

Department of Planning and Budget

2008 Fiscal Impact Statement

1. Bill Number SB 622

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

2. Patron Stolle

3. Committee Passed both houses

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 two issues covered by the legislation that would have a fiscal impact—electronic filings of land records and secure remote access to land records. 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 could 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.
- **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.

6. Fiscal Impact: Indeterminate. See Item 8.

7. Budget amendment necessary: None.

8. Fiscal implications:

The fiscal effects of the proposed legislation can only be partially projected because the impact will be determined by local decisions that cannot be known at this time. In both cases, the revenues generated would not be deposited into the state's general fund, but into a special local fund. Following is a 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.
- 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.

9. Specific agency or political subdivisions affected: 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 source 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: None.

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