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Minutes of March 8, 2021, CCOC Budget Committee Meeting

Approved by the Budget Committee at their meeting on 4/5/21

The Budget Committee of the Clerk of Courts Operation Corporation (CCOC) held a meeting via WebEx on March 8, 2021. An agenda and materials were distributed in advance of the meeting and posted on the CCOC website. Provided below is a summary of staff notes from the meeting. These staff notes are designed to document committee action, not to be a complete record of committee discussions. All motions adopted by the committee are in **bold** text. All CCOC staff action items based on committee direction are in red and **bold** text.

1. Agenda Item 1 – Call to Order and Introduction

The meeting was called to order by Clerk JD Peacock, Chair of the Budget Committee. Marleni Bruner, CCOC Senior Budget Manager, called the roll.

Present for the meeting conference call: Clerk JD Peacock, Clerk Jeff Smith, Clerk Tom Bexley, Clerk Ken Burke, Clerk Stacy Butterfield, Clerk Pam Childers, Clerk Gary Cooney, Clerk John Crawford, Clerk Tara Green, Clerk Carla Hand, Clerk Bill Kinsaul, Clerk Tiffany Moore Russell, Clerk Don Spencer, Clerk Angela Vick

Absent from conference call: Clerk Brenda Forman, Clerk Greg Godwin, Clerk Kellie Rhoades, Clerk Carolyn Timmann

2. Agenda Item 2 – Approve Agenda

A motion was made to adopt the agenda by Clerk Crawford and seconded by Clerk Butterfield.

Clerk Burke stated that he had a comment relating to both the agenda and the minutes. Clerk Burke recalled that the minutes referenced an action point from the February meeting, but there is no action point present on the agenda. Clerk Burke asked why there was no action point present when the committee committed to acting at the February meeting.

Clerk Peacock responded to Clerk Burke, suggesting that the agenda's adoption be postponed so that the minutes can be approved with edits, if necessary. Clerk Peacock explained that this would allow for anyone to have the option to amend the minutes.

3. Agenda Item 3 – Approve Minutes from January 27, 2021 Meeting

Clerk Moore Russell motioned to adopt the minutes, which Clerk Green seconded.

Clerk Peacock explained that Agenda Item 8 (Usage of Excess Revenue – Executive Council Direction) from the previous meeting referenced a prior Revenue Estimating Conference meeting where the revenue was estimated at \$41 M, nearly \$12 M higher than ever before. Clerk Peacock stated that the cumulative excess revenue share at the end of this fiscal year would be used to amend the budgets of those counties in dire need. Clerk Peacock stated that there was a great conversation about this, and it was noted that stakeholders should be included in the conversation of these excess dollars. Clerk Peacock stated that he is a proponent of using every resource to help the clerks, especially in communicating concerns and issues. Clerk Peacock stated that the plan was to see if the February REC followed through with the budget trends and if so, the Budget Committee intended to help those clerks in dire need.

Clerk Peacock stated that this meeting's agenda featured an item that would review the REC's report from their February meeting. Clerk Peacock explained that although their estimate fell short of the original number expected, there is still excess revenue to be utilized. This excess revenue of \$8.2 M means that clerks are entitled to half of that amount, by current law, for CFY 2021-2022. Clerk Peacock recognized Clerk Burke's earlier statement, clarifying that he meant, should the REC hold the exact numbers, the Budget Committee would discuss and bring recommendations to the Executive Council to act. Clerk Peacock stated that his plan, because the numbers from the REC came in short, and the clerks' share would be in the ballpark of four million dollars, he did not feel as if there was enough money available to recommend a particular plan. Clerk Peacock stated that later in the meeting, he would suggest using these funds for a reserve. Clerk Peacock stated that there is \$2 M unspent available from last year's true-up, which would put the available dollar amount at \$6 M. Clerk Peacock stated that later in the meeting, there would be the discussion of how this money should be used, under what circumstances they will be used, and if a reserve should be built with the excess dollars that rolled over from the previous fiscal year. Clerk Peacock recognized Clerk Burke to speak.

Clerk Burke stated that words have meaning, and the words "dire circumstances" were not featured in the minutes from the previous meeting. Clerk Burke stated that back in 2016, the clerks had a statewide budget of \$447 M, which was a smaller budget than prior years, and is much smaller than the current 2021 year. Clerk Burke stated that the clerks are in dire circumstances, as the only player in the legal field with a smaller budget, to his knowledge. Clerk Burke stated that there is no need to go around and justify why each county is in a dire circumstance, but the budget itself explains that clerks statewide are in the midst of a dire circumstance. Clerk Burke stated that around thirty counties were held harmless (fiscally constrained counties) when given a budget cut which all clerks were given, which he supported. Clerk Burke stated that if there is money on the table available to help a dire situation, the money should be

used. Clerk Burke stated that his impression was that after the REC met in February and the committee had a better idea of the numbers and money available. Clerk Burke exclaimed that with this money if clerks don't need it, that is fine, but clerks whose counties do need it should not have to justify their dire circumstance to receive help. Clerk Burke explained that it would be difficult for the legislature to help the clerks when there is money available to be used as it is. Clerk Burke stated that he believes it is essential to be considered on the agenda of the meeting.

Clerk Peacock asked if any other committee members had any commentary to provide. Clerk Smith stated his recollection that this was going to be an action item addressed at today's meeting. Clerk Smith explained that he agrees with Clerk Burke and stated that there should be a reconciliation between the minutes and agenda for this meeting. Clerk Peacock explained that he would entertain a motion to add an item to this agenda, as the minutes do recall action needed from the Budget Committee. Clerk Smith explained that he might have misunderstood the previous meeting, but he recalls that the intent was to have an action item on this meeting's agenda. Clerk Peacock asked if any other committee members recalled the same.

Clerk Crawford asked Clerk Peacock, as part of his decision to amend the agenda, would it have anything to do with the use of these funds. Clerk Peacock answered that it is an accounting mechanism related to future income; however, Clerk Peacock is looking at it from the eyes of a constitutional officer. Clerk Peacock explained that there is the possibility to use these dollars; however, there are significant challenges working through the rules at the state level. Clerk Peacock explained that he had heard many legalities and questions, but given the timing of things, he chose to pause from listening to this input. Clerk Peacock explained his worry of a legality issue with the state in using dollars, not technically the clerks, until the end of the fiscal year. Clerk Peacock asked if there are any questions.

The minutes as presented were approved by a majority voice vote.

Clerk Peacock explained that the agenda still needed to be adopted.

Clerk Moore Russell made a motion to amend the agenda to add the discussion of Agenda Item 8 from the previous meeting's minutes under Other Business and approve the agenda as amended. Clerk Crawford seconded the motion.

Clerk Peacock asked for any debate or comment on the motion. Hearing none, a voice vote was taken. **The agenda was adopted as amended.**

4. Agenda Item 4 – YTD Revenue Update

Clerk Peacock called on Jason Welty to provide the Year-to-Date Revenue Update. Mr. Welty reviewed the material in the meeting packet.

Clerk Peacock thanked Jason Welty for his report and asked the committee if they had any further questions. Clerk Smith asked Mr. Welty for clarification that even though January was below the REC's projection, the clerks are still above the REC projection for the fiscal year. Mr. Welty explained that clerks are 3.6 percent ahead but are still losing ground, as in December, clerks were 7 percent ahead.

Clerk Newton clarified that the clerks are ahead due to the county civil felony being so far ahead. Mr. Welty confirmed that this is one of the reasons why clerks are ahead. Mr. Welty stated that he has heard that clerks had a relatively good February from Operation Green Light. Mr. Welty explained that it could help clerks get back to where they need to be if February comes in higher than expected.

Clerk Smith asked if Mr. Welty has created a projection for what clerks will have accumulated in revenue for the coming twelve months. Mr. Welty explained that when he presented to the REC last week, his projection was on top of the \$410 M projection. Mr. Welty stated that the projection for the clerks is \$418.3 M. Clerk Smith then stated that his Operation Green Light (OGL) event would not be until later in March. Clerk Smith asked how many clerks participated in OGL in the month of February and was informed that the majority of OGL events were held in March or ended in March. Clerk Smith then asked to clarify that Tom Bexley is the legislative lead on legal initiatives. Mr. Welty explained that he has been talking to Clerk Bexley and Jason Harrell, FCCC, to make them aware of the clerks' revenue projections. Clerk Smith thanked Jason for the close relationship between FCCC and CCOC.

Clerk Peacock asked if there were any other questions or comments. There were none.

5. Agenda Item 5 – Revenue Estimating Conference Update

Clerk Peacock asked that Jason Welty provide the update. Mr. Welty explained that the REC met on March 3 and had quite a bit of variance between analyst projections. Analyst projections come from CCOC, the Governor's Office, the Office of Economic and Demographic Research (EDR), and the Office of State Courts Administrator (OSCA). Mr. Welty's projections tend to be closer to OSCA's projections. The REC adopted a lower projection for the current year from the previous projection but a higher amount for the next fiscal year.

Clerk Peacock thanked Mr. Welty for his update. Clerk Peacock asked, should the \$418 M hold for the county fiscal year, what is the timing of when the clerks will know their share of the cumulative excess and what their share would be? Referencing page 16 of the meeting packet, Mr. Welty stated that the adopted forecast shows the cumulative excess at \$4.2 M for the 2021-2022 budget. He also stated that the

cumulative excess is known at the end of the county fiscal year once the August revenue is recorded.

Clerk Kinzel stated her frustration that after reviewing these numbers, there is still dire circumstance present for many clerks. Clerk Kinzel stated that her office is facing a wage issue, causing employees to leave for places that can pay more. Clerk Kinzel stated that if legislature members are on the call, clerks should state how they've lost employees and that clerks need help rather than being cut in their budget. Clerk Peacock agreed with Clerk Kinzel and stated that the legislative efforts of the Legislative Committee prove these facts to be true. Clerk Peacock stated that during the global pandemic, a \$54 M cut was taken, with no response from the court system, leaving the clerks to fend for themselves. Clerk Kinzel stated her worry about going back to full jury trials, as she is facing low staff numbers due to budget cuts and stated the need for dramatic change. She encouraged all clerks to get more local and more vocal.

Clerk Colonnesso clarified that the number given does not include the jury funding, and Jason Welty confirmed that as correct. Mr. Welty explained that he had positive conversations regarding an increase in juror management funding. Clerk Peacock asked if the \$2 M unused dollars will be accessible to clerks above the \$11 M in appropriation.

Clerk Kinzel stated frustration that the legislature is gifting the clerks' dollars, which are already the clerks, all while proposing a raise in juror pay. Clerk Peacock explained that there is a legislative request for an appropriation for the backlog of cases. Mr. Welty stated there is a fiscal analysis taking place to request additional dollars for the fiscal impact of the raise in juror pay.

Mr. Welty stated that there had been an additional request for funding for extra clerks in the courtroom, providing resources to clerks if the judicial system provides more judges for the court. The CCOC request tracks with the request for judges made by OSCA. Mr. Welty also informed everyone that it is still a little early in session for budget items.

Clerk Peacock thanked Jason and moved onto the next item.

6. Agenda Item 6 – Other Business

Clerk Peacock began the conversation regarding Agenda Item 8 – Excess Revenue on the previous meeting's minutes to clarify the recommendation of the committee. Clerk Peacock stated his own thought process, explaining that clerks have an unstable revenue stream, which is lower than the numbers from back in November; however, higher than what the clerks started the year with. Clerk Peacock stated that his suggestion is, based on the clerk's legislative agenda, to build a reserve to help clerks who have dramatic impacts, recommending a policy be put in place to provide access to the reserve. Clerk Peacock stated that he is not in support of an across-the-board

allocation now but supports a policy in which the Budget Committee would listen to clerks' concerns. From there, the Budget Committee would recommend this to the Executive Council. Clerk Peacock stated that there is a budget of \$410 M and anticipated revenue of \$418 M, leaving the clerks with 50 percent of the excess dollars. That \$4 M will be used for the next fiscal year. The unexpended revenue amounts to approximately \$2 M, which Clerk Peacock suggested being used to seed the reserve and that the Budget Committee produce the criteria for how the reserve will be used. He suggested tabling the use of the \$4 M cumulative excess until legislative decisions have been finalized.

Clerk Burke stated his support of having a reserve, but the point of a reserve is for a rainy day. Clerk Burke explained that the budget this year is lower than it has been in the history of Article V funding since 2004 or 2005. Clerk Burke explained that this low budget is not only a rainy day but a hurricane day. Clerk Burke explained that he's unsure whether it is better to use current dollars to begin a reserve and explained that the committee took the across-the-board approach when holding counties harmless. Clerk Burke stated that there is a frustrating separation in the clerks, where there are different criteria per group of clerks. Clerk Burke explained that there was supposed to be a contact with legislative staff to find out what the reaction was to the clerks using the money this year. Clerk Burke asked if Mr. Boyd provided a legal opinion and if the legislative staff was reached out to but wanted to be provided names and their specific opinion.

Jason Harrell and Clerk Bexley asked to speak before they had to go to the capital to represent the clerk's legislative proposal. Clerk Bexley stated his respect for all the clerks but strongly opposed any action regarding the carry forward dollars. Clerk Bexley stated that the clerk's bill up this week directly impacts the reserve and carry forward process, so he is hesitant to move forward as a committee before the bills are moved forward. The law granting clerks 50 percent will sunset (end) after this session if no action is taken. The clerk's legislative proposal is asking to make this permanent and does not want to hamper their options by moving forward on using those funds now.

Clerk Peacock asked if the legislative team would be looking for clerks to create a logical utilization of a reserve now or wait. Clerk Bexley explained that a discussion of the \$2 M in unexpended funds could be discussed now.

Clerk Crawford stated that he previously supported the Fiscally Constrained Counties to be held harmless; however, FCC status has to do with ad valorem, and it may have hurt some counties. He hopes more science instead of emotion be put into considering clerks held harmless or not in the future.

Clerk Green stated that she is a huge proponent of helping clerks come up with a solution as courts rise back to full capacity. Clerk Green said that for her to support borrowing future revenues out of the norm, she would have to be comfortable with the legality so that no adversarial situation comes to take place. Clerk Green stated she believes that there are good intentions, but she would need to feel more comfortable

that there are legal practices taken to use these funds. Clerk Green requested that it be clarified which money is being utilized for the reserve. Clerk Peacock explained that as the bills are passed, the committee must create a policy for the reserve. Clerk Green stated that she is in support of creating a policy but hesitant to make any decisions regarding the cumulative excess. Clerk Peacock stated that the focus of the conversation is to discuss the clerks' share of the cumulative excess at the end of this fiscal year.

Clerk Smith explained that he prefers that the committee put more thought into what the policy might be rather than producing a policy today. Clerk Smith requested that a meeting be set up to discuss this policy specifically, as he is not prepared to create or vote on a policy. Clerk Peacock stated that he was not intending on creating and implementing this policy today but put this into the work order on a time-sensitive basis.

Clerk Moore Russell asked that a conversation be had regarding whether the money should be used for a reserve or instead be used right now in dire circumstances. Clerk Moore Russell stated that she does believe all clerks want a reserve, but there should be a discussion of whether these unexpended funds (\$2 M) are specifically needed now.

Clerk Green reminded the committee that conversations with legislative figures did not encourage clerks to use the cumulative excess now.

Clerk Peacock asked the committee if there is an action or motion that a committee member would like to take regarding the cumulative excess.

Clerk Moore Russell made a motion to direct the CCOC General Counsel to provide a legal opinion of whether or not clerks can use the cumulative excess funds in the current fiscal year. Clerk Green seconded the motion.

Clerk Peacock asked if there were any questions; there were none. Clerk Peacock asked if there was any debate. Clerk Peacock shared his debate explaining that in 2011, legal discussion resulted in negative consequences of law changes. Clerk Peacock stated that if the legal opinion is negative, it ties a clerks' hands, but if it is positive, clerks are encouraged to move forward. Clerk Moore Russell stated that it is also valuable to be knowledgeable and ask for a legal opinion.

Clerk Peacock asked for a vote on the motion. The motion passed with a majority voice vote.

Clerk Moore Russell made the motion that no action is taken on the anticipated cumulative excess in this year's budget. With no second, the motion died. Clerk Peacock opened the floor to committee members for action on this item. There was no further action.

Clerk Peacock explained that there are \$2 M dollars available from the unspent budgeted funds and proposed a policy to begin a reserve with these dollars. Clerk Peacock opened the floor to committee members. Clerk Peacock clarified that the Budget Committee is the workgroup for this topic, and the staff may put together a draft for this policy to be sent back to the clerks for recommendations.

Clerk Burke explained that he believes that it is unfair to leave this policy draft in the hands of CCOC but believes there should be a sub-group put in place for this action. Clerk Burke stated that this group should be a broad group of clerks from all different counties to sit on this group, explicitly suggesting Clerk Alvarez-Sowles (Pasco County) and Clerk Kinzel (Collier County). Clerk Burke explained that if there is a group willing to work on this, that he would like to make a motion.

Clerk Burke made a motion to create a workgroup with members from counties of all sizes to work with CCOC staff on the policy regarding the reserve. Clerk Smith seconded the motion.

Clerk Peacock asked if there was any question or debate on this motion. Clerk Smith was nominated to chair the workgroup. Clerk Miller from Saint Lucie County volunteered to join the workgroup. **The motion was adopted by voice vote.**

Clerk Peacock stated that the committee would get back on track regarding the CFY 2021-2022 budget at the next meeting. Clerk Peacock stated that a spreadsheet would be created with Jason Welty, paring down to the revenue limitations to create a spending limit. Clerk Peacock stated that he would like the Budget Committee to come up with any additional bucketed columns for the spreadsheet regarding the budget process. Clerk Peacock stated that there would be an opportunity for additional requests from clerks.

Clerk Peacock asked for any questions or comments. There were none.

Clerk Peacock stated that the next meeting would be in early April, and the committee will get back on track.

Clerk Burke explained that CCOC staff had done some calculations based on FRS to be approved by the legislature. Clerk Burke said that it would be good to take the same percentage of the state increase on FRS and apply it to the clerk's estimates. Clerk Peacock agreed that there is a need to go backward before going forward.

Clerk Butterfield asked if the \$15/hour minimum wage issue had been discussed and stated that the clerks should prepare for that impact. Clerk Peacock explained that this could be an item that clerks submitted an issue for and included in the spreadsheet for all counties. Clerk Peacock stated that nothing has come through the legislative process and that clerks should model what the state does for employees. Clerk Butterfield stated that there should be a follow-up on that.

Clerk Kinsaul stated that the committee should plan for next year and simplify how much each clerk should get by case. Clerk Peacock stated that he likes using weighted cases and suggests an increase in how the dollars are distributed. Clerk Peacock also stated that the work of the PIE and Budget Committee on weighted cases strengthen their ability to utilize it in the budget.

Clerk Peacock stated that clerks should email Marleni Bruner to volunteer for the workgroup.

The meeting adjourned at 3:54 PM.
