

Analysis of the Collection and Allocation of Court-Related Revenues within Florida's Judicial System

Executive Summary

This Florida TaxWatch study reviews the state's current system of funding and monitoring the court-related operations of the clerks of the circuit court. The study finds:

- The decentralized nature of the current system leads to wide variations in cost efficiency, effectiveness of collecting court-related revenue, and accountability for budgeted expenditures.
- There are no incentives or requirements for individual clerks to improve cost efficiency. If cost efficiency standards were imposed, cost savings of between \$34 million and \$140 million could be achieved.
- The state does not appropriately allocate resources between the clerks and the trial courts (both of which perform important functions of the judicial system).
- A comprehensive study of the potential costs and benefits of consolidation of the clerks' court-related functions within the State Courts System is needed before such consolidation should be undertaken.

Florida TaxWatch recommends:

- **Cost efficiency standards should be imposed on individual clerks and the system as a whole, and incremental cost efficiency improvements should be required over the next two years.**
- **The current system of funding the clerks' court-related functions should be changed to improve transparency and accountability of individual clerks' expenditures. Specifically, the clerks' budgeted expenditures should be subjected to the legislative appropriations process with the Clerks of Court Operations Corporation, or some similar organization, acting as the clearinghouse for the individual clerks and their collective representative through the appropriations process.**

- **Effectiveness standards concerning court-related revenue collection should be strengthened.**
- **The allocation of court-related revenues should be more equally proportioned between the trial courts and the clerks.**
- **A comprehensive study is needed to determine if consolidation of the clerks' court-related duties within the State Courts System would provide measurable benefits to the taxpayers of Florida. Additionally, due to the complexity of consolidation, it should be done carefully and incrementally if future study determines it to be in the best interest of the state.**

Introduction

Florida TaxWatch has closely followed the creation and implementation of Revision 7¹ of Article V of the Florida Constitution, which shifted funding of most state courts' operations from counties to the state on July 1, 2004. TaxWatch has examined the progress made since the transition and the work that remains to be done in the areas of funding, management, and service delivery to the citizens of Florida and others who use the State Courts System.

As part of the multi-year examination, Florida TaxWatch undertook a comprehensive study of the statewide system where the locally-elected clerks of the circuit court provide certain court-related administrative functions for the State Courts System using fees collected under state law. This Florida TaxWatch *Special Report* provides the independent analysis performed by Florida TaxWatch, conclusions about the current system, and recommendations for the system's improvement.

Background

The 67 clerks of the circuit court are locally elected, constitutional officers (meaning that the position is created in the Florida Constitution) who perform a variety of local county activities and court-related functions on behalf of the state.

In addition to administering court-related functions for the state's trial courts,² clerks may also serve as clerk and accountant to the board of county commissioners, county auditor, clerk of the

¹ Revision 7 was a constitutional amendment concerning the state's judicial system that was proposed by the Constitutional Revision Commission and approved by Florida voters in November 1998. The full text of Revision 7 is available at <http://www.law.fsu.edu/crc/tabloid.html#R7> (accessed on 3-27-2009).

² The Florida State Courts System has four levels: The Florida Supreme Court (the Court of Last Resort for both criminal and civil proceedings concerning state law); the five District Courts of Appeal (Intermediate Courts of Appeal – which can, under certain circumstances, actually or practically operate as the Courts of Last Resort for issues or cases); the 20 Circuit Courts (including both Courts of General Jurisdiction – meaning trial courts or courts of first impression on an individual matter or case concerning state law – and Courts of Appeal for decisions of the County Courts); and 67 County Courts (Courts of Limited Jurisdiction – meaning trial courts or courts of first

county court [also a trial court] and as an agent of the Florida Department of Revenue. As clerk of the circuit court, some of their duties include having custody of court records; keeping a progress docket for court cases; keeping minutes of court proceedings; and receiving and accounting for all monies received in connection with court proceedings, including fines, costs, and civil penalties. Clerks collect money for certain services, such as filing fees and collection of fines and child support payments. The budgets for clerks are required to be prepared in two parts, one showing the planned operations of the State Courts System and the second part related to the other duties of the clerk's office.³

As local officials, clerks follow the local government budget cycle, meaning that the Fiscal Year for the clerks starts on October 1 and ends on September 30 of the following year – as opposed to the state Fiscal Year, which begins on July 1 and ends on June 30 of the following year.

Revision 7 to Article V of the Florida Constitution shifted responsibility of funding for most court-related duties of the state's judicial system to a statewide system; however, the administration of certain court-related functions that had historically been vested in the clerks was preserved in those offices under local control but with state funding. To fund the court-related functions, the Legislature enacted laws requiring the clerks to “fund their offices using revenues derived from fines, fees, service charges and court costs assessed in both civil and criminal proceedings.”⁴ Thus, clerks' budgets, unlike other entities in the judicial system, are based on their projected revenue, not appropriated by the Legislature through the appropriations process.

In addition to the revenues used to fund their annual operations, clerks are required to share the revenue they collect with a number of state and local entities according to statutory earmarks. After an individual clerk's operations are funded and statutory earmarks are satisfied, “[e]xcept under certain conditions, one-third of these funds are transmitted to the state to help fund the operation of the state courts system.”⁵ “In Fiscal Year 2005-06, clerks of court remitted \$93.7 million in court-related collections to the state after funding their own operations. These funds offset 23 percent of the \$405.4 million cost of the state courts system during that year.”⁶

impression for certain matters, generally limited to misdemeanors, small claims under \$500, civil matters under \$15,000, and traffic cases). The jurisdiction of these courts is determined by statute.

³ The Florida Legislature's Office of Program Policy Analysis and Government Accountability website – Profile Page of Clerk of the Circuit Court within State Courts System, www.oppaga.state.fl.us/profiles/1072/01/, updated 12/31/08. Accessed by Florida TaxWatch on 3-27-2009.

⁴ The Florida Legislature's Office of Program Policy Analysis and Government Accountability Report No. 07-21, “Clerks of Court Generally Are Meeting the System's Collections Performance Standards,” March 2007. Page 1. (hereafter OPPAGA Report No. 07-21).

⁵ *Id.* See also, s.28.37, Florida Statutes. More precisely, the funds remaining from these court-related revenue sources, after the individual clerks' operations are funded and statutory earmarks are satisfied, are transmitted to the Clerks of the Court Trust Fund (CCTF) maintained by the Florida Department of Revenue. The funds from the CCTF are distributed monthly to local clerks whose budgeted expenditures exceed their revenues, with all CCTF funds not expended to balance the budget of individual clerks transferred to the state's General Revenue Fund to help offset the cost to the taxpayers of funding the State Courts System.

⁶ OPPAGA Report No. 07-21.

To “ensure accountability for these revenues,” the Legislature created the Clerks of Court Operations Corporation (CCOC),⁷ which “supports the clerks of court in the 67 counties in the State of Florida by reviewing and certifying court-related proposed budgeted expenditures under the oversight of the Florida Legislature, the Governor, the Chief Financial Officer, and the Department of Revenue.”⁸ Sections 28.35 and 28.36, Florida Statutes, describe the duties of the CCOC.⁹

Scope and Purpose

This study will examine the current system’s cost efficiency, effectiveness, transparency, accountability, and related issues. The purpose of this study is to analyze whether the current system of funding and oversight of the court-related functions of the clerks is optimal for the citizens of Florida – or if changes to the system would benefit the state and the taxpayers. In this report, Florida TaxWatch will answer five research questions:

1. Does the decentralized nature of the 67 county clerks lead to wide variation in cost efficiency, effectiveness, transparency, and accountability within the system?
2. Does the current system provide incentives to operate cost efficiently or improve cost efficiency?
3. Does the current system appropriately allocate resources based on the value of the function performed (or service provided) to the taxpayer?
4. What have other states done in this area? Are there other models or best practices that could be instructive in improving Florida’s system?
5. Are there viable recommendations to streamline the system?

Section 1. Does the Decentralized Nature of the 67 County Clerks Lead to Wide Variation in Cost Efficiency, Effectiveness, Transparency, and Accountability Within the System?

Cost efficiency, effectiveness, transparency, and accountability are potential areas of concern within the current system given its fragmented nature. To determine if the decentralized nature of the current system leads to wide variation in cost efficiency, effectiveness, transparency, and accountability regarding the performance of court-related function by individual clerks, each of the four issues will be addressed separately.

⁷ *Id.* at 2.

⁸ OPPAGA website – Profile Page of Clerk of the Circuit Court within State Courts System, updated December 31, 2008. Accessed by Florida TaxWatch on February 24, 2009.

⁹ More information on the CCOC can be found at: www.flccoc.org.

Section 1.A. Analysis of Variation in Cost Efficiency of Clerks' Budgeted Expenditures FY 2008-09¹⁰

Florida TaxWatch performed a per unit cost analysis to measure each clerk's cost efficiency in performing the same court-related functions throughout the system. The "per unit cost" is each clerk's cost of handling an individual case, which is determined by comparing the number of cases handled by each clerk to that clerk's total budget for court-related functions for that year.¹¹ The analysis is conducted using the FY 2008-09 projected budget expenditure and projected caseload as provided by the individual clerks through the CCOC.¹²

Due to the wide range in the projected number of cases (from 1,648 per year in Lafayette County to 1,781,308 in Miami-Dade County), the analysis categorizes clerks by the number of cases handled.¹³ If efficiency across the clerks is consistent, then the range of per unit costs in each size category should be small.

Chart 1 shows the range in per unit cost for each category, as well as the nominal cost difference, the ratio of the lowest per unit cost to the highest (i.e., the highest per unit cost as a percentage of the lowest), and the standard deviation from the mean¹⁴ for each category. A small range (as depicted in the dollar differences in the third column) indicates a *high level of consistency of cost efficiency* while a large range indicates *wide variation in cost efficiency*. The same is also true of the cost difference, the ratio of lowest to highest, and the standard deviation; all four measures are indicative of levels of consistency. "N" represents the number of entities (clerks) in each size category.

¹⁰ The analysis in Section 1 is based on the clerks' Fiscal Year 2008-09 Certified Article V Budgets from Florida Clerks of Court Operations Corporation, "Florida Clerks of the Circuit Court: Fiscal Year 2008-09 Certified Article V Budgets for Submission to the Florida Legislature," October 15, 2008. The FY 2008-09 budgeted expenditures are used (instead of the actual expenditures for FY 2007-08) for two reasons: first, budgeted expenditures are a better measure of an entity's cost efficiency because the entity has more control over budgeting expenditures than over actual expenditures (due to emergency situations like natural disasters or expected changes in economic conditions); and second, the data on budgeted expenditures is more recent (FY 2008-09 instead of FY 2007-08 for actual expenditures).

¹¹ While the clerks' court-related functions cannot necessarily be measured as "cases," since each clerk performs the same statutory duties, it serves as a proxy measure of per unit cost.

¹² The Florida Clerks of Court Operations Corporation. "Florida Clerks of the Circuit Court: Fiscal Year 2008-09 Certified Article V Budgets for Submission to the Florida Legislature," October 15, 2008. Note: Due to the revenue-based budgeting and the projected decline in court-related revenues since the clerks' original budget submissions, the CCOC has revised the budgeted expenditures for the individual clerks since this analysis began. According to the CCOC, declining revenues have forced reduction in budgeted expenditures for the current fiscal year. This analysis is based on the original budget submissions for the current fiscal year from October 2008; however, the reduction in projected expenditure is not relevant to this study because the purpose of the per unit cost analysis is to determine the *variation in cost efficiency* among clerks in performing the same duties, not the total amount expended in performing such duties.

¹³ The size categories are: 1) Below 5,000 cases per year; 2) 5,000 –10,000; 3) 10,001–20,000; 4) 20,001–50,000; 5) 50,001–100,000; 6) 100,000 –200,000; 7) 200,001–1 million; and, 8) more than 1 million (only one clerk – Miami-Dade–handles more than 1 million cases).

¹⁴ Mean (or statistical average) is a measure of center obtained by dividing the sum of all the data by the number of data units (i.e., the sum of per unit costs in each category divided by the number of clerks in that category).

Chart 1 – Clerks’ Per Unit Cost by Size Category

Size Category (grouped by projected number of cases)	N**	Range (lowest and highest per unit cost)	Cost difference between lowest and highest	Ratio of lowest cost to highest cost	Standard deviation ¹⁵
< 5,000	4	\$105.60 – \$164.18	\$58.58	155%	24.15
5,000 – 10,000	10	\$47.01 – \$99.97	\$52.96	213%	17.11
10,001 – 20,000	9	\$34.84 – \$105.03	\$70.19	301%	21.70
20,001 – 50,000	14	\$32.58 – \$102.19	\$69.61	314%	20.10
50,001 – 100,000	8	\$48.91 – \$77.82	\$28.91	159%	10.66
100,001 – 200,000	12	\$48.51 – \$119.99	\$71.48	247.4%	18.97
200,001 – 1 million	9	\$42.82 – \$80.43	\$37.61	188%	10.91
1 million+ (Dade)*	1	n/a	n/a	n/a	n/a
Statewide	67	\$60.72	\$55.62	225%	17.66

Source: The Florida Clerks of Court Operations Corporation. “Florida Clerks of the Circuit Court: Fiscal Year 2008-09 Certified Article V Budgets for Submission to the Florida Legislature,” October 15, 2008.

*There is only one clerk with a caseload of more than 1 million cases, so the range is inapplicable.

**N represents the number of clerks in each category.

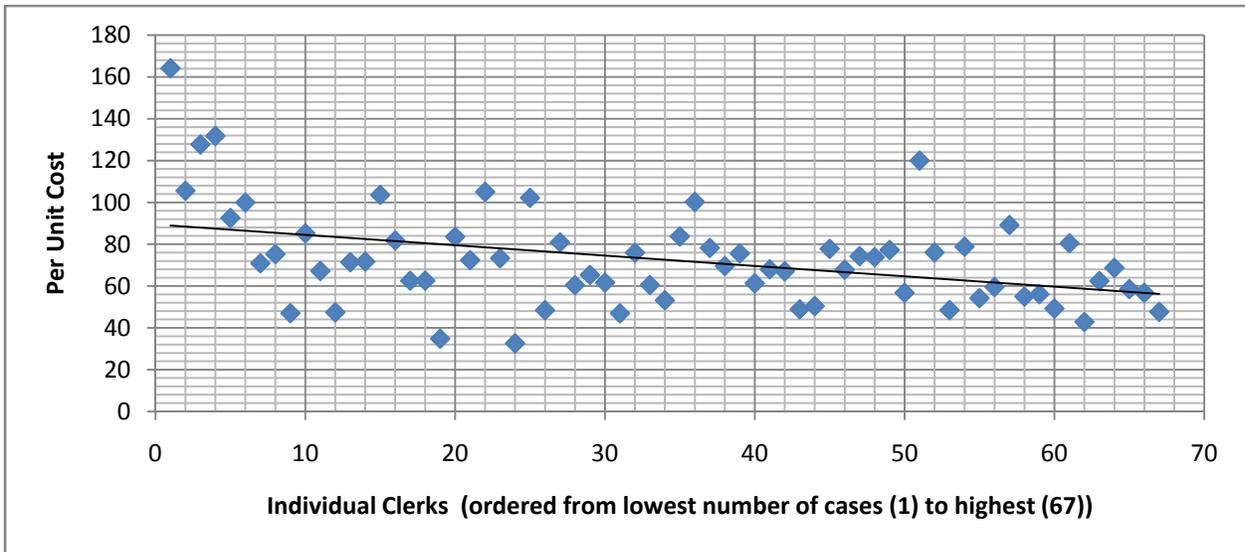
When broken down into categories and compared only with clerks of similar size, a wide variation in per unit cost is apparent. The wide range within each size category, as well as the high standard deviation, suggests that there is wide variation in cost efficiency among individual clerks.

The categorical per unit cost analysis (in **Chart 1**) indicates that larger counties generally have a lower per unit cost than small counties (i.e., the more cases, the lower the per unit cost); however, this finding also shows variation in cost efficiency among clerks because the trend is not consistent – although a general trend is visible.

Figure 1 plots the per unit cost for each clerk by the size of the clerk, ordered from 1 to 67 with 1 being the clerk with the fewest cases (Lafayette) and 67 being the clerk with the most cases (Miami-Dade).

¹⁵ Standard deviation is a measure of the variability or dispersion of a data set. A low standard deviation indicates that all of the data points are very close to the same value (the mean or statistical average), while high standard deviation indicates that the data are “spread out” over a large range of values.

Figure 1 – Clerks’ Per Unit Costs Arranged by Number of Cases Handled



Data Source: Florida Clerks of Court Operations Corporation. “Florida Clerks of the Circuit Court: Fiscal Year 2008-09 Certified Article V Budgets for Submission to the Florida Legislature,” October 15, 2008. Figure by Florida TaxWatch.

*Median Household Income is from 2007 (most recent year of data available).

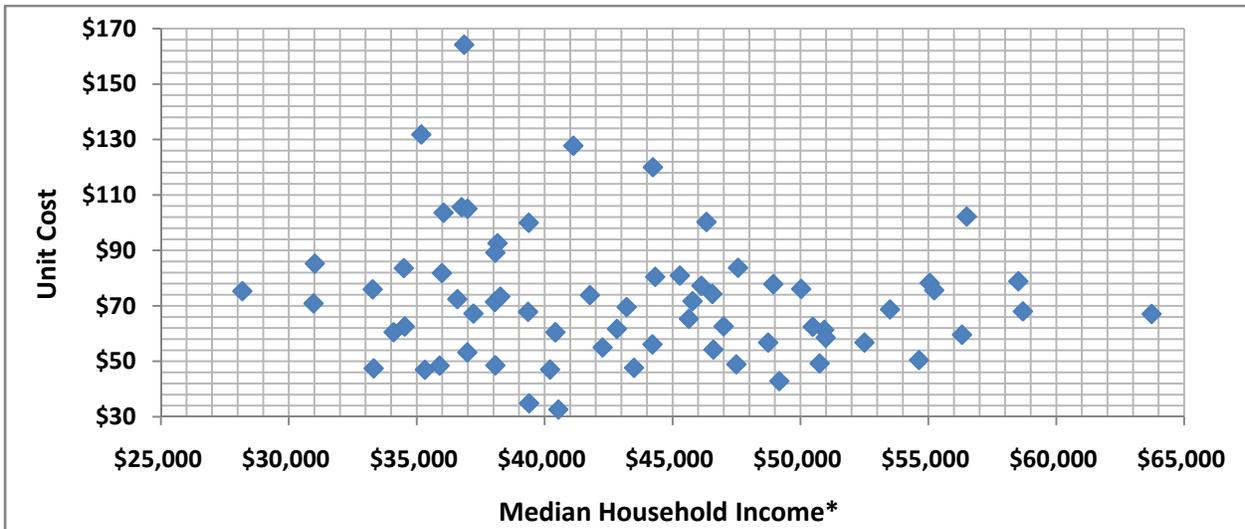
As **Figure 1** shows, there is a general inverse relationship between the number of cases handled and the unit cost, but the pattern is not linear. While the *trend line* (the diagonal line in the middle of the data points) shows a downward trend, the wide range of individual points (depicting counties) around the *trend line* shows that there is wide variation in per unit cost.

In addition to number of cases handled, another factor that could affect per unit costs in a statewide system is the varying cost of doing business in different areas of the state. The largest factor in every clerk’s budget is “personal services” costs – which represent more than 90 percent of all clerk expenditures statewide.¹⁶

To determine the effect of this factor on the variation in cost efficiency, **Figure 2** plots per unit cost for each clerk by each county's median family income from the lowest income (Calhoun, \$28,186) to the highest income (St. Johns, \$63,728). If the costs of operating in different counties accounted for a significant portion of the variation in cost efficiency, the figure below should reveal a clear positive trend upward.

¹⁶ See Chart 6.

Figure 2 – Clerks’ Per Unit Costs Arranged by Median Household Income



Data Source: U.S. Bureau of Economic Analysis and the Florida Clerks of Court Operations Corporation. “Florida Clerks of the Circuit Court: Fiscal Year 2008-09 Certified Article V Budgets for Submission to the Florida Legislature,” October 15, 2008. Figure by Florida TaxWatch.

*Median Household Income is from 2007 (most recent year of data available).

As **Figure 2** shows, there is not a strong relationship between the higher median household income of a county and the unit cost of the clerk’s office in that county. Generally, the pattern in **Figure 2** indicates that the difference in operating costs among counties is not a critical factor in predicting the unit cost of clerk, and therefore, does not help explain the wide variation in cost efficiency among the clerks.

Based on the comparison of unit costs across the clerks, and given that unit costs are a proxy measure of cost efficiency, Florida TaxWatch concludes that there is wide variation in efficiency within the current system.

[Section 1.B. Analysis of Variation in Effectiveness of Revenue Collection](#)

Effectiveness is measured as the clerks’ ability to collect court-related revenues legally owed.

With respect to effectiveness of collecting court-related revenues across clerks, the Clerks of Court Operations Corporation, pursuant to statutory prescription, has created performance measures and standards and developed a process to measure collections across the system.

While Florida TaxWatch did not undertake an empirical review of compliance with the standards, the Florida Legislature’s Office of Program Policy Analysis and Government Accountability (OPPAGA) did recently conduct such an analysis.

The OPPAGA report found that clerks were generally meeting the performance standards, but that there is wide variation in effectiveness across the system.¹⁷ Specifically, the analysis found that there was “considerable variability among the clerks in the percentage of these assessments [i.e., fines, fees, service charges, and court costs] they were able to collect. Collection rates range from a high of 90% to a low of 36%...”¹⁸

The report notes that the differences are due to a number of factors, including some “outside the clerks’ control” – such as the median per capita income of the county. However, the report also identifies wide variation in the collection methods used, and notes that a number of clerks do not use all available methods. While 100 percent of clerks use payment plans to allow individuals to pay court-related assessments over time, OPPAGA found that a number of other methods are generally, but not universally, used: Private Collection Agencies (89%), Drivers License Sanction (85%), Lien (80%), Defendant Notification (72%), and Web Pay Point (64%). Additionally, there were five methods identified by the clerks that “less than half of the clerks use” – clerks as Collection Agents (37%), Collection Courts (33%), Electronic Fund Transfer (17%), and Garnishing Wages (5%) or Bank Accounts (3%).¹⁹ The report also notes, however, that OPPAGA was unable to identify which collection methods proved the most effective.²⁰

While it is clear from OPPAGA’s analysis that collection rates “generally met or exceeded performance standards,” it is equally clear from the analysis that there is wide variety in the effectiveness of individual clerks – and that most clerks are not using all available collection methods to maximize revenue. Based on the OPPAGA review, **Florida TaxWatch concludes that there is wide variation in the effectiveness of individual clerks at collecting legally owed court-related revenue.**

Section 1.C. – Analysis of Variation in Transparency Among Individual Clerks

Transparency is the ability of individuals to access and analyze the actions and functions of their government. In most cases, transparency is measured by the ability to access information related to revenues and expenditures regarding the activities of a governmental entity. Through this lens, transparency reflects the ability of individuals or oversight agencies to review the operations of the individual clerks in order to analyze their performance. Specifically, consistent transparency would enable ready access to information regarding: (1) from what sources court-related revenues are collected, and (2) for what specific court-related functions they are expended.

¹⁷ OPPAGA report No. 07-21, “Clerks of Court Generally Are Meeting the System’s Collections Performance Standards,” March 2007.

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 4.

²⁰ *Id.* “While there may be collection methods that improve collections for specific divisions; our survey data did not link specific methods to division collection success.”

Section 1.C.1 – Analysis of Variation in Transparency of Court-Related Revenue Collection by Clerks

Revenues are collected by the clerk according to statutory prescriptions. In some cases, the specific amounts to be collected are determined by a judge during a court proceeding, subject to guidelines in statute and constitutional law.

A recent OPPAGA analysis assessing the clerks' compliance with collections performance standards concludes, "Statewide, clerks have generally met the collections performance standards, although juvenile delinquency and civil traffic collections pose difficulties."²¹ Although the OPPAGA report makes two recommendations regarding collections practices and the performance standards to which clerks are held,²² the analysis indicates that the collection of court-related revenue by each clerk within the current system is transparent. Based on OPPAGA's ability to complete an analysis of the compliance of the clerks with collections performance standards, **Florida TaxWatch concludes that the level of transparency of revenue collection does not vary widely among individual clerks.**

Section 1.C.2 – Transparency of How Court-Related Revenues Collected by the Clerks are Expended for Specific Court-Related functions

To determine the budgeted expenditures for court-related functions in a given fiscal year, individual clerks must apply a complicated and imprecise methodology. Due to the nature of the dual functions of clerks in performing non-court-related functions (not funded by the state) and court-related functions (funded pursuant to Article V using court-related revenues collected and allocated under Florida Statutes), this budget process is very complex. According to the CCOC, the methodology for allocating court-related budgeted expenditures for FY 2008-09 was:

Each clerk's total budgeted full-time equivalent positions (FTEs) were separated into the direct court-related, direct non-court related, and overhead (indirect; providing services to both court and non-court functions) positions. A portion of total overhead (indirect) costs and positions were allocated to court-related activities based on the ratio of direct court-related positions to total direct positions.

²¹ *Id.*

²² *Id.* at page 6 ("Recommendations: To increase collections and funding for the state court system, we recommend that the corporation [clerks of Court Operations Corporation] identify what collection methods work best, under what conditions, and in what combinations. Given the large amount of potential funds that can be collected to help fund the state courts system, the corporation should initially focus on helping clerks identify options for improving civil traffic collections. The corporation should report its findings to the clerks and develop technical assistance programs to help ensure successful implementation. [Second] To more effectively target collection efforts, we recommend that the corporation consider modifying the juvenile delinquency performance standards, which could enable clerks to concentrate their efforts on activities that can produce the highest return on investment of collections resources.")

Overhead activities include, but are not limited to, executive administration, accounting, personnel/human resources/employee relations, purchasing, payroll, chief deputy clerk’s administrative staff, legal counsel, and mailroom.²³

Additionally, according to the CCOC’s stated “methodologies and rationales” certain “specified court-related budgeted expenditures” are excluded when determining the clerks’ Article V budgets.²⁴

The methodology explained by this section of the clerks’ budget report under Article V demonstrates the complexity of the current system. While it may be possible to analyze the specific application of these “methodologies and rationales” across the 67 individual clerks (an effort not undertaken by Florida TaxWatch for this study), it would prove a difficult undertaking for any interested party (legislative or otherwise). It would take significant time and effort to determine whether “direct court-related, direct non-court related, and overhead (indirect; providing services to both court and non-court functions)” expenses were allocated appropriately by each clerk, or even uniformly across the system.

The complexity and inherent ambiguity of methodology employed to determine court-related functions is even more troublesome given the portion of the court-related budgets that goes to salaries. **Chart 6** presents the “Statewide Cumulative Article V Budget Totals” for FY 2008-09 as provided by the CCOC. (Note: **Chart 6** was created by Florida TaxWatch and does not provide all information, including the breakdown between criminal and civil court expenditures, which is provided in the original chart produced by the CCOC.)

²³ The Florida Clerks of Court Operations Corporation. “Florida Clerks of the Circuit Court: Fiscal Year 2008-09 Certified Article V Budgets for Submission to the Florida Legislature,” October 15, 2008. Page vii. (*emphasis in original*)

²⁴ *Id.* “The costs and FTEs for the following court-related activities were excluded from the clerks’ 2008-09 Article V budgets in calculation of Article V costs:”

Issues	Rationale for Deduction
County-Obligated Court-Related Expenditures Information Technology..... Other..... (e.g. maintenance, utilities, security)	County is responsible for funding (s. 29.008, F.S.) County is responsible for funding (s. 29.008 F.S.)
Optional Court-related [sic] Programs..... (e.g. family mediation, teen court, guardian ad litem, family pro se, victim-witness, law library)	County is responsible for funding (s. 29.008 F.S.)
Federal IV-D Child Support Reimbursement-related [sic] Expenditures	These funds are not considered to be court-related.

Source: The Florida Clerks of Court Operations Corporation. “Florida Clerks of the Circuit Court: Fiscal Year 2008-09 Certified Article V Budgets for Submission to the Florida Legislature,” October 15, 2008. Page vii. Reprinted as in original. (*emphasis in original*)

CHART 6: Statewide Cumulative Article V Budget Totals – FY 2008-09

Budget Category	Budget	Percent of Budget
Number of FTE	9,645.49	n/a
Personal Services	\$480,743,988	90.14%
Operations	\$ 50,771,142	9.52%
Capital	\$ 1,791,197	0.34%
Debt Service	\$0	0%
Total	\$533,306,327	100%

Data Source: Florida Clerks of Court Operations Corporation. “Florida Clerks of the Circuit Court: Fiscal Year 2008-09 Certified Article V Budgets for Submission to the Florida Legislature,” October 15, 2008. Chart by Florida TaxWatch.

As **Chart 6** shows, more than 90 percent of the statewide cumulative court-related budget total for FY 2008-09 is for “personal services” (i.e., salaries, benefits, bonuses, etc.). While there are obviously some employees whose entire job-related activities are unequivocally classified as court-related, there are also many employees whose job-related functions cover both court-related and non-court related functions – as is apparent by the 0.49 FTE included as part of the statewide totals. Essentially, employees may spend part of one year, one month, one day, or even one hour performing court-related functions and another portion of that same period of time performing non-court-related activities. The disaggregated nature of these employees’ activities creates the potential for misallocation of these personnel expenditures as court-related, as opposed to related to the other functions of the clerks not funded through court-related revenues.

Furthermore, the current system lacks any meaningful way to review the decision of what portions of personnel expenses should go into which category – other than the CCOC’s review and certification of the budget. Likewise, there is no meaningful way to check whether each employee spends the budgeted portion of time in a given year performing court-related duties as opposed to non-court-related duties.

Given the large percentage of court-related expenditures that are allocated for personal services, the current system of budgeting for court-related expenses is troublesome in terms of transparency.

Therefore, Florida TaxWatch concludes that the current system offers no meaningful check on the classification of “personal services” as court-related under the current budgeting system. Generally, the level of transparency regarding detailed expenditures of individual clerks is deficient, so there is no way to determine if there is wide variation within the system.

This conclusion is supported by additional information obtained by Florida TaxWatch in conjunction with this analysis – including an Attorney General’s (AG) Opinion regarding whether a specific cost in Clay County could be considered as part of “court-related technology

and court technology.”²⁵ While this example is peripheral to the underlying analysis (because “court-related technology” is a separate and distinct category from general court-related expenses analyzed in this Florida TaxWatch study), it illustrates the ambiguity inherent in the current system regarding what specific expenses should be classified as court-related versus non-court-related. The need for an Attorney General’s opinion in this matter further evidences the lack of distinction between court-related and non-court-related expenses within the system.

While deficiencies in transparency do not inherently render a system as “non-transparent,” nor can a definitive statement be made that such deficiencies are the fault of the decentralized nature of the clerks in the current system, the difficulty of obtaining and independently verifying specific information related to government expenditures is a strong indication that the level of system-wide transparency should be improved.

Additionally, even when the reporting requirements are accepted at face value (i.e., that all direct and indirect costs are properly and uniformly allocated as court-related and non-court-related), the clerks’ projections concerning court-related revenues and expenditures are often inaccurate. Significant deficiencies were recently noted by the Auditor General.

The Auditor General’s Operational Audit of the CCOC in September 2008 found that revenue and expense projections submitted by the clerks and certified by the CCOC were often widely different from actual revenues and expenses when reconciled. Specifically, the report notes that, “actual revenues exceeded projected revenues for 52 clerks, totaling \$27.1 million, including 27 clerks where actual revenues were more than 10 percent greater than projected revenues.”²⁶ A table of the findings presented in the report shows that the actual revenues of eight clerks exceeded projected revenues by more than 20 percent, with one clerk’s actual revenues exceeding projection by just over 40 percent and another by more than 82 percent.²⁷

Likewise, the Auditor General’s review found that a similar overstatement of projected budget expenditures was common among the clerks. Specifically, the report noted that, “budgeted expenditures exceeded actual expenditures for 52 clerks, totaling \$23.5 million.”²⁸ A table of the findings presented in the report shows that the budget expenditures were overstated by at least 14 percent in eight counties, with two clerks’ budgeted expenditures projected as 20 percent higher than actual expenditures.

Reviewing the aggregated surplus funds generated by the clerks in Fiscal Year 2006-07, the Auditor General’s review found that the actual surplus of the 38 “Surplus Clerks” (i.e., those

²⁵ (AGO 2008-03, January 31, 2008).

²⁶ Report no. 2009-016, page 3.

²⁷ *Id.* at 4. It should be noted that it is possible that the increase in revenues was due to the increases in foreclosures attributable to the economic downturn.

²⁸ *Id.*

with projected surpluses based on projected budget and projected revenues)²⁹ totaled \$61.2 million “or 90 percent more than projected.”

The Auditor General’s report recommends, among other things, “CCOC should also provide additional assistance and training to aid in the preparation of the clerks’ court-related budgets to *improve the accuracy and reliability of the data and help ensure that budgets and surplus/deficit calculations are more realistic.*”³⁰ While changing the system might not necessarily improve the accuracy of projections, the current system’s delegation of the control of court-related revenues makes accuracy of projected budgeted expenditures and collected revenues especially important because transparency in the clerks’ budget, revenues, and remittances is the only way the state can ensure that it receives the revenues to which it is entitled – and which are needed to offset the dollars appropriated to fund the State Courts System.

Given the findings of Florida TaxWatch with respect to the complexity of the methodology for determining court-related budget expenditures, combined with the findings of the Auditor General’s Operational Audit concerning the accuracy of projected revenues budgeted expenditures, **Florida TaxWatch concludes that the level of transparency of how court-related revenues are expended for specific court-related functions under the current system is deficient.**

Section 1.D – Analysis of Variation in Accountability Among Individual Clerks

Accountability is measured as the ability to hold individuals – and the entities that are in their charge – responsible for accurately following prescribed procedures, and to hold individuals responsible for the decisions they make (or those made in their name under their authority), especially regarding expenditures and resource allocation.

With respect to clerks, the first element of accountability is measured empirically as the level of compliance with statutory requirements regarding collection and remittance of revenues to the state as required by law, and the corrective management structure in place within the system to remedy compliance failures. The second element of accountability is measured as the ability to hold individuals responsible for their decisions on how to expend government resources.

The current system provides performance standards, designed and measured by the CCOC, imposed on each clerk. The performance standards measure fiscal management, operation efficiency, and effective collection of court-related revenues. While variation in accountability with respect to these three standards is directly relevant to this study, the performance measures do not capture another important factor – accountability with respect to the statutory two-thirds/one-third revenue sharing formula. Therefore, Florida TaxWatch undertook an empirical analysis of the variation in accountability with respect to revenue sharing as well.

²⁹ The concept of Surplus Clerks will be addressed further in Section 1.D. on page 19-20.

³⁰ *Id.* (emphasis added)

Specifically, this section has two main subsections that measure the variation of accountability relevant for this study (1) the level of variation in compliance with the existing performance measures and (2) the level of variation in compliance with the two-thirds/one-third revenue sharing formula.

Section 1.D.1 – The Level of Variation in Compliance with the Statutory Requirements

Statutory law requires that the CCOC develop and certify “a uniform system of performance measures and applicable performance standards” for the clerks’ court-related functions and that the CCOC measure “clerk performance in meeting the performance standards.”³¹ Further, the statute directs that these “measures and standards shall be designed to facilitate an objective determination of the performance of each clerk in accordance with minimum standards of fiscal management, operation efficiency, and effective collection of fines, fees, service charges, and court costs. When the [CCOC] finds a clerk has not met the performance standards, the [CCOC] shall identify the nature of each deficiency and any corrective action recommended and taken by the affected clerk of court.”³²

The timeliness standards relate to the percent of new cases opened within a specified period for each of four types of criminal court cases, and the percent of new cases where documents are docketed within a specified period for each of six categories for civil court cases. The collection rate standard assesses the fee collection rates for four categories of criminal court cases and five categories of civil court cases over five 3-month periods (15 months total). The fiscal management standards relate to accounting and auditing functions, including “whether required monthly expenditures and revenue reports to CCOC were produced timely and according to instructions.”

According to the Auditor General’s review of the CCOC, there is reason to believe that, in some instances, these performance measurements are not being met by individual clerks. With respect to the timeliness standards, “63 clerks (94 percent) met 15 or more of the 20 criteria, while 4 clerks met 14 or less (ranging from 6 to 14)...As for the collection rate standard, 46 clerks (69 percent) met 31 or more of the 36 criteria, while 21 clerks met 30 or less of the 36 criteria.”³³ Additionally, in some incidents, the data to determine compliance were not fully or accurately provided by individual clerks.³⁴

³¹ S.28.35(2)(e), Florida Statutes (2008)

³² *Id.*

³³ *Id.* at 5-6.

³⁴ *Id.* (“Additionally, we noted that some clerks did not report data in certain categories” with respect to the timeliness standards), and *Id.* at 6 (“Our review of the quarterly instances where the data reported by the clerks to CCOC disclosed instances where the data reported were inconsistent or fluctuated significantly within the reporting period. Similar inconsistencies and fluctuations were also found in audit report No. 2008-10, finding No. 4 (“We also noted instances in which collections information appeared inconsistent.”) Also, *Id.* at 6 (“These issues relating to the timeliness and collection rate performance measures discussed above indicate that some clerks are either not

While the current system clearly provides performance standards to which the entities within the system are held, it appears, based on the finding by the Auditor General, that there are deficiencies in implementing and applying these standards. Despite these issues, the current system does provide minimum performance standards with regard to operational efficiency, effective execution of duties, and fiscal management to which the clerks are generally held.

In addition to the performance standards, statutory law also requires the CCOC to review each clerk's proposed budget and monitor the remittance of court-related revenues to the Clerk of Court Trust Fund (CCTF) as required by the two-thirds/one-third revenue sharing formula. In practice, each clerk's proposed budget, once reviewed and certified by the CCOC, is used to designate each clerk as either a "Surplus Clerk" (i.e., projected revenues exceed budgeted expenditures) or as a "Deficit Clerk (i.e., budgeted expenditures exceed projected revenues), and procedures are implemented for either the monthly remittance of one-twelfth of the annual projected surplus from the Surplus Clerks to the Department of Revenue CCFT, or the monthly payment of one-twelfth of the annual projected deficit from the Department of Revenue CCTF.

According to the Auditor General's report,

CCOC developed tracking reports that were to be completed by the clerks and submitted to CCOC on a monthly basis...This information was to be used by CCOC to monitor the activities of the clerks on a monthly basis throughout the year. The tracking reports are the CCOC's primary mechanism to ensure clerks' compliance with [the revenue sharing requirements in] Section 28.37, Florida Statutes, and that all amounts due to the Trust Fund and the General Revenue Fund, as applicable, are remitted.³⁵

The Auditor General's "review of the tracking reports and DOR receipts records" revealed the following:³⁶

- "We compared remittances to the Trust Fund reported by clerks on the tracking reports to DOR receipts and found differences..."³⁷
- "Based on our review of DOR receipts records, we noted that several of the 38 surplus clerks did not remit the required monthly amounts...Additionally, for several clerks, the amounts remitted were not in accordance with CCOC directives...Further, the differences between the directed remittance and the actual remittance amounts did not appear to be

reporting the required data or reporting inconsistent data. Consequently, CCOC is unable to accurately determine, in some cases, whether or not clerks met the established performance standards.")

³⁵ Report no. 2009-016, page 2.

³⁶ *Id.*

³⁷ *Id.* The omitted portion reads: "For example, the Jackson County clerk reported that \$106,540 had been remitted to the DOR during the 2006-07 fiscal year whereas DOR's records indicated that the clerk only remitted \$10,728 during the same period. The Citrus County clerk reported that \$819,420 had been remitted to DOR whereas DOR's records indicated that \$1,159,084 was remitted."

related to the clerk's actual surplus or deficit in a given month or cumulatively year-to-date."³⁸

- “Our comparison of the amounts required to be remitted using the monthly tracking reports (actual revenues less actual expenditures) to the amounts remitted according to DOR’s receipts records for the 2006-07 fiscal year indicated that 21 clerks remitted more than the required amounts to the Trust Fund (amounts over-remitted ranged from \$623 to \$339,644) and 12 clerks under-remitted funds to the Trust Fund (amounts under-remitted ranged from \$1,061 to \$1,749,968).”³⁹

The Auditor General also noted that “similar differences” were found in an earlier audit report (No. 2008-010, finding No. 1). The report concludes, “Without accurate information, *the CCOC cannot determine whether all amounts due to the Trust Fund and General Revenue Fund have been accurately or timely remitted.*”⁴⁰

The Auditor General’s report indicates that accountability with regards to compliance with statutorily required periodic remittances is an issue throughout the system and across the individual clerks’ offices. Overall, the Auditor General’s review of the performance measures and the monitoring of remittances lead Florida TaxWatch to conclude that there is wide variation in accountability throughout the system.

Although current statutory law requires that the CCOC monitor the remittances of revenue to the CCTF, there is no system for monitoring the level of compliance with the two-thirds/one-third revenue sharing formula – i.e., there is no current measure of accountability with respect to actually adhering to the revenue sharing formula.

[Section 1.D.2 – The level of variation in compliance with the two-thirds/one-third revenue sharing formula](#)

There is no specified system of accountability for cost efficiency, or for the revenue sharing aspects of the allocation of court-related revenues between the collecting clerk and the CCTF – and eventually the state’s General Revenue Fund. Therefore, Florida TaxWatch undertook an empirical analysis of the accountability of individual clerks to the two-thirds/one-third revenue-sharing formula provided by statute.

The statutory laws governing revenue sharing among parties within the system (the individual clerks and the state, as explained earlier) provide specific allocations and require that standards be set for performing those transfers. Whether or not the two-thirds/one-third sharing of the

³⁸ *Id.* The omitted portions read: “For example, based on DOR remittance reports, the Flagler County clerk made required remittances for only 8 of the 12 months; the Holmes County and Walton County clerks made required remittances for 6 of the 12 months; the Miami-Dade County clerk made required remittances for 3 of the 12 months; and the Taylor County clerk made required remittances for only 2 of the 12 months. For example, the Broward County clerk was directed by CCOC to remit \$102,987 per month to the Trust Fund during the 2006-07 fiscal year, however, the clerk remitted amounts ranging from \$5,500 to \$168,987...”

³⁹ *Id.*

⁴⁰ *Id.* (*emphasis added*)

revenue is realized and whether or not the procedures for remitting the revenue are followed are addressed separately.

It is also important to note that this analysis is based on clerks' budgets and projected revenues. The one-third allocation by statutory formula to the CCTF and ultimately the state's General Revenue Fund is not designated for use to cover cost overruns, but is actually budgeted into the clerks' expenses at the beginning of the fiscal year. Essentially, only five of the state's 67 clerks' approved and certified FY 08-09 budgets use less than two-thirds of the revenue collected after individual statutory earmarks (including earmarked transfers to the state's General Revenue Fund) are satisfied.

Florida TaxWatch analysis reveals that the allocation of revenues among these sources does not always follow the two-thirds/one-third formula envisioned by s.28.37, Florida Statutes. Under the current system, payments are made by the Department of Revenue from the CCTF to those clerks whose budgeted expenditures exceed their revenues, so that the state's share may not meet the standard expected of one-third of court-related revenues collected. In addition to the payments made from the CCTF to clerks whose budgeted expenditures exceed revenues, the clerk collecting the revenues often keeps more than the two-thirds of remaining revenues.

Chart 7 shows the individual clerks sorted by the amount of the remaining one-third of court-related revenues allocated for the clerks' FY 2008-09 budget. In **Chart 7**, where the number in the far right column is larger than 0 percent, the number represents the amount of the one-third of projected court-related revenues that have been budgeted for the current fiscal year by the clerk's office that collected the revenues. Where the percentage exceeds 100 percent, additional money will be transferred from the CCTF (i.e., court-related revenues collected from other parts of the state and designated for the state's General Revenue Fund if not expended through the CCTF) to that clerk's office in order to balance the year's budget expenditures.

Chart 7: Clerks Sorted by the Amount of Remaining One-Third of Court-Related Revenues Needed to Establish a Balanced Budget

County	Total Budgeted Expenditures and Reserve	Projected FY 08-09 Revenue	Budgeted Surplus or Deficit	1/3 of Fines and Fees	Amount of 1/3 Needed to Balance	Percent of 1/3 Needed
Dade	\$85,895,520	\$88,431,200	\$2,535,680	\$29,477,064	\$26,941,384	91%
Palm Beach	\$40,694,967	\$37,771,209	(\$2,923,758)	\$12,590,402	\$15,514,160	123%
Broward	\$44,659,253	\$45,600,000	\$940,747	\$15,199,998	\$14,259,252	94%
Orange	\$36,757,690	\$37,320,000	\$562,310	\$12,439,999	\$11,877,689	95%
Pinellas	\$28,252,090	\$26,170,479	(\$2,081,611)	\$8,723,492	\$10,805,103	124%
Hillsborough	\$35,404,733	\$37,154,431	\$1,749,698	\$12,384,809	\$10,635,111	86%
Pasco	\$15,920,148	\$10,527,804	(\$5,392,344)	\$3,509,268	\$8,901,611	254%
Brevard	\$17,428,654	\$13,988,817	(\$3,439,837)	\$4,662,939	\$8,102,775	174%
Polk	\$16,085,860	\$16,432,757	\$346,897	\$5,477,585	\$5,130,688	94%

County	Total Budgeted Expenditures and Reserve	Projected FY 08-09 Revenue	Budgeted Surplus or Deficit	1/3 of Fines and Fees	Amount of 1/3 Needed to Balance	Percent of 1/3 Needed
Volusia	\$12,869,046	\$12,008,011	(\$861,035)	\$4,002,670	\$4,863,705	122%
St. Lucie	\$9,853,276	\$8,540,500	(\$1,312,776)	\$2,846,833	\$4,159,609	146%
Seminole	\$10,683,733	\$10,688,700	\$4,967	\$3,562,900	\$3,557,933	100%
Lake	\$7,931,567	\$7,028,760	(\$902,807)	\$2,342,920	\$3,245,727	139%
Sarasota	\$9,638,545	\$9,791,546	\$153,001	\$3,263,848	\$3,110,847	95%
Escambia	\$7,942,717	\$7,259,403	(\$683,314)	\$2,419,801	\$3,103,115	128%
Manatee	\$7,294,431	\$6,409,600	(\$884,831)	\$2,136,533	\$3,021,364	141%
Duval	\$19,317,461	\$24,779,081	\$5,461,620	\$8,259,693	\$2,798,073	34%
Collier	\$10,392,723	\$12,107,300	\$1,714,577	\$4,035,766	\$2,321,189	58%
Leon	\$7,122,493	\$7,265,914	\$143,421	\$2,421,971	\$2,278,550	94%
Alachua	\$6,313,920	\$6,400,000	\$86,080	\$2,133,333	\$2,047,253	96%
Monroe	\$4,059,792	\$3,497,000	(\$562,792)	\$1,165,667	\$1,728,459	148%
Marion	\$7,048,382	\$8,020,000	\$971,618	\$2,673,333	\$1,701,715	64%
Indian River	\$4,049,115	\$3,688,000	(\$361,115)	\$1,229,333	\$1,590,449	129%
St. Johns	\$4,730,000	\$4,730,000	\$0	\$1,576,667	\$1,576,667	100%
Charlotte	\$4,774,807	\$4,806,156	\$31,349	\$1,602,052	\$1,570,703	98%
Nassau	\$2,342,137	\$1,419,840	(\$922,297)	\$473,280	\$1,395,577	295%
Clay	\$4,077,877	\$4,077,877	(\$0)	\$1,359,292	\$1,359,293	100%
Santa Rosa	\$3,693,570	\$3,694,000	\$430	\$1,231,333	\$1,230,903	100%
Putnam	\$2,361,542	\$1,770,000	(\$591,542)	\$590,000	\$1,181,542	200%
Martin	\$4,251,477	\$4,767,822	\$516,345	\$1,589,274	\$1,072,929	68%
Okeechobee	\$1,624,783	\$1,033,295	(\$591,488)	\$344,432	\$935,920	272%
Hernando	\$4,129,100	\$4,994,400	\$865,300	\$1,664,800	\$799,500	48%
Walton	\$1,986,286	\$1,976,000	(\$10,286)	\$658,667	\$668,953	102%
Levy	\$1,360,778	\$1,086,950	(\$273,828)	\$362,317	\$636,145	176%
Hendry	\$1,332,335	\$1,132,586	(\$199,749)	\$377,529	\$577,278	153%
Bay	\$4,126,384	\$5,416,603	\$1,290,219	\$1,805,534	\$515,315	29%
Hardee	\$1,054,665	\$850,000	(\$204,665)	\$283,333	\$487,999	172%
Gadsden	\$1,422,998	\$1,422,998	\$0	\$474,333	\$474,333	100%
Flagler	\$1,886,438	\$2,128,101	\$241,663	\$709,367	\$467,704	66%
Highlands	\$2,266,634	\$2,704,724	\$438,090	\$901,575	\$463,485	51%
Jackson	\$1,229,137	\$1,188,157	(\$40,980)	\$396,052	\$437,032	110%
Franklin	\$718,188	\$423,106	(\$295,082)	\$141,035	\$436,117	309%
Gilchrist	\$678,617	\$415,000	(\$263,617)	\$138,333	\$401,950	291%
Okaloosa	\$4,208,951	\$5,738,925	\$1,529,974	\$1,912,975	\$383,000	20%
Suwannee	\$1,211,875	\$1,243,694	\$31,819	\$414,565	\$382,745	92%
Lee	\$14,361,419	\$20,984,846	\$6,623,427	\$6,994,948	\$371,521	5%
Desoto	\$1,001,003	\$1,003,000	\$1,997	\$334,333	\$332,336	99%
Dixie	\$603,719	\$437,100	(\$166,619)	\$145,700	\$312,319	214%

County	Total Budgeted Expenditures and Reserve	Projected FY 08-09 Revenue	Budgeted Surplus or Deficit	1/3 of Fines and Fees	Amount of 1/3 Needed to Balance	Percent of 1/3 Needed
Union	\$442,500	\$198,093	(\$244,407)	\$66,031	\$310,438	470%
Columbia	\$1,594,277	\$1,998,877	\$404,600	\$666,292	\$261,692	39%
Gulf	\$489,855	\$384,401	(\$105,454)	\$128,134	\$233,587	182%
Baker	\$636,151	\$637,343	\$1,192	\$212,448	\$211,255	99%
Calhoun	\$505,600	\$443,900	(\$61,700)	\$147,967	\$209,667	142%
Liberty	\$326,819	\$177,036	(\$149,783)	\$59,012	\$208,795	354%
Glades	\$556,623	\$556,623	\$0	\$185,541	\$185,541	100%
Taylor	\$640,916	\$719,898	\$78,982	\$239,966	\$160,984	67%
Lafayette	\$275,984	\$182,000	(\$93,984)	\$60,667	\$154,651	255%
Washington	\$743,066	\$925,000	\$181,934	\$308,333	\$126,399	41%
Wakulla	\$817,575	\$1,044,886	\$227,311	\$348,295	\$120,984	35%
Hamilton	\$450,756	\$525,000	\$74,244	\$175,000	\$100,756	58%
Bradford	\$665,081	\$947,761	\$282,680	\$315,920	\$33,240	11%
Citrus	\$2,181,127	\$3,257,282	\$1,076,155	\$1,085,761	\$9,606	1%
Holmes	\$399,503	\$607,520	\$208,017	\$202,507	\$0	0%
Jefferson	\$346,180	\$640,666	\$294,486	\$213,555	\$0	0%
Madison	\$439,273	\$1,020,190	\$580,917	\$340,063	\$0	0%
Sumter	\$1,735,302	\$2,645,000	\$909,698	\$881,667	\$0	0%
Osceola	\$8,924,643	\$13,482,465	\$4,557,822	\$4,494,155	\$0	0%
Totals:	\$539,222,065	\$550,719,633	\$11,497,568	\$183,573,193	\$172,494,619	

= Counties identified as fiscally constrained as defined in s.218.67, Florida Statutes

Data Source: Florida Clerks of Court Operations Corporation. "Florida Clerks of the Circuit Court: Fiscal Year 2008-09 Certified Article V Budgets for Submission to the Florida Legislature," October 15, 2008; Chart Prepared by the Office of the State Courts Administrator, Research and Data.

Only five of the 67 clerks (7.5 percent) operate with only two-thirds of the total revenues collected (i.e., use 0 percent of the one-third allocated to the Trust Fund and ultimately the state's General Revenue Fund). Therefore it is important to note that 62 of the 67 clerks (92.5 percent) use all, part, or more of the total revenue intended by this section for the General Revenue Fund. One additional clerk, Citrus County, uses only 1 percent of the additional one-third of its collected revenues. On the other hand, six clerks use exactly 100 percent of the one-third of revenues allocated to the CCTF (meaning the court-related budgeted expenditures require exactly 100 percent of the projected court-related revenues), while the budget expenditures for 28 clerks exceed the projected court-related revenues for the current fiscal year. In total, 34 clerks budgeted 100 percent or more of the projected court-related revenues they will collect this year, whereas only five budgeted less than the two-thirds of court-related revenues envisioned by the two-thirds/one-third formula.

Statewide, \$172,494,619 of the \$183,573,193 (94 percent) in projected FY 08-09 revenue designated for the CCTF and ultimately for the state's General Revenue Fund will be

redistributed to local clerks in order to fund their court-related functions. Roughly \$11 million, or 2 percent, of the approximately \$550.7 million projected for collection by the clerks in court-related fines, fees, service charges, and costs under state law is projected by the clerks to be remitted to the General Revenue Fund, from which the State Courts System is funded.

Overall, as **Chart 7** shows, the state would actually receive well under one-third of court-related revenues collected in FY 2008-09 – approximately 2 percent instead of one-third. This reduced amount will mean that the taxpayers of Florida will have to make up more of the cost of the State Courts System – at a time when the state budget is already under stress.

It is important to note that Fiscally Constrained Counties (as defined by s.218.67(1), Florida Statutes) are included in the above analysis – although they are specially denoted (highlighted in yellow) in the **Chart 7**. Fiscally Constrained Counties are any “county that is entirely within a rural area of critical economic concern as designated by the Governor...or each county for which the value of a mill will raise no more than \$5 million in revenue...”⁴¹ Essentially, Fiscally Constrained Counties are rural counties where funding state services strains the county’s tax base, so special provisions are applied when revenue is shared with the state under statutes. Twenty-eight of the 67 clerks operate in Fiscally Constrained Counties.

Of the 28 Fiscally Constrained Counties, 16 budgeted 100 percent or more of projected court-related revenues in FY 08-09, whereas three of the 28 budgeted less than two-thirds of projected court-related revenues, thus transmitting more than the one-third of revenues designated by the formula to the CCTF.

If these 28 Fiscally Constrained Counties’ clerks are excluded from the above analysis, then the number of clerks budgeting 100 percent or more of projected revenues drops to 18 (from 32). However, the number of clerks operating with only two-thirds of total revenues collected drops to two (from five). In other words, three of the five clerks operating with less than two-thirds of their collected revenues are Fiscally Constrained Counties as designated by Florida Law.

CHART 8 – Fiscally Constrained Counties Compared to Non-Fiscally Constrained Counties in Amount and Percent of One-Third of Court-Related Revenues Designated for CCTF Used to Fund Budgeted Expenditures

	Amount of One-third Needed to Fund Budgeted Expenditures	Percent of One-third Needed to Fund Budgeted Expenditures
28 Fiscally Constrained Counties	\$9,256,205	5%
Other 39 Counties	\$163,238,414	89%

Data Source: Florida Clerks of Court Operations Corporation. “Florida Clerks of the Circuit Court: Fiscal Year 2008-09 Certified Article V Budgets for Submission to the Florida Legislature,” October 15, 2008. Chart by Florida TaxWatch.

⁴¹ S.218.67, Florida Statutes (2008)

As **Chart 8** shows, the 28 Fiscally Constrained Counties will use only 5 percent (\$9,256,205) of the total \$172,494,619 amount needed by the clerks statewide from the one-third of the money ultimately allocated to the state's General Revenue Fund to help offset the taxpayers' share of funding the State Courts System.

As previously noted, 94 percent of those funds transferred to the CCTF was distributed among the 28 clerks requiring more than 100 percent of their projected court-related revenues to balance the FY 08-09 budget. Eighteen of those clerks receiving these funds are not designated as Fiscally Constrained Counties, but receive some portion of the one-third of court-related revenues collected from the citizens of the three Fiscally Constrained Counties that transmitted the full one-third of revenues to the CCTF.

The 39 clerks operating in counties not designated as Fiscally Constrained Counties will use 89 percent of the one-third of total projected court-related revenues allocated for sharing with the state. The state's General Revenue Fund will receive 6 percent of the one-third of projected revenues, or 2 percent of the total court-related revenues projected to be collected statewide in FY 08-09.

Although Florida TaxWatch did not specifically undertake an empirical attempt to analyze the accountability of individual clerks regarding compliance with any requirement other than revenue sharing, the findings of the Auditor General clearly indicate that accountability is an issue in areas not specifically reviewed by Florida TaxWatch.

With respect to accountability of compliance with revenue sharing, Florida TaxWatch finds that there is wide variation in accountability within the current system. There are numerous incidents of deficient reporting by individual clerks regarding revenue sharing identified by the Auditor General, and the Florida TaxWatch analysis of compliance with the requirements of revenue sharing indicate that the system lacks sufficient accountability to ensure that all revenues to which the state is entitled under the current law are being remitted.

It is important to note that the Auditor General's report recommends remedies to these deficiencies, and even more important to note that the CCOC's response acknowledges these deficiencies and outlines corrective measures to be undertaken by the CCOC; however, neither the recommendations nor the remedial actions prevent the conclusion that, as of September 2008, the current system is clearly deficient with respect to accountability of compliance with revenue sharing. **Based on the findings of the Auditor General's review of compliance with the revenue sharing requirements of the current system, Florida TaxWatch concludes that the current system lacks sufficient accountability with respect to revenue sharing.**

Section 2: Does the Current System Provide Incentives to Operate Cost Efficiently or Improve Cost Efficiency?

Irrespective of the measures of efficiency (i.e., whether the current system, in fact, operates efficiently or not), a separate question is whether the system provides incentives to operate cost efficiently or improve cost efficiency. The converse is whether the service delivery system, in fact, provides disincentives to operating cost efficiently or improving cost efficiency (i.e., is the system designed so that those participants who operate most inefficiently are rewarded most).

Analysis of the current system of funding the clerks' court-related functions in terms of incentives to operate cost efficiently and to improving cost efficiency is, admittedly, more qualitative than quantitative (with the notable exception of [Section 2.A](#)). There are certain elements that are present in service delivery systems (applicable to both governmental and nongovernmental systems) that can act as objective standards.

- A. Are there standards of cost efficiency to which the entities within a system are held?
- B. Is cost efficient operation encouraged? (i.e., where multiple entities perform the same or similar function, are those entities that do so at a lower per unit cost than expected rewarded?)
- C. Are there incentives for operating inefficiently? (i.e., are those systems that do not operate efficiently rewarded with resources or benefits not realized by those that operate efficiently?)
- D. Are there incentives to improve cost efficiency?

The following analysis applies these principles, one by one, to the current system of funding the court-related functions generally.

Section 2.A – Are there Standards of Cost Efficiency to which Clerks within the System are Held?

The current system of charging the clerks with providing court-related administrative functions does not contain any cost efficiency standards. As demonstrated in [Section 1.A](#), cost efficiency varies widely throughout the system.

Despite the fact that there are no cost efficiency standards in the current system, it is likely that the imposition of efficiency standards would significantly reduce costs. Due to the variation in number of cases handled, it would not be entirely fair to hold all clerks to the same efficiency standard. A better way would be to impose a standard for each category (again using the categories from [Section 1.A](#)).

If a per unit cost standard were applied to clerks of similar size based on the previously created categories, the cost savings would be significant. **Chart 9** provides the cost savings if the lowest, second-lowest, and mean per unit cost (by category) were achieved by every clerk within each category.

**Chart 9 – Potential Savings if Cost Efficiency Standards were Imposed by Category
(based on FY 08-09 projected budgeted expenditures and per unit costs)**

Category	Category Low	Savings if Low had been Achieved by all Clerks in Category	Second-Lowest	Savings if Second-Lowest had been Achieved by all Clerks in Category	Mean	Savings if Mean had been Achieved by all Clerks in Category
< 5,000	\$105.60	\$302,978	\$127.74	\$80,117	\$132.33	\$52,489
5,000 – 10,000	\$47.01	\$1,729,816	\$47.43	\$1,702,975	\$72.86	\$362,735
10,001 – 20,000	\$34.84	\$5,037,667	\$46.94	\$1,998,157	\$75.52	\$972,184
20,001 – 50,000	\$32.58	\$16,807,210	\$50.52	\$10,637,723	\$67.88	\$4,045,641
50,001 – 100,000	\$48.91	\$8,428,652	\$54.21	\$7,719,565	\$64.83	\$2,350,185
100,001 – 200,000	\$48.51	\$39,062,027	\$49.22	\$29,586,234	\$73.03	\$10,924,892
200,001 – 1 million	\$42.82	\$68,772,375		\$44,973,041	\$58.89	\$15,382,853
Statewide Total		\$140,140,725		\$96,697,812		\$34,090,978

Data Source: Florida Clerks of Court Operations Corporation. “Florida Clerks of the Circuit Court: Fiscal Year 2008-09 Certified Article V Budgets for Submission to the Florida Legislature,” October 15, 2008. Analysis and chart by Florida TaxWatch.

The savings that could potentially be achieved if uniform efficiency standards were imposed across the system are significant. If the cost efficiency standard was tied to the most efficient entity in each category, the savings would be more than \$140 million. If the cost efficiency standard was set at the level of the second-most cost efficient clerk in each category, the statewide savings would be almost \$100 million. Even if only the average per unit cost per category was set as the cost efficiency standard, it would result in a savings of more than \$34 million in a single year (based on FY 08-09 data).

Section 2.B – Is efficient operation encouraged?

The second measure applied by Florida TaxWatch to determine if the current system incentivizes efficient operation is to determine whether efficient operation is specifically encouraged. Put another way; are those entities operating more efficiently actually rewarded for their efficiency? Under this standard, the answer is clearly no; however, very few entities in government, in Florida and elsewhere, provide any sort of tangible reward, financial or otherwise, for efficient operation.

While efforts to implement rewards for efficiency in Florida government continue – notably the Prudential – Davis Productivity Awards Program sponsored by jointly by Florida TaxWatch, the Florida Lottery, the Florida Council 100, and the State of Florida, and administered by Florida TaxWatch – few governmental entities, system, programs, or agencies have institutionalized rewards for efficient operation or for improving efficiency. Therefore, **Florida TaxWatch finds the current system of providing court functions through the clerks to be deficient in providing appropriate incentives to operate cost efficiently.**

The State of Florida and the Legislature have an obligation to provide the highest level of fiscal stewardship for taxpayers. This is especially true with clerks because they serve two disparate functions within the same office, often by the same people. If designed properly, the clerk’s system can actually improve local government efficiency as well. Under the current system, clerks act as one of the few checks on local spending, and improving their cost efficiency will make them a stronger beacon of cost savings that can show the way for other local government entities.

The Legislature should explore implementing a new system that allows for more direct accountability to the state with respect to operational performance. Potentially, the Legislature could statutorily provide that clerks who are identified as deficient in certain areas and who fail to successfully implement corrective measures in a specified time shall have the duty to perform court-related functions removed from their offices and bestowed upon some other officer.⁴²

It is important to note that there is a statutory expenditure cap for clerks under s.28.36(5)(b), Florida Statutes. As the CCOC explains; “Starting in FY 2004-05, clerks’ expenditures were capped by law. In FY 2004-05, the expenditure cap was tied to FY 2003-04 estimated expenditures, but the cap changed to a revenue growth-based cap for FY 2005-06 and each year thereafter...”⁴³ (FY 2004-05, when the cap was implemented, was the first year that the clerks’ court-related functions were funded by the state under Revision 7 of Article V.) In FY 2004-05, each clerk’s individual budget was capped at 103 percent of the previous year’s expenditures – meaning the cap was set at a 3 percent rate of growth in expenditures based on previous expenditures. In FY 2005-06, the cap changed to be revenue-based instead of expenditure-based. In FY2007-08, the cap was again amended and set by statute (s.28.36(5)(c)(3), Florida Statutes) at the percentage change in revenue from the prior (adjusted) budget year to the current budget year.⁴⁴ Essentially, the current statutory cap on clerks’ individual budget expenditures is set at

⁴² The Florida Constitution allows the Legislature to remove the court-related duties of the clerks under Article V, Section 16, which reads in full: “There shall be in each county a clerk of the circuit court who shall be selected pursuant to the provisions of Article VIII section 1. Notwithstanding any other provision of the constitution, the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. There may be a clerk of the county court if authorized by general or special law.”

⁴³ The Florida Clerks of Court Operations Corporation. “Florida Clerks of the Circuit Court: Fiscal Year 2008-09 Certified Article V Budgets for Submission to the Florida Legislature,” October 15, 2008. Page viii.

⁴⁴ S.28.36(5)(c)(3), Florida Statutes (“For the county fiscal year 2008-09 and thereafter, the maximum budget amount for the standard list of court-related functions of the clerks of court in s.28.35(4)(a) that may be funded from

100 percent of the growth in revenues, due to the revenue-based budgeting process under the current system.⁴⁵

Under the current budget cap, if a clerk increases the budget to the cap maximum (as determined by the percentage increase in revenues), then the amount of surplus court-related revenues collected will not increase from the previous year – meaning that the state General Revenue fund will not share in the increased revenues at all despite the two-thirds/one-third court-related revenue allocation formula in s.28.37, Florida Statutes. To determine the effectiveness of the current expenditures cap under s.28.36(5)(c)(3), Florida Statutes, Florida TaxWatch analyzed the clerks’ submitted budgets compared to the statutory budget cap. The results are two categories of clerks – those who have proposed FY 2008-09 budgets that exactly match the maximum expenditure cap (meaning that the state will not share in the additional revenues collected) and those with budgets that are less than the statutory maximum expenditure cap.⁴⁶

- 39 clerks’ (58 percent) proposed budgets exactly matched their expenditure cap
- 28 clerks’ proposed budgets were less than their expenditure cap

Of the 39 clerks whose proposed budgets exactly matched their expenditure caps, 15 clerks (38 percent of the 39) received additional moneys from the CCTF, which would have ultimately reverted to the state’s General Revenue Fund if not expended. Five of those 15 clerks whose budgets exactly meet the expenditure cap were not Fiscally Constrained Counties (as defined by s.218.67(1), Florida Statutes), while 10 were so designated.

Based on the Florida TaxWatch analysis of the expenditure cap, Florida TaxWatch concludes that the cap is insufficient to limit expenditures, resulting in less court-related revenue for the state to offset the cost of operating the State Courts System, and therefore, unnecessarily shifting the burden of funding the State Courts System onto the taxpayers of Florida.

[the enumerated court-related revenues] retained by the clerks of court shall be calculated as the rebased budget for the prior county fiscal year adjusted by the projected percentage change in revenues between the prior county fiscal year and the county fiscal year for which the maximum budget amount is being authorized.”

⁴⁵ Under the statutory expenditures cap, certain types of revenue are excluded from the calculation of the individual cap, including “federal IV-D child support reimbursement funds, revenues received from clerks of the Court Trust Fund, and forfeitures not yet recognized as revenue.” *Id.* Additionally, There is an exception to the cap: under s.28.36(b), Florida Statutes, “The Legislative Budget Commission may approve increases to the maximum annual budgets approved for individual clerks of the court” under two conditions: “additional funding is necessary to pay the cost of performing new or additional functions required by changes in law or court rule...”; and “the additional funding is necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature” up to “2 percent of the maximum annual budgets approved pursuant to this section for all clerks, in the aggregate, for that same county fiscal year.”)

⁴⁶ The data source for this analysis: The Florida Clerks of Court Operations Corporation. “Florida clerks of the Circuit Court: Fiscal Year 2008-09 Certified Article V Budgets for Submission to the Florida Legislature,” October 15, 2008.

Section 2.C – Are there Incentives in the Current System for Inefficient Operation? (i.e., are those systems that do not operate efficiently rewarded with resources or benefits not realized by those that operate efficiently?)

Although difficult to measure, there are potential incentives for inefficient operation inherent within the current system. Since clerks are basically encouraged to spend all the money they collect or lose it to the state, there is actually an incentive to be inefficient – a ‘use-it-or-lose-it’ incentive. Since any surplus revenue raised through those sources goes to the state’s General Revenue Fund and not back to the local constituency in the form of lower fines and fees, there appears to be an incentive for local clerks to spend, at least, more than the minimum amount possible (and, at most, as much of the money as possible) in performing state funded duties within the county.⁴⁷

Thus, the current system may actually incentivize inefficient operation of court-related functions. The inefficiency could potentially take many forms: a clerk could hire more people than are essential to perform the charged duties (thus not only expanding the sphere of influence but also decreasing the workload on all those who are employed to perform the task), pay employees better than the market demands for such services, or provide bonuses to all (or many) employees.

However, there are certainly clerks within the system who operate efficiently. Imposing cost efficiency standards will benefit the efficient clerks by ensuring that their inefficient counterparts are not rewarded at their expense – or at the expense of their constituents.

A related issue to this section is the external accountability of the individual clerks within the current system. Separate from the issue discussed in [Section 1.D](#) (which was essentially internal accountability – or the measures of how individuals are held accountable within the system), external accountability concerns the ability of the voters to hold elected officials responsible for government activities – especially with regard to revenues and expenditures. While clerks have no direct control over setting the amounts of the fines, fees, service charges, and court costs they collect, the level of external accountability is directly relevant to the study of incentives to operate efficiently or inefficiently. A lack of external accountability for expenditure decisions indicates that there is little external accountability to the voters for court-related expenditure decisions. Essentially, there is little comparative expenditure information about the cost efficiency of individual clerks, or the clerks’ use of court-related funds, for the constituency to examine and utilize in making election decisions.

The external accountability would be for the constituency of inefficient clerks to hold their individual clerk responsible for perceived overspending. However, external accountability is unlikely because the expenditures in excess of revenues are funded with revenues collected from other parts of the state and not the constituency of the overspending clerk. This situation creates a disconnect in external accountability – a fiscally austere clerk who is sending the full one-third

⁴⁷ Florida TaxWatch became aware of at least one documented instances of this situation, but it will not be individually discussed in this report.

of his/her court-related revenues to the state cannot be held responsible for perceived inefficiency by their local constituency because they are meeting the minimum efficiency standard, but an inefficient clerk is unlikely to be held accountable by the rate of his/her county because the excess spending is funded by Floridians who are not residents of the county and the clerk is actually bringing money into the county without increasing the tax burden on the constituency.

These scenarios concerning the incentives for inefficient operation and the lack of external accountability of the clerks to the voters concerning potentially excessive court-related expenditures lead **Florida TaxWatch to conclude that the current system actually has incentives to operate inefficiently.**

Section 2.D. Incentive to Improve Cost Efficiency

Turning to the issue of whether the current system provides incentives to improve efficiency, the relevant question should be, “Is improvement of efficiency rewarded?” Put another way, “While it may be inherent that some entities within a system are naturally more efficient than others, are those that improve their efficiency (vis-à-vis their previous performance) rewarded?”

Neither the statutory laws governing the clerks, nor the CCOC provide specific incentives to improve cost efficiency. The finding of **Section 2.A.** that millions of dollars could be saved if efficiency standards were imposed is strong evidence that there are no incentives for efficiency improvements. Likewise, the finding of **Section 2.B.** that there is no specific incentive for efficient operation generally is strong evidence that there is no incentive for improvement.

Based on the overall analysis of the system’s incentive structure with regards to efficiency, Florida TaxWatch concludes that there are no incentives for individual clerks to improve cost efficiency over time without reasonable cost efficiency standards and without the standard checks and balances of the appropriations process of the Florida Legislature.

Section 3. Does the Current System Appropriately Allocate Resources Based on the Value of the Function Performed (or Service Provided) to the Taxpayer?

Statutory law, under Chapters 28 and 34, prescribes the court-related functions performed by the clerks, as a result of Revision 7, and the functions of the State Courts System. The court-related revenues collected by the clerks are used to fund the court-related activities of the clerk and to

“help fund the operation of the state courts system.”⁴⁸ Therefore, the distribution of court-related revenues collected directly affects the taxpayers and is critical to this analysis.⁴⁹

The distribution of court-related revenues varies by source type (see Section 1.B.1 discussing the specific division of revenues), and is very exact and often very complicated; however, the general formula with respect to the division of funds among the individual clerks collecting the revenues and the state is controlled by s.28.37, Florida Statutes. The simple interpretation of this statutory allocation formula directs that no less than two-thirds of court-related revenues collected shall be allocated to the administration of clerk-administered court-related functions, and no more than one-third of these revenues are provided to the General Revenue fund, from which the State Courts System’s funding is drawn.

To analyze the appropriate allocation of those revenues in relation to the duties charged to each entity within the system, this section begins with a breakdown of the statutory responsibility charged to each entity.

Duties of the Clerk (in Statute) Compared to Duties of the State Courts System (in Statute)

The charts below provide a breakdown of the court-related functions performed by the local clerks of the court and the State Court System.

- a. According to s.28.35(4)(a), Florida Statutes, the clerks are responsible for the following court-related functions:
 - i. Case Maintenance
 - ii. Records Management
 - iii. Court Preparation and Attendance
 - iv. Collections and Distribution of Fines, Fees, Service Charges, and Court Costs
 - v. Processing of Bond Forfeiture Payments
 - vi. Payment of Jurors and Witnesses
 - vii. Determination of Indigent Status
 - viii. Reasonable Administrative Costs to Support these Functions
- b. According to s.29.004, Florida Statutes, the State Courts System is responsible for the following court-related functions:
 - i. Judges appointed or elected, as well as general magistrates, special magistrates, and hearing officers
 - ii. Reasonable court reporting and transcription services necessary to meet constitutional requirements

⁴⁸ OPPAGA Report No. 07-21

⁴⁹ For example, the OPPAGA analysis of collections notes that, “if clerks increased [civil traffic] collections from the current 85% to the standard of 90% statewide, the state would receive an additional \$5,494,876 in these revenues to help fund the state courts system.”

- iii. Construction or lease of facilities, maintenance, utilities, and security for the district courts of appeal and the Supreme Court
- iv. Court foreign language and sign-language interpreters and translators essential to comply with constitutional requirements.
- v. Expert witnesses who are appointed by the court pursuant to an express grant of statutory authority
- vi. Judicial assistants, law clerks, and resource materials.
- vii. Court administration
- viii. Case management – i.e., the initial review and evaluation of cases, including assignment of cases to court divisions or dockets; case monitoring, tracking, and coordination, scheduling of judicial events, service referral, coordination, monitoring, and tracking for treatment-based drug court programs (but may not include costs associated with the application of therapeutic jurisprudence principles by the courts and case intake and records management conducted by the clerk of court)
- ix. Mediation and arbitration, limited to trial court referral of a pending judicial case to a mediator or a court-related mediation program, or to an arbitrator or a court-related arbitration program, for the limited purpose of encouraging and assisting the litigants in partially or completely settling the case prior to adjudication on the merits by the court. (but does not include citizen dispute settlement centers and community arbitration programs)
- x. Basic legal materials reasonably accessible to the public other than a public law library. These materials may be provided in a courthouse facility or any library facility.
- xi. The Judicial Qualifications Commission.
- xii. Offices of the appellate clerks and marshals and appellate law libraries.

Chart 10 provides a breakdown of FY 2008-09 clerks and trial courts total budgeted expenditures by circuit court jurisdiction.

Chart 10: Clerks' and Trial Courts' State Funded Budget Comparison by Circuit⁵⁰
FY 2008-09

Circuit	Clerks		Trial Courts	
	FTE	Budget	FTE	Budget
1	355.29	\$17,269,553	100.5	\$6,658,203
2	192.32	\$9,820,252	71	\$5,042,222
3	103.35	\$4,460,000	43.5	\$2,814,601
4	534.84	\$25,141,871	135	\$9,897,278
5	462.32	\$21,942,048	105	\$7,025,711
6	722.49	\$43,039,614	193.25	\$13,428,860
7	438.49	\$21,056,862	105	\$7,175,485
8	193.55	\$9,268,325	71.75	\$4,871,803
9	732.20	\$45,244,532	197.5	\$13,721,314
10	377.78	\$18,148,056	107.75	\$7,971,381
11	1,279.15	\$84,689,127	323.5	\$25,869,232
12	318.68	\$17,223,490	93.5	\$6,735,780
13	673.37	\$35,248,898	171	\$14,141,344
14	135.07	\$6,641,511	54.5	\$3,766,361
15	631.12	\$40,491,236	170.75	\$11,681,880
16	64.78	\$3,671,093	31.5	\$2,121,503
17	936.00	\$44,497,419	237.5	\$16,625,725
18	549.07	\$27,196,757	106.5	\$7,661,609
19	331.00	\$18,158,653	76.5	\$5,516,130
20	547.61	\$30,567,973	124	\$9,203,578
TOTAL	9,578.48	\$523,777,270	2,519.50	\$181,930,000

Circuit	Trial Court to Clerk Budget Ratio	Clerk Budget as % of Total	Clerk's Budget/Case	Trial Court's Budget/Case
1	74%	57%	\$64.70	\$48.02
2	94%	52%	\$58.10	\$54.64
3	104%	49%	\$69.48	\$72.19
4	78%	56%	\$48.14	\$37.72
5	66%	60%	\$67.83	\$44.74
6	60%	62%	\$90.85	\$54.96
7	69%	59%	\$59.83	\$41.45

⁵⁰ This analysis does not consider money provided to either the clerk or the trial court by counties to help fund court-related duties. The analysis considers the resources available for all the clerks' offices and the trial courts (circuit courts and county courts) in each of the 20 judicial circuits of Florida. The salaries of the elected clerk and the judges are excluded. Essentially, this chart is a comparison of the amount of state funds each entity (clerks and trial courts) has to accomplish their respective duties broken down by circuit.

Circuit	Trial Court to Clerk Budget Ratio	Clerk Budget as % of Total	Clerk's Budget/Case	Trial Court's Budget/Case
8	92%	52%	\$53.81	\$49.43
9	57%	64%	\$57.64	\$32.64
10	83%	55%	\$57.34	\$47.84
11	57%	64%	\$47.64	\$27.23
12	71%	59%	\$77.06	\$54.64
13	72%	58%	\$62.45	\$45.18
14	103%	49%	\$52.80	\$54.40
15	53%	65%	\$68.69	\$36.61
16	95%	51%	\$78.24	\$74.61
17	74%	57%	\$56.77	\$42.27
18	57%	64%	\$75.47	\$42.78
19	59%	63%	\$79.97	\$46.91
20	59%	63%	\$63.11	\$37.31
Statewide total	66%	60%	\$60.72	\$40.22
Mean	74%	58%	\$64.32	\$46.94
Median	72%	58%	\$62.45	\$45.18

Across the state's 20 circuits, the ratio of the state's funding of the trial courts to clerks ranges from .53 to 1.04, with a mean of .74 – meaning that the average budget for the trial courts in the 20 circuits is approximately three-fourths of the average budget for the clerks within that circuit.⁵¹ Among Florida's 20 circuits, only 2 (10 percent) have more state funding for the functions performed by the State Courts System than the clerks. In all but two of Florida's 20 circuits, the clerks' budgets for court-related functions is more than half of the total state funds allocated to both the clerks and circuits (meaning that the clerks within the circuit spend more performing their functions than the trial courts spend performing their functions). Statewide, the clerks' budgets for court-related functions are 187.9 percent of the state funding for the State Courts' System's functions – nearly twice as much.⁵² Whatever the subjective weight placed on duties within an integrated system, this analysis shows that the citizens of Florida pay almost twice for the clerks to perform their court-related functions than it costs for the State Courts System to perform its functions – on its face the allocation of resources is counterintuitive.⁵³

It is important to note in comparing the budgets of the clerks with those of the trial courts that the budgeting process for these two entities performing state-funded functions is very different. The

⁵¹ The formula for determining the ratio is circuit budgeted expenditures divided by clerks budgeted expenditures.

⁵² The formula for determining this ratio is clerk's budgeted expenditures divided by the circuit's budgeted expenditures.

⁵³ It is important to note, as was noted in Section 1A, that the clerks and the circuit court receive funding from counties to assist in their respective court-related duties; however (as was noted in Section 1A), this funding is outside of the purview of this analysis.

trial courts are funded through the legislative appropriations process, like almost every other entity performing a state-funded function; the clerks, however, are funded through the revenues they collect (less the amounts that must be shared with the state and other entities by statute).

According to data provided to Florida TaxWatch by the CCOC, the revenue-based nature of the clerks' budgets causes instability in the year-to-year budgets of the clerks. Although clerks' budgets have increased dramatically since FY 2004-05 (when the state first began funding the court-related duties), the CCOC projects that court-related revenues will fall to below FY04-05 levels during the next fiscal year (FY 09-10),⁵⁴ which will mean significant cuts to clerks' expenditures. Whether or not these projections prove accurate, the revenue-based budgeting system clearly causes significant instability. Additionally, clerks have pointed out that judges can waive fees and court costs, thus reducing the amount of revenue collected by the clerks and adding to the instability of their budgets.

The information provided to Florida TaxWatch concerning the clerks' revenue projections indicates that the revenue-based budgeting system currently used to fund the clerks' court related operations leads to instability for clerks and potentially adds to the inequity in the distribution of court-related revenues between the clerks and the trial courts. Based on the evidence analyzed in this section, **Florida TaxWatch concludes that the Legislature should reconsider the formula and method of allocating court-related revenues, with the state funding of both the clerks and the trial courts determined under the system of checks and balances by the Legislature through the appropriations process.**

Section 4. Consolidation of the Court-Related Functions of the Clerk Within a Single State Government Entity

Many states have consolidated their trial courts into a single, integrated court system—as did Florida with Revision 7. A number of states have always had a consolidated system that incorporated the record-keeping functions of the clerk under the appointed court administration. Of the states that have had elected clerks of the court, there are a few states that have worked to integrate the court-related administrative functions performed by elected clerks (or their equivalent) within the state's court system. While many states have considered such consolidation – and a handful of states have actually eliminated elected clerks – most states continue to operate in a model similar to Florida, with an elected clerk that serves the state's trial courts. Alexander B. Aikman, a court administrator for more than three decades and the author of eight books and multiple journal articles on court administration, as well as a graduate of the

⁵⁴ Based on information provided by the CCOC to Florida TaxWatch. According to discussions with the CCOC, revenues are estimated to drop sharply because of a number of factors, including the slowing economy, a projected downturn in foreclosure proceedings, an increase in individuals who are unable to pay their court-related costs, and a decrease in traffic citations (due to a decrease in police patrols because of budget cuts and an increase in warnings given by officers who do stop individuals for traffic violations).

University of Chicago Law School, explained in his book, The Art and Practice of Court Administration:

Part of the reform effort of the second half of the 20th century in some states involved wresting control of the clerk's function in courts of general jurisdiction and placing it with the court administrator. As the clerk of court is a constitutional officer in most states, this was a long and difficult process; it succeeded in only a few states. The majority of states still have elected or appointed clerks of courts for their courts of general jurisdiction. These clerks normally are outside of the judicial branch and independent of the judges' control.⁵⁵

The clerk of the court is elected in 28 of the nation's 50 states, although the duties and responsibilities, as well as the structure of the system and relationship of the clerk to the state, vary considerably among states.

Until the mid-1990's, New Jersey had elected clerks performing court-related functions for the state courts; however, the clerks' functions were locally funded. In the mid-1990's, New Jersey transferred the court-related functions of the locally elected clerk to the state. While there were a number of reasons for the consolidation, two motives of relevance to this examination were cost savings and improved uniformity across the system.

After a number of studies recommended consolidation, the New Jersey system mandated that the functions of the clerk would be funded and administered by the state. The consolidation plan mandated cost savings in the legislation directing unification.⁵⁶ The New Jersey effort was based on the idea that cost savings would be achieved through increased accountability throughout a statewide system.⁵⁷ It was asserted that a unified structure would result in more effective allocation and use of resources throughout the system.⁵⁸

⁵⁵ Alexander B. Aikman, *The Art and Practice of Court Administration*, CRC Press, Boca Raton, Florida. 2007. pp. 101-02.

⁵⁶ According to a document provided by the New Jersey Administrative Office of the Courts to Florida TaxWatch, "A main purpose of the amendment is to reduce property taxes, and the implementing bill (8-888/A-2266) includes a specific requirement that the county budget cap be adjusted downward by the county's current spending level for the courts. In other words, property tax relief is not only promised but mandated by the implementing bill."

⁵⁷ According to a document provided by the New Jersey Administrative Office of the Courts to Florida TaxWatch, "With a unified budgetary system comes more direct accountability. The staff people will have a much clearer sense of the overall court system and their place in it. They can be directly responsive to the judges and the key managers. Judges and managers will also show a new sense of accountability, with ability to compare performance from vicinage to vicinage and to meet statewide goals. The Judiciary as a whole will be accountable for the way it uses the funds it is appropriated, but an organization performance is affected as much, or more, by the way it uses its people."

⁵⁸ *Id.* "Resources will be allocated uniformly so that all vicinages are equally equipped to handle their workload. Along with equal services there will need to be an appropriate level of resources, particularly the number of staff, the amount of automation, and the training available. This effort will take several years, but the result should be that all vicinages will be equipped up to a standard necessary for effective operations."

Although there are a number of documents from New Jersey supporting unification to enhance accountability and allocation of resources, and thereby achieving cost savings, Florida TaxWatch was unable to find any documentation that such cost savings were actually achieved. It is possible that such documentation exists, but all of the information obtained by Florida TaxWatch for this analysis evidences the theoretical, potential, or likely cost savings that unification would achieve.

California is another state that moved away from a bifurcated system of court administration to a unified system. Whereas, the locally-elected county clerks once performed court-related duties for the state's trial courts, California now operates under a unified system where the county clerk (still a locally elected position) no longer performs court-related functions. As with New Jersey, Florida TaxWatch was not able to locate any evidence demonstrating that the removal of the court-related functions from the clerks produced any measurable benefit to the state's taxpayers.

Another state that recently completed a full-scale consolidation is Michigan. Although numerous studies on court consolidation in Michigan were performed and published around 2000, the results do not support the conclusion that removal of the clerks' court-related functions produced any measurable benefits. However, a November 2001 article on demonstration projects in Michigan for the National Center for State Courts (NCSC) found that, "all of the demonstration projects have resulted in reduced net court operating costs or improved management of court related revenues and operating costs."⁵⁹ While it is not clear what elements of this conclusion are attributable to the consolidation of functions performed by clerks in Michigan, it is noteworthy that Michigan instituted full-scale consolidation across the state. As with California and New Jersey, Florida TaxWatch was unable to locate any direct evidence of taxpayer benefits resulting from Michigan's consolidation.

Most recently, the Nevada Supreme Court authorized the consolidation of responsibility for functions performed by the court clerks into the state's court. As of January 2007, the court clerk functions were integrated into the Eighth Judicial District Court (Las Vegas) to "increase efficiency while returning accountability of the clerk function to the judiciary."⁶⁰ As with New Jersey, there is no documented evidence of actual benefits realized through the transfer – although there is documentation predicting improvements from the transfer both in cost efficiency and accountability.

"Currently, the Judiciary is developing a model for the appropriate level of support staff, calculating ratios between judges and staff and between workload and staff. Some vicinages presently do not have enough staff, and additions will be sought. But others have more than they should need if their operations were at a maximum level of effectiveness. Through attrition, those extra positions (not persons) will be transferred to the vicinages that need greater resources."

⁵⁹ John D. Ferry, Jr. "Assessing the early experience with Michigan Court consolidation demonstration projects." *Judicature*, Volume 85, Number 3. November-December 2001. Page 130.

⁶⁰ News Release, "Clark County District Court Integrates Court clerk Functions; Increased efficiencies will promote public service and access to justice," January 16, 2007.

According to Florida TaxWatch research, the consolidation/integration in New Jersey, California, Michigan, and Nevada were all undertaken as efforts to improve cost efficiency, increase accountability, and to provide better service to the citizens. While no direct evidence was found detailing whether the consolidation efforts were successful in achieving these goals, it is noteworthy that these states – after extensive and thorough review – pursued consolidation as a means of improving the administration of justice.

Additionally, there has been thorough analysis of the Missouri court system that made a number of recommendations for improvement, many of which relate to the role of the elected clerks.

A 2001 report on court consolidation in Missouri recommended “Election of the circuit clerk should be abolished. The position should be filled by appointment of the circuit court en banc...Current circuit clerks should be grandfathered into the appointed position.”⁶¹ The same report cites Missouri’s Chief Justice in a speech to the Missouri Legislature in January 1999, “Election of circuit clerks no longer suits the needs of the modern judicial system,” and he asked lawmakers to “make the clerk of each circuit court an appointed position”⁶². However, there is no evidence provided that this unification will improve cost efficiency, and the report makes clear that a number of attempts to convince the Missouri Legislature to take this action have not been successful.

Like Missouri, Tennessee recently analyzed the potential savings related to consolidation of their court system and included recommendations concerning the elected court clerks as part of the recommendations. Of the variety of issues the report recommended for the Tennessee Legislature to consider, the only one relevant to Florida related to the qualification of the elected clerks. (The other recommendations generally related to issues not present in Florida’s system – including the problem of multiple clerks in each county due to a lack of a unified trial court system, and issues related to local funding.) The report noted, “Tennessee has no standards or qualifications for clerks. People with no knowledge of the court system could be elected because there are no standards for elected clerk positions. Some clerks acknowledged that many newly elected clerks know little or nothing about the job or the court system.”⁶³ The report recommends developing a “policies and procedures manual” and increasing training for clerks.⁶⁴ The issue of training elected clerks is generally addressed by the CCOC in Florida and so is not directly relevant to Florida’s system. However, it is relevant to note that the report does not recommend that Tennessee remove the court-related functions from the elected clerks and vest those functions within an appointed court administrator.

⁶¹ *Id.* at 67.

⁶² Jerry A. Moyer, clerk of the Circuit Court, Barton County Circuit Court, Lamar Missouri, “Court Consolidation in Missouri, Where Are We After 20 Years?” Institute of Court management, May 2001. Page 27.

⁶³ John G. Morgan, “Tennessee’s Court System: Is Reform Needed?” Office of Research Comptroller of the Treasury, January 2004, page iii. Available at www.comptroller.state.tn.us/orea/reports.

⁶⁴ *Id.* page 40

It is important to note the arguments given against consolidation of the clerks' court-related duties within the court system. Mr. Aikman's analysis provides a succinct summary of the arguments for maintaining locally elected clerks.

Putting the political issues aside, the substantive argument for the continuing independence of the clerk of court can be summarized simply: Court records are public records that are critical for the proper and fair administration of justice and as a source of local history in many localities. To assure their integrity, someone other than judges (or someone responsible to judges for their job, i.e., the administrator) needs to be in charge. Otherwise, some judges might try to alter records or keep them from public scrutiny in return for bribes or political favors, or for personal friends, or surreptitiously to hide or to correct their mistakes. An independent clerk assumes this will not happen.⁶⁵

Mr. Aikman acknowledges that this argument "correctly identifies the importance of court records...[and] correctly assumes the risk" that some judges will be corrupted by bribes or political considerations; however, he generally refutes some of the argument's main assertions by pointed out:

- No organization "is or can be assured of being corruption free,"
- "The federal trial courts and state appellate courts all appoint their clerks of court," and
- "If the only issue between clerks of court and judges were the integrity of the record, judges would have virtually no interest in assuming control of clerks' operations."⁶⁶

Furthermore, Mr. Aikman's analysis provides a number of "examples of how an elected clerk can harm a court (and taxpayers) far more than the theoretical possibility of a judge (or a judge's employee) seeking to alter records."⁶⁷ The issues he identifies generally relate to tensions between an elected clerk and the court (judges) that could lead to inefficient operation of the judicial system.

Mr. Aikman also acknowledges that "an independent clerk may on occasion serve as a desirable gatekeeper and 'check' on a judge or a court."⁶⁸ However, he concludes that these "circumstances are not sufficient to support the need for a separate clerk of court, and further, "even though administrators are hired and fired by the court, they still can act as a brake on excesses of judges in most instances."⁶⁹

After presenting various pros and cons of consolidation, Mr. Aikman concludes that consolidation of the clerks' court-related functions into the court system would be a positive

⁶⁵ *Id.* at 105.

⁶⁶ *Id.*

⁶⁷ *Id.* at 107.

⁶⁸ *Id.* at 109.

⁶⁹ *Id.*

reform.⁷⁰ However, his analysis does not specifically address the potential cost savings that could be achieved, or the manner in which such consolation should occur.

It is also important to note that the issue of consolidation has also been brought up in Florida. A November 2001, OPPAGA Information Brief raises the idea of removing the clerks' court-related functions from the purview of the clerk and instilling them in a state administrator.⁷¹ However, OPPAGA did not provide a comprehensive analysis of the costs and benefits at that time.

Given the lack of definitive evidence on the subject, **Florida TaxWatch concludes that more study is needed to determine if removal of the clerks' court-related duties would provide measurable benefits to the taxpayers of Florida.**

Section 5: Florida TaxWatch Recommendations to Streamline the System

As discussed in [Section 4](#), consolidation of the clerk's court-related functions is an option that the Legislature may wish to consider in order to improve the current system. However, the state should carefully estimate the cost of consolidation and the long-term cost benefits.

Incremental unification is likely the best way to achieve both a successful and cost effective reform. Were the state to assume such a significant reform of the justice system, it would be most prudent to undertake a long-term process that begins with carefully chosen counties – likely chosen because of ease of integration, likelihood of increased efficiency, or other relevant criteria.

Another option for the Legislature is to improve the current system by altering the funding process and requiring additional improvements. **Florida TaxWatch recommends the following improvements be made in order to increase the consistency of cost efficiency, effectiveness, transparency, and accountability of the current system.**

- 1) **Cost efficiency standards should be imposed on individual clerks and the system as a whole, and incremental cost efficiency improvements should be required over the next two years.** Florida TaxWatch recommends that the Legislature work with the CCOC to design and implement cost efficiency standards to be applied to individual clerks. The analysis in [Section 1.A](#) demonstrates that there is wide variation in cost efficiency across the current system. While all potential factors causing variation in cost efficiency could not be accounted for, the analysis considers many of the potential factors (including number of cases handled per year and median income of the county) and

⁷⁰ *Id.*

⁷¹ OPPAGA Report No. 01-54, p.5 (“The state’s ability to hold these officers accountable for providing standardized state services will be very limited. The severance approach would allow the clerks to continue to provide county services and be accountable to local voters, while a state agent or employee who would be accountable to the Legislature would provide essential state and courts services in a manner directed by the state.”)

concludes that cost efficiency varied widely. Furthermore, the analysis in [Section 2.A](#) shows that the state could save millions of dollars if cost efficiency were standardized and required to a minimum level considering case handled. If the cost efficiency standard were tied to the most efficient entity in each category, the savings would be more than \$140 million. If the cost efficiency standard were set at the level of the second-most cost efficient clerk in each category, the statewide savings would be almost \$100 million. If only the average per unit cost per category were set as the cost efficiency standard, it would result in a savings of more than \$34 million in a single year (based on FY 08-09 data). **Therefore, Florida TaxWatch recommends that the Legislature should implement cost efficiency standards related to size and potentially other factors (such as the cost of living for certain areas) to be applied to individual clerks. Furthermore, the Legislature should require that incremental cost efficiency improvements of at least 15 percent annually be achieved over the next two years.** These requirements can be implemented by the Legislature statutorily to ensure maximum taxpayer value during these difficult fiscal times.

- 2) **The current system of funding the clerks' court-related function should be changed to improve transparency and accountability of individual clerks' expenditures. Specifically, the clerks' budgeted expenditures should be subjected to the legislative appropriations process with the Clerks of Court Operations Corporation, or other similar organization, acting as the clearinghouse for the individual clerks and their collective representative through the appropriations process.**

- 3) **Effectiveness standards concerning court-related revenue collection should be strengthened.** The current collections performance standards are generally being met; however, millions in legally owed court-related revenues are going uncollected. Therefore, **Florida TaxWatch recommends that the Legislature require the CCOC to implement more stringent collection performance standards, and should closely monitor the success of CCOC in implementing and enforcing these more stringent standards.** During these difficult fiscal and economic times, all levels of Florida government must improve the collection of legally owed revenues to ensure that needed revenues are available to fund necessary operations while also ensuring fairness and integrity of the system. This improvement is especially important with respect to the judicial system – both for reasons of fairness and integrity and because proper funding of the state's judicial system is crucial to Florida's citizens and businesses. Additionally, **Florida TaxWatch recommends that the Legislature require the CCOC to implement standards regarding the use of various collection methods as a means of improving the collections rate.** Where necessary, the Legislature should also work with the CCOC to ensure that potential methods of improving collections are authorized under law – and impediments to their implementation and application are removed. Finally, **the Legislature should mandate that the CCOC monitor best practices regarding**

collection methods and develop a system for evaluating the effectiveness of the different methods under given conditions that individual clerks face.

Florida TaxWatch recommends that the Legislature end the current revenue-based budgeting system used by the clerks and instead fund the clerks through the normal appropriations process, with the CCOC or some similar entity acting as the collective representative of the individual clerks in the appropriations process. This change could potentially yield significant savings for the state by requiring clerks to operate within a predetermined budget, bring stability to the clerks' funding stream, and ensure that court-related revenues are appropriately allocated among the entities within the judicial system according to Legislative priority. It would also bring the clerks, when performing court-related functions, in line with the requirements of the local State Attorneys and Public Defenders, who are also elected local officials serving a critical state function and who have their budgets appropriated by the Legislature. Additionally, this change would create incentives to operate efficiently, and mitigate the inherent incentives to operate inefficiently in the current system, by enabling the Legislature to require minimum levels of cost efficiency. It would also enhance the transparency of the current system by bringing the clerks into the budget process, which requires detailed budgetary information. This reform would also eliminate the need for an expenditure cap (s.28.36(5)(b)) because the Legislature would set the amount of state revenue expended each year through the appropriations process.

4. **The allocation of court-related revenues should be more equally proportioned between the trial courts and the clerks.** As the analysis in Section 3 shows, the clerks receive significantly more *state* funding than the trial courts both statewide and in almost all individual circuits of the State Courts System. While local governments supplement both the clerks' and the trial courts' budgets (which, as explained earlier is outside the purview of this analysis), the state's funding under Revision 7 significantly favors the clerks compared to the trial courts. The functions of both the clerks and the trial courts are vital to the administration of justice in Florida; however, if the clerks' system-wide cost efficiency is improved, there will be more court-related revenues that can be directed to the trial courts.
5. **A comprehensive study is needed to determine if consolidation of the clerks' court-related duties within the State Courts System would provide measurable benefits to the taxpayers of Florida. Additionally, due to the complexity of consolidation, it should be done carefully and incrementally if future study determines it to be in the best interest of the state.** Whatever the benefits of consolidation, a review of the discussion makes clear that the implementation of a unified system of court-related administration duties would prove to be a massive undertaking. Due to the potential for cost savings as found by other states examining the issues (including New Jersey, California, Michigan, and Nevada), Florida TaxWatch concludes that unification could

possibly produce long-term cost savings; however, based on the experience of other states, the initial cost of unification may be significant. One option for consolidation would be for Florida to create a pilot program in order to incrementally build a statewide system that provides formative input statewide along the way on a small scale, thus allowing future unification to benefit from the experience gained during the process. Successes would be built upon and maximized; failures could be amended and learned from, thus limiting the overall potential negative impact. **If the Legislature determines that consolidation is appropriate, Florida TaxWatch recommends that this undertaking be done most cautiously and incrementally.**

For the benefit of the economy and the state's citizens and taxpayers, the Florida Legislature should implement the improvements recommended in this report.

This Florida TaxWatch *Special Report* was written by **Robert Weissert, Esq.**,
Special Counsel to the President and CEO;

with the assistance of

David A. Macpherson, Ph.D., Senior Director of Research and Development, **Deborrah
Harris**, Chief of Staff, and **Balazs Khor**, Research Intern;
under the direction of **Dominic M. Calabro**, President and CEO.

David A. Smith, Chairman; Dominic M. Calabro, President, Publisher, and Editor.

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About Florida TaxWatch

Florida TaxWatch is a statewide, non-profit, non-partisan taxpayer research institute and government watchdog that over its 30-year history has become widely recognized as the watchdog of citizens' hard-earned tax dollars. Its mission is to provide the citizens of Florida and public officials with high quality, independent research and education on government revenues, expenditures, taxation, public policies, and programs, and to increase the productivity and accountability of Florida Government.

Florida TaxWatch's research recommends productivity enhancements and explains the statewide impact of economic and tax and spend policies and practices on citizens and businesses. Florida TaxWatch has worked diligently and effectively to help state government shape responsible fiscal and public policy that adds value and benefit to taxpayers.

This diligence has yielded impressive results: in its first two decades alone, policymakers and government employees implemented three-fourths of Florida TaxWatch's cost-saving recommendations, saving the taxpayers of Florida more than \$6.2 billion -- approximately \$1,067 in added value for every Florida family, according to an independent assessment by Florida State University.

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Tallahassee, FL 32302

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