

## Department of Planning and Budget 2010 Fiscal Impact Statement

**1. Bill Number:** SB258-S1

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

**2. Patron:** Lucas

**3. Committee:** Finance

**4. Title:** Funding of circuit court clerks' offices; fees.

**5. Summary:** Creates a local fee retention funding method for circuit court clerks' offices in which the clerk retains fees locally and pays 20 percent of gross fees to the state to be held by the Compensation Board in a trust fund beginning July 1, 2012. Currently, fees are paid to the state and apportioned by the Compensation Board back to localities. The trust fund created would be used to fund those offices that did not receive enough revenue in fees to maintain operations.

**6. Fiscal Impact Estimates:** Preliminary; See Item 8 below.

**7. Budget Amendment Necessary:** Yes. Revenue - Page 1

**8. Fiscal Implications:** SB258 (substitute) proposes the addition of paragraph F. to Section 17.1-275, affecting the disposition of circuit court clerks' fees. Currently, the majority of clerks' fees are deposited to the general fund. The Compensation Board establishes a budget for the operation of clerks' offices, with that budget being funded by the locality and reimbursed by the Compensation Board using general fund. Any amount of clerks' fees that are deposited to the general fund that exceed the amount of expenditures reimbursed by the Compensation Board are considered "excess fees". These excess fees are shared by the Commonwealth and the local government, with one-third of excess fees being refunded back to localities, and two-thirds of excess fees staying in the general fund of the Commonwealth.

SB258 proposes that all clerks' fees be deposited by the clerk into a special nonreverting local fund to be used to cover operational expenses of the clerks' office, presumably negating the need for a general fund appropriation to cover the budgeted funds currently allocated by the Compensation Board. The bill also proposes that 20 percent of these fees be deposited by each clerk into a Compensation Board administered trust fund. The trust fund would then be used by the Compensation Board to fund clerks' offices that would not have sufficient remaining deposits in their special nonreverting local fund to cover operational expenses of the clerks' offices. The depositing of fees locally would begin July 1, 2012, and the use of fees to support Clerks' office operations expenses would begin January 1, 2013. As such, general fund would still be required for payment of clerks' expenses through December 31, 2012.

SB258 further provides that the Compensation Board would submit an annual report to the House Appropriations and Senate Finance Committees outlining the level of fees necessary in order to operate clerks' offices on this fee-based system.

According to the Compensation Board, the proposed legislation could have a significant fiscal impact to the general fund. During FY09, circuit court clerks collected \$63.5 million in clerks' fees, and the Compensation Board reimbursed \$40.3 million (excluding benefits) in expenses. Fifty clerks' offices collected an excess of \$27.1 million in fees, and 68 offices had expenses totaling \$3.8 million more than their collected fees. After splitting the excess fees (one-third to the locality and two-thirds to the Commonwealth), the general fund received \$17.0 million in excess fees. From this amount the Compensation Board reimbursed localities when their local clerks' costs exceeded their collected fees (\$3.8 million). After this action, the general fund netted approximately \$13.2 million.

Under SB258, these net revenues (totaling \$13.2 million in FY09) would stay with localities each year instead of with the Commonwealth's general fund. It appears that 35 offices could fund current expenses with the 80 percent share of fees deposited locally and 83 offices would require funding from the proposed 20 percent trust fund in order to maintain current levels of funding for operating expenses.

Also, in FY13, this proposal would require payment of clerks' expenses utilizing general fund dollars through December 31, 2012, while fee collections would be deposited locally. Based upon FY10 base budget funding for clerks' offices, and a reimbursement cycle one month in arrears, reimbursements to localities from the general fund would be necessary for seven months in FY13, at an additional cost of approximately \$26 million.

The Compensation Board also noted that it is not adequately staffed to analyze fee revenue data or to forecast such fee revenues (in order to determine fee amounts needed to make recommendations on an annual basis to the legislature). To support these additional functions, the Compensation Board estimates a need for two additional positions at an annual cost of \$150,000. As there is no specified start date for the reporting cycle, staff needs are estimated to begin in FY11. The Board also noted that additional resources could be needed for the Supreme Court for generating fee information through the Financial Management System.

The Auditor of Public Accounts reports the proposal will either double or triple the time it takes for the APA to do the circuit court audits. This would increase their staffing needs by nine to 18 auditors, which would cost approximately \$375,000 to \$750,000, each year.

**9. Specific Agency or Political Subdivisions Affected:** Compensation Board, circuit court clerks' offices statewide

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None

**Date:** 2/8/2010 dpb/John Crooks

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