

Department of Planning and Budget

2008 Fiscal Impact Statement

1. Bill Number HB 1106

House of Origin ☐ Introduced ☐ Substitute ☒ Engrossed
Second House ☐ In Committee ☒ Substitute ☐ Enrolled

2. Patron Kilgore

3. Committee Senate Finance

4. Title Electronic filing in clerks' offices; fees collected by clerks

5. Summary/Purpose:

The proposed legislation deals with several issues related to circuit court clerks. There are numerous technical provisions related to how documents should be docketed, indexed, and the format in which they must be submitted to the clerk's office. Because these provisions do not appear to have a fiscal impact, they are not dealt with in this analysis.

There are four issues covered by the legislation that would have a fiscal impact—electronic filing of land records, fees that are to be charged by clerks, secure remote access to land records, and salary increases for deputy circuit court clerks. The provisions of the bill related to these issues are summarized below:

- Electronic filing of land records—The bill would authorize a clerk of circuit court to establish a network or system for electronic filing of land records and to charge a fee for each instrument recorded electronically. The fee shall not exceed \$5.00 per document. Revenue from the fee would be placed in a special nonreverting local fund to be used to cover the operational expenses of the network or system.
- Fees charged by clerks—Current law requires clerks of circuit court to charge a myriad of fees for the services they provide. The table on the following page shows the changes in the clerks' fees in the proposed legislation:

Action	Current fee	Proposed fee
Appointing and qualifying estate representative, etc:		
Estates not exceeding \$50,000	\$20	\$25
Estates not exceeding \$100,000	\$25	\$30
Estates exceeding \$100,000	\$30	\$35
Issuance of marriage license	\$10	\$15
Making out bonds, generally	\$3	\$5
Civil action filing fees		
Actions not exceeding \$50,000	\$60	\$62
Actions not exceeding \$100,000	\$110	\$112
Actions exceeding \$100,000	\$160	\$162
Making endorsements on bond	\$1	\$5
Divorce proceedings or civil actions not including claims for monetary damages	\$60	\$62
Lodging, indexing, and preserving a will	\$2	\$10
Issuing any execution and recording return thereof	\$1.50	\$5
Execution of summons of interrogation of execution creditor	\$1.50	\$5

- Secure remote access to land records—Under current law, a circuit court clerk who provides electronic access to nonconfidential court records or other records may charge a fee for such access to cover the operational expenses of the access. The fee can be based on each inquiry, actual connect time, or a flat fee. The revenue from the fees are deposited into a local nonreverting fund. In addition, the clerk may charge users a clerks' fee of up to \$25 per month. The proposed legislation would authorize the clerk to charge a fee for secure remote access to land records only and the fee could only be a flat fee of up to \$50 per month, rather than a discretionary fee based on inquiry, connect time, or a flat fee. The legislation would also eliminate the clerks' monthly fee of \$25.
- Salary increase for deputy clerks—The proposed legislation contains a second enactment clause that would make the increases in clerks' fees authorized by the bill effective only if there is an additional general fund appropriation included in the budget bill to provide deputy circuit court clerks with a four percent salary increase.

6. Fiscal Impact: Preliminary. See Item 8.

7. Budget amendment necessary: Yes. Item 74.

8. Fiscal implications:

Generally, the fiscal effects of the proposed legislation can only be partially projected. In many cases, the data needed to make an estimate is not available; in other cases, the impact will be determined by local decisions that cannot be known at this time. In none of these cases is there sufficient ground upon which to base final numbers. Following is a detailed discussion of each issue.

- Electronic filing of land records—Under the terms of the legislation, a clerk would be authorized to charge up to \$5.00 per document for the electronic filing of land records. According to data furnished by the Compensation Board, in 2006, there were 2.1 million instruments recorded in the land records. Assuming the same volume of recordations and a maximum fee of \$5.00 per instrument, the total revenue received for deposit into the special local funds would be \$10.5 million. However, the number of instruments will vary from year to year, clerks may elect to charge a smaller fee, and some clerks may not provide for electronic filing. Therefore, it is clear that the revenue realized as a result of this provision of the legislation will be significant, but a more definitive estimate is not feasible. (Under the provisions of this bill, these revenues would not be deposited into the state's general fund, but into a special local fund.)
- Secure remote access to land records—Because clerks currently use different methods of assessing this fee, depending on the locality, and the proposed legislation would limit their options to a flat fee of no more than \$50 per month, the effect of the legislation will vary by locality. According to an analysis of the Compensation Board based on current fee structures and subscriber bases, some localities would lose revenue, while others would gain. Overall, it is estimated there would be \$699,200 less revenue collected. (The fees currently collected by clerks for this activity are not deposited into the state's general fund, but into a special local fund. The proposed legislation would continue that practice.)
- Fees charged by clerks—It is possible to identify only a portion of the additional revenue that would be collected from the increase in clerks' fees set out in the proposed legislation. Currently, the revenue collected from fees is deposited and reported together by clerks, without breaking the amounts down according to source. There are, however, workload data available from the Compensation Board, the Supreme Court, and other sources that allow for an estimate to be made for several of the sources of potential new revenue. This data is set out in the following table:

Action	Fee increase	Number	Additional Revenue
Appointing/qualifying for estate	\$5	17,116	\$85,581
Lodging/indexing/preserving will	\$8	17,116	\$136,929
Issuing marriage license	\$5	59,465	\$297,325
Making out any bond*	\$2	45,643	\$91,286
Filing monetary civil actions	\$2	58,743	\$117,486
Filing divorces	\$2	33,384	\$66,768
Total			\$795,375

*Data for the issuance of bonds is available only for those related to qualifications for estates. Consequently, this amount is an underestimate.

Data needed to estimate additional revenue from the increases in fees for bonds other than those related to qualification for estates, making an endorsement on a bond, issuing any

execution and recording its return, and preparing and executing a summons for interrogation by an execution creditor are not available.

There is another factor that makes it difficult to estimate how much of the projected additional fee revenue will accrue to the state. Clerks of circuit courts are required by law to deposit all fee revenue into the state's general fund. However, if the fee revenue generated by the clerk's office exceeds the expenses of the clerk's office, two-thirds of the excess revenue is returned to the locality and the state retains the remaining one-third. With the information currently available, it is not feasible to estimate how much of the additional revenue identified above would be retained in the general fund.

- Salary increases for deputy clerks—Although the proposed legislation does not explicitly require a salary increase for deputy circuit court clerks, it makes the increase in clerks' fees contingent of such an increase being provided. Therefore, one of the purposes of the legislation is that deputy circuit court clerks receive a four percent salary increase. Because no other effective date of the salary increase is specified, it is assumed that any such increase would be effective July 1, 2008, the effective date of the legislation, if enacted. The Compensation Board estimates that a four percent salary increase for deputy circuit court clerks would cost \$1.4 million annually.

9. Specific agency or political subdivisions affected:

Compensation Board
Circuit court clerks

10. Technical amendment necessary:

The current law requires that revenue from fees collected for providing electronic access to court records be deposited into a special local fund. The proposed legislation would continue that policy. The legislation would also authorize clerks to charge a fee for electronic filing of land records and provides that the revenue from that fund be deposited into a special local fund.

Both of these provisions seem to be in conflict with the current Appropriation Act and the budget bill for the 2008-2010 biennium. Paragraph A.5 of Item 74 in the budget bill (Item 64 in the current Appropriation Act) requires clerks to deposit all fees with the State Treasurer. If it is intended that the revenue collected from fees for electronic filing of land records and for providing secure remote access to land records not be deposited with the State Treasurer, the language in the budget bill should be amended with the phrase, "Except where provided otherwise by law...."

11. Other comments:

While it is clear, as noted above, that the intent of the second enactment clause is that deputy circuit court clerks receive a four percent salary increase and that the proposed increases in clerks' fees are contingent on their receiving such an increase, the wording of the clause is awkward and confusing.

If the intent of the legislation is to make the proposed fee increases contingent on the deputy circuit court clerks receiving a salary increase, it is recommended that the second enactment clause be changed to read as follows:

2. That the fee increases provided in § 17.1-275, Code of Virginia, in this act shall be effective only if the General Assembly includes in the 2008 general appropriation act, as finally enacted into law, an appropriation providing for a four percent salary increase for deputy clerks of circuit court.

At present, it appears that neither the House Appropriations Committee nor the Senate Finance Committee included in their budget amendments an appropriation providing funding for additional raises for deputy circuit court clerks.

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