent for costs" for persons eligible to be represented by the public defender, but who are represented by private counsel not appointed by the court for a reasonable fee as approved by the court; represented by a pro bono attorney; or who is proceeding pro se. Such determination makes the applicant eligible for the provision of state-funded due process services. The bill requires that if the person hired private counsel, that his or her fees are determined by the court to be reasonable in order to be determined 'indigent for costs.' Consistent with the treatment of individuals who seek to defer payment of service charges, fees, costs or fines imposed by law, in a payment plan, the bill similarly requires the clerk to enter into a payment plan for an individual determined to be 'indigent for costs.'

### **Appointment of competency experts and mental health professionals**

#### Present situation:

Current law authorizes the court to appoint no more than three nor fewer than two experts to determine issues of the mental condition of a defendant in a criminal case, including the issues of competency to proceed, insanity, and involuntary hospitalization or placement.<sup>3</sup> While expert witnesses are clearly covered as part of the state's responsibility to fund due process costs,<sup>4</sup> current law requires the county in which the indictment was found or information filed to fund expert witnesses. Further, current law only allows the court to pay for witnesses not requested by either party that are appointed by the court pursuant to an express grant of statutory authority.<sup>5</sup>

#### Proposed changes:

The amendment to sections 916.12, 916.115, 29.004, and 916.301, F.S., is premised on the understanding that the determination of competency to proceed is akin to a jurisdictional issue for the courts, and as such, the court system should be responsible for the payment of experts it appoints to determine competency. If insanity is asserted as an affirmative defense, however, the defense is responsible for payment of such expert.

The bill makes the following statutory changes regarding provisions relating to the appointment and payment of mental health experts:

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protects the rights of the accused, and Article I, section 9 of the Florida Constitution requires due process of law in order to deprive a person of life, liberty, or property. The Florida Supreme Court has held that an indigent defendant has the constitutional right to have his court costs, including the cost of his transcript, to be paid for by the government. *State v. Byrd*, 378 So.2d 1231 (Fla. 1979).

<sup>2</sup> Section 28.246(4), F.S.

<sup>3</sup> Section 916.115(1)(b), F.S.

<sup>4</sup> Sections 29.004(6), 29.005(3), 29.006(3), and 29.007(4), F.S., provide for the payment of expert witnesses summoned by the court, the state attorney, the public defender, or by court appointed counsel on behalf of an indigent.

<sup>5</sup> Section 29.004(6), F.S.

- Amends s. 916.12, F.S., to allow the parties to stipulate to the findings of one competency expert, without further evaluation. The amendment to this section further allows the court to appoint no more than two additional experts to evaluate the defendant.
- Amends s. 916.115, F.S., to allow the court to pay for any expert that it appoints, using funds specifically appropriated on behalf of the state courts for due process costs. If a competency expert also addresses issues related to sanity as an affirmative defense, the court shall only pay for that portion of the experts' fees as relates to competency to proceed, with the remainder paid by the defense. The bill requires the public defender to pay for any expert it retains, the Justice Administrative Commission to pay for any experts retained by court-appointed counsel, and the state attorney to pay for any expert it retains, including experts appointed by the court to ensure that the expert has access to the defendant.
- Amends s. 29.004, F.S., to allow the courts to pay for expert witnesses appointed by the court pursuant to an express grant of statutory authority.
- Amends both ss. 916.115 and 916.301, F.S., to clarify that payment of competency experts shall be paid for by the courts, rather than the county.
- Repeals s. 29.005(4), F.S., allowing the state attorney to fund mental health professionals required for Baker Act or competency proceedings involving indigents, but retains s. 29.005(3), F.S., regarding payment of experts.
- Amends s. 29.007, F.S., to allow the state to fund the appointment of mental health professionals expressly required by statute for the full adjudication of any civil case involving an indigent.

### **Civil penalties received by county courts**

#### Present situation:

Current law requires that civil penalties received by a county court for the disposition of traffic infractions, be distributed monthly to specified entities.<sup>6</sup> One dollar from every civil penalty is remitted to the Department of Revenue for deposit into the Child Welfare Training Trust Fund, and another dollar is deposited into the Juvenile Justice Training Trust Fund. Of the remainder, 56.4% shall be deposited into the fine and forfeiture trust fund if the violation occurred within the unincorporated area of a county that is not within a special improvement district of the Seminole Indian Tribe or Miccosukee Indian Tribe.<sup>7</sup> However, if the violation occurred within a municipality, only 5.6% is paid into the fine and forfeiture fund and the municipality keeps 50.8%.<sup>8</sup>

#### Proposed changes:

The bill specifies that 56.4% of the remainder of any civil penalties received by county court for violations occurring within the unincorporated area of a county created pursuant to s. 6(e), Article VIII of the State Constitution,<sup>9</sup> are to be deposited into the fine and forfeiture fund. The bill also includes a declaratory statement that the amendments relating to the disposition of these revenues by consolidated governments are intended to reiterate the original intent of the Legislature.

### **Redaction of social security numbers in court records**

#### Present situation:

Section 119.07(6)(gg), F.S., allows specified social security numbers included in court files to be available for public inspection and copying unless redaction is requested by the holder of the numbers.

<sup>6</sup> Section 318.21, F.S.

<sup>7</sup> Section 318.21(2)(g)3., F.S.

<sup>8</sup> Section 318.21(2)(g)2., F.S.

<sup>9</sup> The Florida Supreme Court has held that to assure that Dade County could be adequately financed for its performance of municipal services in its unincorporated areas, that the provisions of Article VIII, section (6)(f) of the Florida Constitution of 1968 (which provide that to the extent not inconsistent with the powers of existing municipalities or general law, Dade County may exercise all powers conferred now or hereafter by general law conferred upon municipalities) was a municipality and entitled to the municipal share of alcoholic beverage license taxes imposed and collected within the unincorporated areas of the county. State ex rel. Dade County v. Nuzum, 372 So.2d 441 (Fla. 1979).

Effective January 1, 2006, the clerks will be required to keep complete bank account, debit, charge, credit card numbers, and social security numbers confidential and exempt without any person having to request redaction. During the 2002 legislative session, the Legislature created the Study Committee on Public Records and charged it with studying issues of privacy in the electronic release of court records and other public records.<sup>10</sup> As a result, the Florida Supreme Court has issued an administrative order halting the online publication of specified court records pending recommendations by a workgroup, whose recommendations are due July 1, 2005.<sup>11</sup>

Proposed changes:

The bill extends the deadline for the clerks to keep social security, bank account, debit, charge, and credit card numbers included in court files confidential and exempt from January 1, 2006 to January 1, 2007.

**Performance of court-related functions performed by court clerks**

Present situation:

The Florida Constitution creates the position of chief judge and specifically provides that the chief judge "shall be responsible for the administrative supervision of the circuit courts and county courts in his circuit."<sup>12</sup> The elected office of the clerk of court is also established by the Florida Constitution, which provides that "notwithstanding any other provision of the constitution, the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."<sup>13</sup> Funding for the offices of the clerks is constitutionally required to 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.<sup>14</sup> The list of court-related functions clerks may fund from filing fees, service charges, court costs, and fines are limited to those functions expressly authorized by law or court rule.<sup>15</sup> The statute also provides that clerks may not fund from filing fees, service charges, court costs, and fines functions which are not expressly provided by law, functions assigned by administrative order which are not expressly provided by statute; enhanced levels of service which are not required by the clerk to perform the statutorily-required functions; and functions identified as local requirements or local option programs.<sup>16</sup> The judiciary has no power to fix appropriations.<sup>17</sup>

Proposed changes:

The bill amends s. 28.36(2), F.S., to provide that the chief judge, after consultation with the clerk of court, shall coordinate the provision of all court-related functions and determine the priorities for the court-related functions which can be funded by filing fees, service charges, court costs and fines as provided by s. 28.36(4)(a), F.S. The bill creates s. 28.44, F.S., which provides that a function being performed in support of the trial courts on July 1, 2004, may only be discontinued or substantially modified if the chief judge has consented in writing or the clerk has given the chief judge written notice of the discontinuance or intention to substantially modify a function at least one year before the effective date of such discontinuance or modification. The bill also creates s. 28.45, F.S., to provide that clerks who act in good faith upon a court-related duty prescribed by a court rule or administrative

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<sup>10</sup> Chapter 2002-302, LOF.

<sup>11</sup> AOSC04-4, Supreme Court of Florida, February 12, 2004.

<sup>12</sup> Article V, section 2(d) of the Florida Constitution.

<sup>13</sup> Article V, section 16 of the Florida Constitution.

<sup>14</sup> Article V, section 14(b) of the Florida Constitution.

<sup>15</sup> Section 28.35(4)(a), F.S., provides a list of court-related functions which may be funded by filing fees, service charges, court costs, and finds. The list includes case maintenance; records management; court preparation and attendance; processing the assignment, reopening, and reassignment of cases; processing of appeals; collection and distribution of fines, fees, service charges, and court costs; processing of bond forfeiture payments; payment of jurors and witnesses; data collection and reporting; processing of jurors; determination of indigent status; and reasonable administrative support costs to enable the clerk to carry out these court-related functions.

<sup>16</sup> Section 28.35(4)(b), F.S.

<sup>17</sup> Article V, section 14(d) of the Florida Constitution.

order of a chief judge, shall not be held responsible to repay costs associated with the duty if it is later determined that the performance of that duty was not a proper expenditure of state funds. Lastly, the bill adds subsection (4) to section 43.26, F.S., which reiterates that the chief judge has the authority to promote the prompt and efficient administration of justice and is required to consult with the clerk of court in determining the priority of services provided by the clerk.

## Other

The bill also makes numerous statutory changes as follows:

- Provides a multitude of administrative requirements designed to aide the Justice Administrative Commission in the furtherance of their duty to account for and pay for various elements of the state court system;
- Requires counties to pay for due process costs when contracting with the Public Defender to defend violations of special laws, and to recover fees from guilty defendants;
- Clarifies that any other entity designated by a county charter may be the designated custodian of official court records;
- Clarifies that the clerk's court collections can be remitted monthly, rather than within 7 days;
- Requires counties designated as the county headquarters for each appellate district to pay for designated costs of the public defender's office in that county.
- Requires counties to pay for furniture in hearing rooms and for audio equipment;
- Allows the Guardian ad Litem Program to request criminal background checks of volunteer applicants, and obtain records upon presentment of orders;
- Exempts the Justice Administrative Commission from the Administrative Procedures Act;
- Removes the county obligation to fund mediation for indigents;
- Allows the courts to charge for scheduled mediation sessions, and requires the clerk to report to the chief judge amounts collected for mediation fees;
- Allows the clerk to deposit unclaimed monies and bonds into the fine and forfeiture fund;
- Requires the clerk to report quarterly to the Office of the State Courts Administrator, the amount collected of the \$15 fee for court facilities;
- Deletes the counties' responsibility to pay for Civil Traffic Infraction Hearing Officer programs, as hearing officers are a state responsibility;
- Conforms the criminal fee for return of a license after a criminal offense to match the current \$47.50 fee for the civil offense;
- Includes the sheriff and the clerk in bond forfeiture provisions;
- Allows the Office of the State Court Administrator to recover expenditures for state-funded services furnished to non-indigent private users, through the Grants and Donations Trust Fund;
- Repeals the Article V Indigent Services Board effective July 1, 2006. The board is made up of 12 members appointed by the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court. The Board is required to make recommendations to the Legislature concerning qualifications and compensation for state-funded due process costs for indigents;
- Allows counties to use up to 25% of a \$15 surcharge on civil traffic infractions to be used to support local law libraries;
- Requires the clerk of the court to withhold any unpaid fees, fines and court costs when remitting a cash bond;
- Provides that court reporting equipment is a state responsibility while the wiring for the equipment is a county responsibility; and
- Provides that counties are exempt from paying filing fees when under contract with the state or enforcing state laws through local ordinances.

## C. SECTION DIRECTORY:

Section 1 amends s. 27.40, F.S., regarding court-appointed counsel.

Section 2 amends s. 27.42, F.S., regarding Circuit Article V indigent services committees.

Section 3 amends s. 27.52, F.S., regarding the determination of indigency.

Section 4 amends s. 27.5304, F.S., regarding compensation of court appointed counsel.

Section 5 amends s. 27.54, F.S., regarding the limitation on payment of expenditures for the public defender's office.

Section 6 amends s. 28.24, F.S., regarding service charges by the clerk of the circuit court.

Sections 7 and 21 amends ss. 28.2402 and 34.045, F.S., regarding cost recovery and use of the courts for ordinance or special law violations.

Section 8 amends s. 28.245, F.S., regarding transmittal of funds to the Department of Revenue.

Section 9 amends s. 28.246, F.S., regarding the payment of court-related fees, charges, and costs; partial payments; and distribution of funds.

Section 10 amends s. 28.345, F.S., regarding an exemption from court-related fees and charges.

Section 11 amends s. 28.36, F.S., regarding the clerk's budget procedure.

Section 12 amends s. 28.37, F.S., regarding fines, fees, service charges, and costs remitted to the state.

Section 13 creates s. 28.44, F.S., regarding the clerk's discontinuance of court-related functions.

Section 14 amends s. 29.004, F.S., regarding court system payment for expert witnesses.

Section 15 amends s. 29.005, F.S., regarding payment of expert witnesses by the state attorneys.

Section 16 amends s. 29.007, F.S., regarding payment for mental health professionals by court appointed counsel.

Section 17 amends s. 29.008, F.S., relating to county funding responsibilities.

Section 18 amends s. 29.015, F.S., regarding the contingency fund for due process services appropriations categories.

Section 19 amends s. 29.018, F.S., regarding cost sharing of due process services.

Section 20 amends s. 29.0185, F.S., regarding provision of state-funded due process services to individuals.

Section 22 amends s. 34.191, F.S., regarding the disposition of fines and forfeitures.

Sections 23, 24, and 25 amend ss. 39.0132, 39.821, and 39.822, F.S., regarding guardians ad litem.

Section 26 amends s. 40.29, F.S., regarding the payment of due process costs.

Section 27 creates s. 40.355, F.S., regarding accounting and payment to public defenders and state attorneys.

Section 28 amends s. 43.16, F.S., regarding the powers and duties of the Justice Administrative Commission.

Section 29 amends s. 43.26, F.S., regarding the powers of the chief judge of the circuit.

Sections 30 and 31 amend ss. 44.102 and 44.108, F.S., regarding mediation.

Section 32 amends s. 57.081, F.S., to add a cross-reference.

Section 33 creates s. 57.082, F.S., regarding the determination of civil indigency.

Sections 34 and 35 amends ss.92.142 and 92.231, F.S., regarding payment of witnesses.

Section 36 amends s. 110.205, F.S., regarding exempt positions in career service.

Section 37 amends s. 116.01, F.S., regarding payment of public funds into the treasury.

Section 38 amends s. 119.07, F.S., regarding inspection and copying of records.

Section 39 amends s. 142.01, F.S., the fine and forfeiture fund.

Sections 40, 41, and 42 amend s. 213.13, 219.07, and 219.075, F.S., regarding remittance of funds by the clerk.

Section 43 amends s. 318.121, F.S., regarding the preemption of additional fees, fines, surcharges, and costs.

Section 44 amends s. 318.18, F.S., regarding the distribution of civil penalties.

Section 45 amends s. 318.21, F.S., regarding the disposition of civil penalties by county courts.

Sections 46 and 47 amends s. 318.31 and 318.325, F.S., regarding the Civil Traffic Infraction Hearing Officer Program.

Section 48 amends s. 322.29, F.S., regarding the surrender and return of license.

Section 49 amends s. 372.72, F.S., regarding disposition of fines, penalties, and forfeitures.

Sections 50 and 51 amend ss. 903.26 and 903.28, F.S., regarding bond forfeitures.

Sections 52 and 54 amend ss.916.115 and 916.301, F.S., regarding the appointment of experts.

Section 53 amends s. 916.12, F.S., regarding mental competence to proceed.

Section 55 amends s. 938.29, F.S., regarding legal assistance and liens for payment of attorney's fees or costs.

Section 56 amends s. 939.06, F.S., providing that acquitted defendants aren't liable for costs.

Section 57 amends s. 985.05, F.S. regarding access to court records by the Justice Administrative Commission

Section 58 amends s. 985.201, F.S., regarding jurisdiction.



Section 59 creates a section regarding compensation of traffic court witnesses.

Section 60 creates a section regarding recovery of expenditures for state-funded services.

Section 61 creates a section regarding legislative intent.

Section 62 repeals s. 318.37, F.S., regarding the Civil Traffic Infraction Hearing Officer Program and s. 29.014, F.S., regarding the Article V Indigent Services Advisory Board.

Section 63 provides an effective date of July 1, 2005, except as otherwise provided.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Declaration of legislative intent that fines for violations that occurred within the unincorporated area of a county having a consolidated government are to be deposited into the fine and forfeiture fund is expected to result in increased revenue to the local clerk of approximately \$8 million on a recurring basis. In addition, funds accumulating in an escrow account being held by the Clerk of Miami-Dade County would be transferred to the state adding approximately \$8 million of non-recurring revenue. Any funds not retained by the clerk to support operations will be deposited into the Clerks of Court Trust Fund in the Department of Revenue. Any surplus in the Clerks of Court Trust Fund is deposited into the General Revenue Fund.

There are a number of other provisions that will affect court-related revenue received by the clerk that would, in turn, affect state revenue. The overall impact of these changes would appear to be insignificant.

The courts may generate revenue since they will be allowed to recoup the costs of services provided to the public by the courts and to charge cancellation fees for mediation. The impact of these changes is indeterminate since unit cost and utilization data are not available to estimate the cost of court services provided to the public. There are also no data available for estimating the number of mediation cancellations.

#### 2. Expenditures:

It is expected that providing statutory authorization for "indigent for costs" will increase the due process costs paid for by the state. Since many of these costs are currently assumed by the state through more informal, local processes, any additional impact is indeterminate.

It is expected that allowing the court to appoint mental health experts will result in a shift of state-funded due process costs, from state attorneys and public defenders to the courts. The state may also experience a savings from allowing the court to decide competency based on one expert opinion.

It is expected that amendments providing increased authority for the courts to appoint mental health experts and other expert witnesses will also increase state costs. The impact of these changes is indeterminate since there are no data available to determine how much increased utilization to expect or how much utilization by other publicly-funded entities would decrease.

The bill requires state payment for witnesses in civil traffic cases. The total impact is indeterminate since data are not available to estimate the number of witnesses that would be compensated.

The bill provides for state funding of the civil traffic hearing officer program. Data are not available from the courts on the anticipated costs of the program to the state.

The bill provides that it is a 1st degree misdemeanor to knowingly provide false information during the indigency determination process.

## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

Local governments will be able to charge the \$10 filing fee for local ordinance violations to guilty defendants. The impact is indeterminate because the number of guilty dispositions is not known and data are unavailable to determine the percentage of amounts due that would actually be collected. Data provided by the Office of State Courts Administrator for HB 113A from the 2003 special session indicated 118,773 local ordinance violation filings. This would suggest a maximum possible impact of \$1.2 million even if all cases were found guilty and there were a 100% collection rate.

Clerks of court should experience an increase in revenue because of fee increases. These may be offset by limitations on the ability to charge certain fees. The net impact is indeterminate.

### 2. Expenditures:

Local governments would be required to pay due process costs of indigent individuals in local ordinance violation cases. The expected impact is indeterminate but expected to be insignificant.

There would also be an indeterminate impact on local clerks who would be required to participate in the Clerks of Court Information System.

There may be an increase in workload for the Clerks of Court based on increased requirements for indigency determination and a new process for determination of civil indigent status. The impact is indeterminate.

Provisions authorizing the chief judge to direct the work of the court could result in additional workload and costs for the Clerks of Court. The impact is indeterminate since it is not known what demands judges might place on clerks that are in addition to current responsibilities.

Local government will not have to pay filing fees for certain local ordinance violations. The impact is indeterminate but likely insignificant based on total filings.

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The court system will have enhanced mechanisms to recover state-funded due process costs furnished to private users.

## D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

Not applicable.

2. Other:

The purpose of this bill is to continue 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.

This bill continues to implement the legislative framework for this shift in responsibility for funding of the state courts system.

Separation of powers: Article II, section 3, Florida's separation of powers provision, states: "[t]he powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." One of the prohibitions under this constitutional provision is that "no branch may encroach upon the powers of another."<sup>18</sup> A primary function of the legislature is that of appropriating funds. A separations of powers issue may be implicated when a chief judge has the ability to assign responsibilities to a non-judicial constitutional officer, which may be tantamount to the judicial branch making an appropriation.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

**On March 31, 2005, the Judiciary Committee adopted 25 amendments as follows:**

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<sup>18</sup> Florida Senate v. Florida Public Employees Council 79, AFSCME, 784 So.2d 404, 408 (Fla. 2001).

Amdt 1 by Simmons (lines 364 and 365): Provides that the Justice Administration Commission (JAC) “shall investigate and evaluate the use of,” rather than “may expend funds for,” alternate models for the provision of due-process services and representation other on than a per-case fee model.

Amdt 2 by Simmons (line 440): Clarifies that the \$40 application fee is for the application for “court-appointed counsel.”

Amdt 3 by Simmons (line 550): Provides that a person eligible for a public defender, but represented by private counsel, may still be considered indigent for the purposes of receiving costs, if the private counsel is paid “a reasonable fee as approved by the court,” rather than “a fee which does not exceed the limitations in s. 27.5304.”

Amdt 4 by Simmons (lines 554-556): Removes language from the bill that provides that due-process costs for indigents are not available for post-conviction relief proceedings.

Amdt 5 by Planas (lines 635 and 1776): Changes proposed penalty for providing false information on an application for indigency from a second degree misdemeanor to a third degree felony.

Amdt 6 by Simmons (lines 637-725): TECHNICAL. Only makes technical drafting changes [i.e., re-designates paragraphs (2)(a) and (b) as subsections (3) and (4)].

Amdt 7 by Simmons (lines 941-947): Restores current law (i.e., restores clerk authority to impose \$5 monthly service charge clerks for receiving and disbursing certain partial payments in lieu of charging a one-time administrative services charge of \$25).

Amdt 8 by Simmons (lines 1028 and 1029): Provides that the monthly payment amount as part of a clerk payment plan corresponds to a person’s ability to pay (as required under current law) when it does not exceed 2 percent of his or her net income.

Amdt 9 by Simmons (lines 1048 and 1049): Directs the chief judge to coordinate the provision of all court-related functions within a circuit and determine priorities for the court-related functions provided by the clerks of court.

Amdt 10 by Simmons (lines 1081 and 1082): Establishes the conditions under which a clerk may discontinue performance of functions performed in support of the trial court.

Amdt 11 by Planas (lines 1081 and 1082): Provides circumstances in which clerks may exceed statutory budget limits.

Amdt 12 by Simmons (lines 1375-1378): Eliminates language duplicative of line 1380 of the bill and, as drafted, inadvertently permitting indigency to be determined solely by the court without regard to existing statutory requirements.

Amdt 13 by Simmons (lines 1434-1439): Provides that a “municipality” for purposes of dispositions of fines and forfeitures does not include consolidated governments.

Amdt 14 by Simmons (lines 1457-1459): Rather than permitting the JAC to inspect court records that may contain confidential information of a highly personal nature when auditing compensation of court-appointed counsel, the bill limits the JAC to a review of dockets and if these are insufficient for auditing purposes, then the JAC may petition the court to obtain other documentation.

Amdt 15 by Simmons (between lines 1581 and 1582): Requires chief judges to consult with clerks in prioritizing the court-related services provided by the clerks and authorized pursuant to s. 28.35(4)(a).

Amdt 16 by Simmons (lines 1910-1975): Removes the section of the bill proposing to repeal authority for counties to use local option sales tax proceeds for operational costs associated with court facilities.

Amdt 17 by Simmons (lines 2092-2096): Restates proposed language requiring all counties to deposit certain civil penalties into the clerks' fine and forfeiture fund by including a reference to consolidated governments.

Amdt 18 by Simmons (lines 2104-2107): Removes proposed language dictating court use of hearing officer program funds.

Amdt 19 by Simmons (lines 2507 and 2515): Revises proposed language making the recovery of state-funded expenditures by trial court administrators mandatory. Changes it to discretionary.

Amdt 20 by Simmons (lines 2519-2521): Removes proposed language requiring the court to enter into payment plans for those unable to pay for certain state-funded services. (This should be handled through clerk payment plans.)

Amdt 21 by Simmons (line 2528): TECHNICAL. Corrects inadvertent reference in regard to section repealed in the bill.

Amdt 22 by Simmons (between lines 2529 and 2530): Declaring that the amendments relating to disposition of certain revenues by consolidated governments are intended to reiterate the original intent of the Legislature.

Amdt 23 by Kottkamp (lines 246-247): Removes the requirement that circuit Article V indigent services committees compile and maintain a list of attorneys by race, sex, and ethnicity.

Amdt 24 by Kottkamp (lines 400-402): Removes the requirement that the Justice Administrative Commission shall track the race, sex, and ethnicity of private court-appointed counsel for each circuit and report the data in a required quarterly report.

Amdt 25 by Seiler (line 751): Specifies that the fee assessed to persons charged with local ordinance violations must be charged in all instances where the person enters a plea of guilty.

**The Justice Appropriations Committee adopted a strike-all amendment as amended by Seiler amendment #3 at its meeting on April 15, 2005.** Major differences from the strike-all as compared to the original bill are as follows:

- Removes language earmarking use of certain funds. Retains deposit of funds into currently designated trust funds but expenditures would be subject to appropriations.
- Removes language allowing the Clerks of Court Operations Corporation to increase budget caps beyond statutory limits.
- Provides that court reporting equipment is state responsibility while wiring is county responsibility.
- Provides that local governments do not have to pay a filing fee when they are under contract with the state or enforcing a state law through a local ordinance.
- Requires clerks of court to withhold any unpaid fines, fees, service charges or court costs from remission of a cash bond.
- Requires payments collected from individuals on county probation to be split equally between the clerk of the court for any unpaid fines, fees, service charges or court costs and the county for cost of supervision.
- Raises threshold for presumption that a person is not indigent if he or she owns personal or real property up to \$2,500 or one vehicle up to \$5,000. Current language does not allow for any ownership of tangible or intangible real property and there is no allowance for a vehicle.
- Reduces severity of crime of providing false information from third degree felony to first degree misdemeanor.
- Allows attorneys ad litem and court appointed counsel to get free copies from the clerk.

- Allows court appointed counsel and judges' staff an exemption from court-related fees.
- Delays repeal of the Statewide Article V Services Advisory Board from July 1, 2005 to July 1, 2006.
- Allows counties to use up to 25% of funds generated by the \$15 surcharge on traffic tickets to continue support for law libraries at 2004 levels.
- Makes a number of technical changes suggested by stakeholders.

**On April 22, 2005, Rep. Simmons filed a strike all amendment at the Justice Council meeting, which makes the following changes:**

- Reiterates that private counsel appointed by the court shall be selected from a registry of individual attorneys (page 12).
- Makes each attorney on the registry responsible for notifying the JAC of a change in status (page 12).
- Requires circuit Article V indigent services committees to provide a current copy of each registry to the JAC and the Indigent Service Advisory Board (p. 13).
- Gives the JAC authority to review documentation related to hourly accounting, subject to attorney-client privilege and work-product privilege (p. 14).
- Requires counsel representing a person determined to be indigent for costs to execute the JAC's contract (p. 25).
- Requires counsel providing representation under an alternative model to enter into a uniform contract with the JAC (p. 27).
- Requires the clerks to give public guardians access to and free copies of specified public records (p. 33).
- Exempts public guardians from court-related fees and charges (p. 43).
- Requires clerks to implement corrective actions identified by the CFO regarding proposed budgets (p. 45).
- Requires the JAC to approve uniform contract forms for use in processing payments for due process services (p. 49).
- Confirms the statutory duties of the JAC to include provisions relating to the Guardian ad Litem program (p. 65).
- Exempts all officers and employees of the JAC and related organizations from career service positions under chapter 110 (p. 75).
- Provides requirements for restitution orders regarding delinquency cases, and allows the court to retain jurisdiction (p. 97).
- Requires clerks to remit to DOR for deposit into GR, funds received from the Clerk of Court Trust Fund (p. 99).
- Confirms cross-reference to the civil indigency provisions (p. 101).

The Kyle Amendment to the Simmons strike-all removed language requiring registry attorneys to identify the race, sex, and ethnicity of each attorney listed in the registry (p. 13).

The Simmons Amendment to the Simmons strike-all removed section 54 of the bill, which provided that funds collected from individuals on county probation must be split equally between the clerk for any unpaid fees, fines, and court costs, and the county for the cost of supervision.