



REVENUE ENHANCEMENT/NEW FUNDING MODEL
COMMITTEE MEETING
September 11, 2018 1:30pm

Stacy Butterfield, CPA
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REVENUE ENHANCEMENT COMMITTEE

SEPTEMBER 11, 2018

1:30 PM (EDT)

Location:

Phone Conference Call: (904) 512-0115, Code 412463

- 1) Welcome, Roll Call.....Hon. Tiffany Moore Russell
- 2) Approve August 15th Summary MinutesJohn Dew, CCOC Staff
- 3) Staff Draft of Funding Continuity Action PlanJason Welty, CCOC Staff
- 4) Long-term Funding Solution- Workgroup UpdateHon. Tiffany Moore Russell
- 5) Other Business

Committee Members: Honorable Tiffany Moore Russell, Chair; Honorable Paula O'Neil; Honorable Angel Colonnese; Honorable Jess Irby; and Honorable Victoria Rogers.

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.

Summary Minutes- Revenue Enhancement Committee

August 15, 2018 (9am. Orlando, Florida)

Draft

John Dew called the roll at 9am. Chair Russell, Clerk O'Neil, Clerk Irby, Clerk Colonnese, and Clerk Rogers were in attendance. Chair Russell announced a quorum was present as all members of the Committee were there. She asked the other individuals in the room to introduce themselves. Other Clerks present during the meeting were CCOC Executive Council Chair Clerk Butterfield and FCCC Legislative Chair Clerk Bexley.

Review of Committee's Purpose

Chair Russell noted that there are two specific purposes of the Committee. The first is to look at finding short-term funding solutions and the second is to develop a long-term sustainable funding solution for Clerks. Later in the meeting, CCOC Executive Council Chair Clerk Butterfield confirmed from her perspective also that there were two specific tasks she hoped the Committee would achieve in the next few months. The first also was related to recommending a short-term funding solution or solutions as is required under section 28.35(2)(c), F.S. This requires the CCOC as part of their statutory duties, to recommend to the Legislature adjustments to fines and fees to provide adequate funding of the Clerks. Clerk Butterfield asked that the Committee have a document with these recommendations available to the CCOC Legislative Committee for review in the next two months and that it would then be reviewed by the CCOC Executive Council for approval in November. The second task she was seeking from the Committee was a long-term funding model solution for budgeting the Clerks. It likewise would be important to have some part of that plan available for review and approval by the CCOC Executive Council in November as well.

Fiscal Outlook/Legislative Process

CCOC Staff Jason Welty provided a fiscal outlook for the 2019 Legislative Session as well as ideas on how to work in the current legislative process for requesting and receiving additional funds. From the fiscal outlook, Mr. Welty shared the priorities of the legislature, which include education and health care issues. These areas have grown by \$3 billion and \$2 billion respectively, while public safety has only grown by \$400 million in general revenue over the same time frame. The clerks will compete for general revenue with these broad policy areas and will also compete for general revenue within public safety. Within the public safety budget, the clerks will compete against the Department of Corrections, which is likely going to receive more than \$100 million to resolve lawsuits. Additionally, the Justice Administrative Commission will also likely receive \$18 million to cover deficits in due process costs. Mr. Welty conveyed the opinion that the clerks should focus on low hanging fruit for the upcoming session, such as the ability to keep revenue above the projection as well as allowing unspent revenue to be carried forward to be allocated as nonrecurring in the next year's budget. The clerks should also begin building a broad coalition of support for more innovative approaches to the funding model for future years. Mr. Welty also provided an overview of the current and future years revenue projection for the Clerks from the Revenue Estimating Conference and answered questions concerning the process.

Legislative Funding Priorities

CCOC Staff John Dew and Doug Isabelle went over the Funding Continuity Action Plan which was provided to the Legislature in January 2018 to explain each of the options listed for revenues and the results from the 2018 Legislative Session. FCCC Legislative Director Jason Harrell also provided insight. Chair Russell then engaged the Committee members and audience in a discussion on what list of funding options should be brought forward and recommended for the upcoming "Funding Continuity Action Plan". The purpose of the Plan is for the short term while the next item on the agenda is to discuss and find long-term funding solutions.

The Committee agreed to move forward all the current items in the Plan with the exceptions of the following which could be handled under the long-term funding solutions. The options to be removed from the new Funding Continuity Plan are: funding for additional compliance programs; funding for increased FRS employee contribution costs; and funding for increases in employer contributions to health insurance.

The Committee agreed to include a new option in the plan involving receiving service charges for "cash bonds." Specifically, to clarify the current statutory language to provide receiving service charges also when "processing" a cash bond whereas currently the language appears to only provides charges for "approving" a bond. The Committee asked CCOC staff to develop a survey to Clerks on cash bonds to better understand the potential revenues.

The Committee also recommended including within the current recommendations funding necessary for the new duties most recently added by the 2018 Legislature such as "risk protection orders", data transparency implementation, and other requirements. Finally, to update the potential projected revenues from each of the options. This may also include a survey of Clerks for determining the number of "resets" on electronic foreclosure sales.

Once all the numbers are provided to the Committee, they would determine if we provide only the list of options without the estimated budget

Finally, the Committee asked that CCOC staff update the report and assure the language emphasizes that the funding options, if implemented, are essential to meeting public safety issues and requirements established by the Legislature to serve the public.

Conceptual Review of New Funding Model

Chair Russell asked Orange County Clerk staffer Kathryn Farynowski to go through the Conceptual Overview of the Long-Term Model as provided to the members. The members agreed with each of the overall objectives of the model which included that it is a case-related, cost-based funding process; will calculate what our required level of funding is to perform our statutory duties and meet court partner expectations; will not determine where the money comes from or how funded; and must be a sustainable model that is easy to communicate and present with data and a methodology that has integrity.

Likewise, consensus was reached on the decision points and assumptions on how the model would be applied. For development of the model on a statewide basis for funding, it was decided that cases for revenue purposes would be used for the 10 case types. However, the CCOC Council in their distribution of the dollars could use subcases within the 10 case types for determining the distribution amount to each Clerk if they wanted. It was stressed, that while difficult, the model also needed to include “continuing” cases as part of the model to help assure the Legislature understands that many new cases may be “touched” by Clerks’ staff over a number of years and is therefore a workload. This should be an ongoing educational process.

Clerk Butterfield mentioned that for the model to be successful we will need to continue to work with Clerks to assure they each are following the business rules for projections and counting cases. She also mentioned that in the future the CCOC needs to do a better job of obtaining more detailed Clerk expenditure data in order to connect the funding sources to the expenditures and that this is something the CCOC Budget Committee should address.

Clerk Russell received approval from the Committee members that a workgroup of CCOC and Clerk’s staff would now develop and test the conceptual model with real data. The workgroup would be led by Kathryn Farynowski (Orange) and will heavily depend on CCOC staff resources. Other suggested group members included Dan Wolson (Manatee); Kim Stenger (Polk); Chris Mettler (Pasco); and consideration of involvement from Flagler County and FCCC as staff.

Chair Russell noted that the Committee would potentially meet again via a conference call in September to review the draft of the short-term funding continuity plan and hear back from the workgroup on their progress.

The meeting concluded at 12:35pm.



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AGENDA ITEM #3

DATE: September 11, 2018
SUBJECT: CCOC Staff Draft of Funding Continuity Action Plan
COMMITTEE ACTION: Review Funding Continuity Plan and Recommend Revisions

OVERVIEW: Section 28.35(2)(c), F.S. requires the CCOC to recommend funding solutions to the Legislature if there are not sufficient revenues available to ensure reasonable and adequate funding of the Clerks in the performance of their court-related duties. Based on the Original Budget Requests, the Clerks do not have adequate funding of the Clerks' court-related duties.

The Revenue Enhancement Committee (REC) met on August 15, 2018 and directed CCOC staff to draft a Funding Continuity Plan and bring back at the next meeting with recommendations. This draft document has many of the same recommendations as provided in last year's plan. However, it has been updated to include additional recommendations both as directed by the Committee at the last meeting and a couple of additional items included by CCOC Staff.

Once approved, the REC will provide the plan to the CCOC Legislative Committee for review and suggested edits. Once approved by the Legislative Committee, the CCOC Executive Council will review and be available for approval in November.

COMMITTEE ACTION: Review draft Funding Continuity Plan and provide recommendations to staff for revisions.

LEAD STAFF: Jason Welty

ATTACHMENTS: CCOC Staff Draft of Funding Continuity Action Plan



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CLERKS' BROKEN BUDGET MODEL

Clerks provide critical public safety and commerce services to the citizens of Florida. As part of the criminal justice system, the Clerks are responsible for maintaining records for the system and providing those records timely to the Court for the administration of justice. However, revenues for providing these services are not adequate, which forces the Clerks to rely heavily on revenues from other cases, such as traffic citations, to be able to meet the needs of the citizens they serve. 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 state's population is up, the economy is improving, and the number of drivers is up, but the number of traffic citations issued is down. This trend is driving revenues that fund the Clerks' public safety related services down dramatically. For many services provided by the Clerks, there are no associated fees or the fees that are provided are not commensurate with the work necessary to continue to serve the public. The misalignment of budget to workload is unsustainable and dangerous for the people Clerks serve.

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

- 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
- Increases in health insurance costs
- Increases to statutorily-set FRS contribution rate

Pursuant to statute, the Florida Clerks of Court Operations Corporation (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 for the public. **The budget model is broken. The Clerks' CFY 2018-19 approved revenue-limited budget is \$424.6 million; however, the approved budget is \$37.3 million less than the Clerks' budget request, which continues to put public safety at risk and threatens to slow down commerce in Florida's economy.**

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.

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.

Funding for Public Safety Services with No Fees

Provide funding for injunctions for protection for the five types of interpersonal violence: domestic, dating, repeat, and sexual violence, and stalking.

(\$16.5 million)

- Injunctions for protection from violence are critically important to ensuring public safety. Currently, Clerks perform these services at no cost to the petitioners and the Clerks support this good public policy. These services include assisting those individuals requesting injunctions, which is time consuming and labor intensive.
- This option assumes the legislature would provide a \$195 filing fee per case from general revenue. 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. **Revenue for this option should not reduce funds already allocated to other agencies or shelters within the state who perform related/ancillary duties.**

Provide funding for Baker Act and Marchman Act

(\$11.5 million)

- The Baker Act and Marchman Act are designed to protect the public and individuals that are displaying behavior that will cause serious bodily harm to oneself or others and individuals that have lost self-control with respect to substance abuse. Currently, Clerks perform these services at no cost to the petitioners and the Clerks support this good public policy. Clerks must efficiently process involuntary admissions for the Baker Act and Marchman Act to uphold that public safety.
- This option assumes the legislature would provide a \$195 filing fee per case from general revenue. 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. **Revenue for this option should not reduce funds already allocated to other agencies or receiving facilities within the state who perform related duties.**

Criminal Case Cost Reimbursement

(Between \$53 million and \$74 million)

- State agencies do not pay a filing fee for cases they file or for any copies or other services Clerks perform in the course of performing court-related activities.
- This option provides for reimbursement from the state through an annual general revenue appropriation based on estimated filings for the year. 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., including records on appeal.

- 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, criminal collections would be remitted back to general revenue.

Civil Indigency Case Cost Reimbursement

(\$11.2 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 continues to provide financial assistance to those that need access to the judiciary while allowing Clerks to provide those services timely and equitably.

Administrative Changes

Eliminate the automatic sweep of the Clerks of Court Trust Fund.

(Variable based on Collections – estimated \$13.8 million in current fiscal year)

- The FY 2017-18 collections were greater than projected by the Revenue Estimating Conference (REC). However, the July Article V Revenue Estimating Conference sets the Clerks' budget. Additional revenue collected by the Clerks accumulates in the Clerks of Court Trust Fund and could be automatically swept by the Department of Revenue on January 25.
 - Based on the Clerks' budget request of approximately \$460 million for FY 2017-18, the Clerks could have utilized this funding to fund important public safety issues, such as increased compliance with statutory reporting of mental health records in FDLE's MECOM database.

Allow unexpended budget authority to be carried forward as a non-recurring revenue source for calculating Clerks' budgets.

(Variable – Between \$4 and \$6 million)

- Each year, the Clerks expend between 97 – 98 percent of their budget authority as a result of the normal timing of filling open positions and the receipt of requested items for purchase.
 - In years with declining revenues, the REC allowed the Clerks to carry-forward unexpended dollar amounts to be included in the calculation for the following year budget.
 - During the 2018 Article V Revenue Estimating Conference, the REC did not allow the carry-forward of unexpended revenue.
- Authorizing this unexpended carry-forward amount to be included as a non-recurring source of funding would allow the Clerks to pay for necessary nonrecurring public safety projects.

Allow Clerks to have additional budget authority during the county fiscal year when the REC projects a higher revenue during the county fiscal year.

- Current statutes appear to indicate the Clerks' approved budget authority is based on the REC's "most recent" revenue projection. During the July 2018, REC meeting CCOC staff indicated that they had the right to increase the current county fiscal year budget authority since the revenue was increasing. However, REC staff indicated the statutes were not clear on this issue and therefore they were not of the same opinion.

Require a reserve in the Clerks of Court Trust Fund.**(No Additional Revenue)**

- The Clerks have very little protection from the unpredictable assessment and collection of the fines, fees, service charges, and court costs that make-up the basis for the statewide budget.
- This option would require the Clerks to maintain a reserve in the Clerks of Court Trust Fund to insulate the Clerks' budgets from the unpredictable nature of collections.

Create an 8 percent Administrative Fee for collecting and remitting court fees.**(\$10.8 million)**

- The Clerks collect funds for the State on various fines and fees, which are subsequently distributed to various entities. However, the Clerks do not receive an administrative fee for handling the collection of these fines and fees. The Florida Department of Revenue (DOR) charges an 8 percent administrative fee for receiving and distributing 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 general revenue. This option would exclude charging an administrative fee on the trust funds associated with the State Courts, State Attorneys, and Public Defenders.

Amend s. 45.035 (1), F.S. to clarify that Clerks collect \$70 to cover their associated workload each time a foreclosure sale is scheduled rather than only collecting the fee when the sale first scheduled.**(Survey Results)**

- Foreclosure sales are sometimes delayed or reset for different dates due to various reasons by the plaintiff, respondent or the Court. Every time a sale is reset, the Clerk must redo work that was done for the initial sale.
- This option would clarify the law and allow Clerks to provide the smooth transition of property in a foreclosure sale.

Redirection of Fines, Fees, Service Charges, and Court Costs Changes**Redirect certain fines and fees to the Clerks.****(\$52.8 million)**

- In 2008, the Legislature increased fines, fees, service charges, and court costs, making changes to 73 sections of statute. These individual statutes can be compiled into four revenue sources: (1) driving under the influence, s. 316.193 F.S., (2) Filing

fees for trial and appellate proceedings, s. 28.241(1) (d) F.S., (3) Amount of Penalties (noncriminal and criminal traffic infractions), s. 318.18, F.S., and (4) all other. These revenues are currently directed to general revenue.

- This option would allow for the redirection of some or all of those fines, fees, service charges, and court costs.

Require service charge on cash bonds.

(Survey Results)

- Currently, the clerks collect an \$8.50 service charge on surety bonds, but do not collect the service charge on a cash bond.
- This option would allow the Clerks to treat all bonds equally for performing identical services relating to the administration of bonds.

Funding for New Policies

Risk Protection Orders

(Indeterminate Positive)

- During the 2018 session, the legislature created the Risk Protection Order Act to prevent individuals who are at a high risk of harming themselves or others from accessing firearms or ammunition by allowing law enforcement to obtain a court order temporarily restricting a person's access to firearms or ammunition.
 - Similar to injunctions for protection against violence, the Clerks support this public policy, but without a stable funding source the Clerks will not be able to timely perform the tasks set forth in the new legislation

Injunction for protection for vulnerable adults

(Indeterminate Positive)

- During the 2018 session, the legislature created a cause of action for an injunction prohibiting exploitation of a vulnerable adult. The new law requires Clerks to assist petitioners in filling out the forms and sets a sliding-scale fee for filing a petition. The law also allows Clerks to request a reimbursement for the processing of petitions.
 - Many of the petitioners are indigent and, while the law set a sliding-scale fee, that fee is waived for indigent petitioners
 - Similar to injunctions for protection against violence, the Clerks support this public policy, but without a stable funding source the Clerks will not be able to timely perform the tasks set forth in the new legislation

Fund New Compliance Programs

(Indeterminate Positive)

- Create and fund enhanced compliance programs 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.

- Recommended by the National Center for State 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 as a reimbursement for the cost of monitoring these activities.
- Other compliance enforcement options are available for discussion should policymakers decide this should be a priority.

DRAFT



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AGENDA ITEM 4

DATE: September 11, 2018
SUBJECT: Long-term Funding Solution—Workgroup Update
COMMITTEE ACTION: Revenue Enhancement Committee

OVERVIEW:

At the August 15th Orange County staff provided the Committee with a conceptual overview of the long-term funding model. The members agreed that the overall objectives of the model would be case-related; cost-based funding process; will calculate what the required level of funding should be to perform the Clerk's statutory duties to meet court partner expectations; will not determine where the money comes from or how funded; and must be a sustainable model that is easy to communicate and a methodology that has integrity.

The Committee directed a workgroup of CCOC and Clerk's staff to develop and test the conceptual model with real data. The workgroup would be led by Kathryn Farynowski and include CCOC staff. CCOC staff will be the key resource for modeling. Other potential workgroup members include Dan Wolfson (Manatee); Kim Stenger (Polk); Chris Mettler (Pasco) and other Clerk staff as needed.

After several telephone conference calls the project leader and CCOC staff met August 30 and 31 in Tallahassee to review the data and tables in the data base and identify further refinements. After some initial testing, the project leader and CCOC staff met via conference call on September 6 to resolve issues and clarify understanding of the data and finalize tasks. Initial work was also completed on modeling approaches.

The next step is to validate the data and relationships, review the design and assumptions with the workgroup. Development of models to analyze different funding bases will start following model validation.

COMMITTEE ACTION: No action necessary.

LEAD STAFF: Kathryn Farynowski and Doug Isabelle

ATTACHMENTS: See below

Attachment

Data Model/Documentation/Descriptions

Cost models will primarily utilize data from 2014-15, 15,16, and 16-17. The methods using continuing cases will also utilize budget data from earlier years.

Planned Base Costs Models:

- Basic costs per case—fiscal year budget vs. same fiscal year cases;
- Basic costs per “worked cases” (new + continuing cases)—fiscal year budget vs. total cases “worked” in that budget year;
- Budget allocation based on continuing case rate-allocated budget based on continuing case rates.

Model Variations:

- Individual year, averaged across 3 years;
 - Original budget (CCOC approved “needs”); and Operational (REC based)
-