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January 11, 2018

Section 28.35 (2)(c), Florida Statutes, charges the Clerk of Court Operations Corporation (CCOC) with recommending adjustments to fines and fees to provide adequate funding of the Clerks of the Court of the State of Florida. In compliance with this statutory requirement, the CCOC Executive Council approved the following list of revenue options contained in this communication to address a serious concern of inadequate revenues to support statutory obligations. On behalf of the CCOC, it is our pleasure to submit to you this report for your consideration.

There is a significant gap between the projected revenue available and the needs of the Clerks' offices. Revenue is continuing to decline, while expenses outside the control of Clerks continue to increase. This year's shortfall between Clerks' needs and the available revenues is currently at least \$50 million. This number is expected to increase significantly due to the impacts of Hurricane Irma and other factors outside the control of Clerks. Unfortunately, I must also report that we do not anticipate that the revenues will be there as projected to support our current CFY 2017-18 statewide budget, resulting in an immediate current year budget emergency.

Clerks recognize and appreciate the Legislature's actions over the past several years to provide additional funding to offset some of the budget challenges. We respect the role of the Legislature in the appropriations process and we look forward to working together on a solution.

Accordingly, the CCOC urges the Legislature to address the broken model and provide the necessary funding to support the statutory duties of Florida's Clerks of Court. Please note that we are in no way requesting that all the items listed in this report be provided to Clerks. Rather, the following menu of options represents this body's efforts to assist the Legislature by identifying areas for consideration to provide funding to carry out the statutory responsibilities, while working towards a long-term solution.

Our Mission: As a governmental organization created by the Legislature, we evaluate Clerks' court-related budgetary needs, and recommend the fair and equitable allocation of resources needed to sustain court operations.

We greatly appreciate your review and consideration of these legislative options. **The budget model is broken.** Clerks of the State of Florida stand ready to work with you and to respond with any additional information needed.

Respectfully,



Ken Burke, CPA
Pinellas County Clerk of the Circuit Court & Comptroller
Chair, Florida Clerks of Court Operations Corporation

Cc: Council Members
John Dew, CCOC Executive Director



FUNDING CONTINUITY ACTION PLAN

LIST OF OPTIONS

JANUARY 2018



2560-102 BARRINGTON CIRCLE ✦ TALLAHASSEE, FLORIDA 32308 ✦ PHONE 850.386.2223 ✦ FAX 850.386.2224 ✦ WWW.FLCCOC.ORG

BUDGET BACKGROUND

The Clerks' current year (2017-18) approved revenue-limited budget is \$409.4 million. This approved budget represents a reduction of \$12.6 million from the CFY 2016-17 budget. In total, Clerks' budgets have been reduced by \$63 million over the last 5 years. Revenues are not expected to be sufficient to support the already-reduced approved \$409.4 million budget.

For context, the Constitutional amendment placing responsibility for Court and Clerk funding with the State went into effect with the fiscal year beginning 2004-05. This CFY 2017-18 budget now represents the lowest level of funding for Clerks under that model.

CLERKS' BROKEN BUDGET MODEL

Clerks rely heavily on cases such as traffic citations to fund their budgets. Thus, the current budget model depends on the traffic division to fund the criminal division. In recent years, there has been a substantial decrease in the number of traffic citations issued. The population is up, economy is up, and the number of drivers is up, but traffic citations are down. This trend is driving revenues that fund Clerks' budgets down dramatically. For many services provided by the Clerk, there are no associated fees and the fees that are provided are not commensurate with the work activity in our offices. The misalignment of budget to workload expense is unsustainable and dangerous for the people Clerks serve.

As revenues decline, there are also many factors outside of the control of the Clerk that are increasing costs currently not considered under this broken budget model. These unfunded variables include:

- Increasing population (more customers to serve)
- Increases in health insurance costs
- Increases to FRS contributions
- Fiscal impact to Clerks from state policy decisions and changes
- Judicial and Administrative Orders (at both State and Local levels)
- Protecting data that could lead to identity theft

Per statute, the CCOC cannot approve budgets that exceed the revenue estimates provided by the Revenue Estimating Conference (REC). The approved budget MUST equal the REC projection under the existing funding model regardless of needs or costs. Current available revenues are far below what Clerks indicate is needed to sufficiently fund services provided by our offices. **The budget model is broken.**

Our Mission: As a governmental organization created by the Legislature, we evaluate Clerks' court-related budgetary needs, and recommend the fair and equitable allocation of resources needed to sustain court operations.

HURRICANE IRMA IMPACT

Unfortunately, like most of our state, Clerks' offices were impacted by Hurricane Irma. In addition to the reductions and shortfall detailed above, the Clerks' Trust Fund is expected to decline further during the year as a result of this massive storm. Below are the results of an initial impact study conducted by the CCOC.

- The CCOC's estimated fiscal impact suggests losses of between \$7-8.6 million in traffic alone for the September through November period, the major revenue source for the current funding model for Clerks.
- CCOC estimates loss of non-traffic related revenues such as reduced filing fees, services charges, and court costs, to the Trust Fund of approximately \$5.7 million for September alone.

This loss of revenue due to Hurricane Irma will further negatively impact Clerks' budgets.

LIST OF OPTIONS

The following menu of options represents this body's efforts to assist the Legislature by identifying ways to provide adequate funding to carry out Clerks' extensive statutory responsibilities. For additional information or questions please contact the CCOC.

Redirect Ch. 2008-111 revenue to Clerks from State General Revenue

(Between \$55 and 57 million)

- The revenues collected by the Clerks per Ch. 2008-111, LOF may be redirected to the Clerks of Court Trust Fund and retained locally to offset costs of performing court-related functions.
- Ch. 2008-111 LOF comprises of 73 sections of statutes. These individual statutes can be compiled into four revenue sources: (1) s. 316.193, (2) s. 28.241(1) (d), (3) s. 318.18, F.S. and (4) all other

Amend s. 45.035 (3), F.S. to clarify that Clerks collect \$70 to cover their associated workload each time a sale is reset rather than conflicting interpretations on whether the fee is only allowed once on each case

(Indeterminate Positive)

- Interpretation of the application of the electronic sale fee on foreclosure sales is not well defined. Clarify legislation to confirm that Clerks may charge each time a sale is reset.

Provide Clerks funding for workload associated with domestic violence, repeat violence, dating violence, sexual violence, and stalking cases (\$200 per case– not to be taken away from funding for the DV shelters or FCADV)

(Between \$16 and \$18 million)

- Section 741.30(2) (a), F.S. states that, notwithstanding any other law, the clerk of the court may not assess a fee for filing a petition for protection against repeat violence, sexual violence, or dating violence. However, the clerk of the court may, each quarter, submit to the Office of the State Courts Administrator a certified request for reimbursement for petitions for protection issued by the court under this section at

the rate of \$40 per petition. The request for reimbursement shall be submitted in the form and manner prescribed by the Office of the State Courts Administrator. From this reimbursement, the clerk shall pay the law enforcement agency serving the injunction their requested; however, this fee may not exceed \$20.

- This option would provide authorizing a reimbursement for the Clerk of \$200 per case filed for Clerk. This service charge does not include law enforcement agency costs.
- It should also be noted that this reimbursement should be additional funding for this activity on a statewide basis. **It should not reduce funds already allocated to other agencies or shelters within the state who perform related/ancillary duties.** This request is to be funded from State GR.

Circuit Criminal (Felony) Case Cost Reimbursement (CCOC assumes unit cost of \$360 per case)
(Between \$60 and \$67 million)

- State agencies do not pay a filing fee for cases they file or for any copies or other services Clerks perform for them in the course of court-related activities.
- This option provides for reimbursement from the state through an annual appropriation based on estimated filings for the year under budget or using an historical average of past filings. Agencies would also be required to pay for copies and other services at the statutory rates set for all other customers in s. 28.24, F.S. This should include records on appeal. This would also provide transparency and accountability in agency budgets as these costs would be accordingly monitored and allocated.
- Responsibility for collecting amounts owed on these cases will remain with the Clerks. Performance standards currently in place, as well as certifications of minimal collections efforts by Clerks, are to be maintained and monitored for compliance.
- Under this option, circuit criminal collections would be remitted back to General Revenue.

8% Administrative Fee for collecting and remitting court fees on behalf of State GR and State agencies (excluding court TFs) to the State Department of Revenue
(Between \$15 and \$20 million)

- The Florida Department of Revenue (DOR) charges an 8% administrative fee for receiving and disbursing funds on behalf of other state agencies.
- This option provides that the State reimburse Clerks for handling all fines, fees, service charges and court costs collected for the state court system and remitted to the DOR. The recommendation is to only collect this fee from funds remitted to the State GR and other state agencies or non-court trust fund recipients not related to the core court system. This would exclude charging an administrative fee on the State Courts TF, State Attorney TF and Public Defender TF.

Civil Indigency Case Cost Reimbursement
(Between \$8 and \$9 million)

- Applicants who file civil cases, particularly dissolutions of marriage, and are determined to be indigent are not required to pay the statutory filing fees associated with the various case types being filed.
- This option suggests the State reimburse Clerks for the lost filing fee revenue to cover adequate Clerk workload costs for services rendered.

Provide funding for additional Compliance Programs**(Indeterminate Positive)**

- Seek authorization and necessary funding for enhanced compliance programs within Clerk's offices to provide individuals with options to ensure successful completion of court ordered obligations with the goal of keeping Floridians working, driving and moving forward with their lives.
- An example of a compliance enforcement mechanism is the establishment of community service programs to assist individuals with meeting court ordered obligations in lieu of court costs and fines. This could include a strategic partnership with the Department of Economic Opportunity Workforce Programs. In addition, this mirrors recommendations by the CCOC Revenue Enhancement Committee in 2010 and suggestions made to the Legislature by the National Center for State Courts in the November 2012 "Study of the Effectiveness of Collections in the Florida Courts."
- Amend s. 28.35, F.S. to specify that the Clerks of Court are charged with the responsibility for collecting all court costs, fines and fees imposed by the courts as authorized in statutes including collection schedules, determinations of community service and other related compliance or collection activities. This would require a fee paid to the Clerks to reimburse for the cost of monitoring these activities. The CCOC will develop procedures and best practices in consultation with the Courts and the Clerks.
- Other compliance enforcement options are available for discussion should policymakers decide this should be a priority.

Provide funding for increased FRS employer contribution costs in conjunction with state agencies on an approved FTE basis**Provide funding for increases in employer contributions to health insurance at the percentage increase provided to state agencies on an approved FTE basis****(Indeterminate pending further study)**

- All state agencies, including those in the court system (judiciary, public defenders, and state attorneys), receive automatic budget authority increases for changes in FRS and health insurance costs. Unlike state agencies, Clerks must absorb these costs.
- State could fund Clerks' increases at a similar amount based on what state agencies receive. This would be allocated to Clerks on an approved FTE basis.