

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 248

INTRODUCER: Judiciary Committee and Senator Ring

SUBJECT: Court Costs

DATE: March 13, 2009 REVISED: 03/20/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	Fav/CS
2.			FT	
3.			JA	
4.			WPSC	
5.			RC	
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill proposes policies concerning the application and collection of certain court-related fees, service charges, costs, and fines by the state courts system. More specifically, the bill proposes changes to:

- Procedures related to determining if a person is indigent in the criminal context;
- Application of the reopen fee in circuit and county civil cases;
- Fees associated with the filing of a counterpetition;
- Initiation of collection activity and awards of collection fees for collection of court fees, service charges, fines, court costs, and liens;
- Costs assessed if a judicial sale is conducted by electronic means;
- Costs related to electronic tax deed sales;
- County and local government surcharges for certain noncriminal traffic infractions and other criminal traffic violations;
- Notice procedures for the suspension of driver's licenses for failure to comply with court directives or failure to pay financial obligations in certain criminal cases;
- Who appears before the court to be examined regarding their ability to pay any court-ordered obligation; and

- Procedures related to deposits made on behalf of criminal defendants which are applied to satisfy certain costs and fines.

The bill also establishes a legislative workgroup to review court-related fees, service charges, costs, and fines. The workgroup will consist of seven members – a Senator, a Representative, two clerks of a circuit court, one circuit court judge, one county court judge, and one member of the American Collectors Association International – who must report to the President of the Senate and the Speaker of the House of Representatives after the review.

This bill amends the following sections of the Florida Statutes: 27.52, 28.241, 28.246, 34.041, 45.035, 57.082, 197.542, 318.18, 322.245, 938.30, and 938.301. The bill also repeals section 939.17, Florida Statutes. In addition, the bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Court Fines, Fees, and Costs

The collection of court fines, fees, and costs was the subject of a report prepared by the Office of Program Policy Analysis and Government Accountability (OPPAGA) in March 2007.¹ As noted in the OPPAGA report, in 1998 Florida voters approved Revision 7 to Article V of the Florida Constitution, which allocated more costs to the state, effective July 1, 2004. To that end, the Legislature directed the state to pay for specified elements of the state courts system and required the 67 county clerks of court to fund their offices using revenues derived from fines, fees, service charges, and court costs assessed in both civil and criminal proceedings.² “Except under certain conditions, one-third of [those] funds are transmitted to the state to help fund the operation of the state courts system.”³ Further, the report noted that

[i]n 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.⁴

The OPPAGA report found that, statewide, clerks collected 71 percent of assessed court fines, fees, service charges, and court costs.⁵

Collection Methods

In evaluating the combination of collection methods clerks use, the OPPAGA report found that all clerks use payment plans allowing for the payment of fines and fees in installments over time. Most clerks utilize sanctions, such as driver’s license suspensions or liens against property. In addition, almost 90 percent of the clerks responding to OPPAGA’s survey use private collection

¹ Office of Program Policy Analysis and Government Accountability, *Clerks of Court Generally Are Meeting the System’s Collections Performance Standards*, Report No. 07-21 (March 2007).

² *Id.* at 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 2.

agencies in an effort to recover assessments. The study, however, identified collection methods that less than half of the clerks use:

- **Clerks as collection agents** - uses existing clerk resources to send collection letters directly to defendants rather than using private agents, who can impose an additional fee of 40 [percent] that the clerks are not allowed to impose (37 clerks not using).
- **Collection courts** - hold defendants accountable to the court – if a defendant pays his or her fines and fees according to the agreed-upon terms, the case is closed; if a defendant fails to pay, he or she must appear before a judge to explain why or risk issuance of a warrant for the failure to appear (41 clerks not using).
- **Electronic fund transfer** - involves obtaining defendants' permission to automatically debit their accounts on a scheduled basis (49 clerks not using).
- **Garnishing wages or bank accounts** is a legal device used by a creditor to take a debtor's property that is held by a third person, or money owed to the debtor from a third person, and use it to pay the debt to the creditor (56 and 56 clerks not using, respectively).⁶

In order to create an incentive for clerks to collect funds, the law authorizes clerks to retain two-thirds of the funds collected to fund their offices.⁷

Collection Activity and Fees

Clerks may initiate the collection of any fees, service charges, fines, court costs, and liens associated with representation by a public defender, including the payment of an application fee for a determination of indigence, which remain unpaid for 90 days or more.⁸ The clerk may also refer the account to a private Florida attorney or a registered collection agent. In pursuing the collection of these financial obligations, the clerk is entitled to receive a collection fee, including any reasonable attorney's fees, in addition to the balance owed in an amount not to exceed 40 percent of the amount owed at the time the account is referred to the attorney or collection agent.⁹

Collection of Financial Obligations in Criminal Cases

In 1998, the Legislature created the Comprehensive Court Enforcement Program Act,¹⁰ the purpose of which was to facilitate the collection from noncompliers of fines, court costs, and fees imposed by the court in criminal cases. The legislation authorized the chief judge in any circuit to implement the program as supplemental proceedings.¹¹ Under the supplemental proceedings, if a person is liable for a financial obligation related to a criminal case, the court may require him

⁶ *Id.* at 4.

⁷ Office of Program Policy Analysis and Government Accountability, *Court Fine and Fee Collections Can Increase*, Report No. 04-07, at 2 (Jan. 2004). *See also* s. 28.37(2), F.S.

⁸ Section 28.246(6), F.S.

⁹ *Id.*

¹⁰ Chapter 98-247, Laws of Fla.

¹¹ Section 938.301, F.S.

or her to appear before the court for an examination of his or her ability to pay the obligation.¹² At that time, the judge has discretion to convert the statutory financial obligation into court-ordered community service. A person who fails to attend the hearing may face arrest.¹³ At the hearing, testimony may be taken relevant to the person's financial interests, including examination of witnesses with insights about the person's ability to pay.¹⁴

Fiscal Year 2007-2008 Clerk Collection Data

In its annual report of the payment of court-related fees, costs, fines, and other monetary penalties, the Florida Association of Court Clerks & Comptrollers provides a synopsis of the clerks' assessments and collection activity during FY 2007-08.¹⁵ Although an actual collection percentage cannot be calculated from this data because some revenues collected during this timeframe may be from assessments made in a prior fiscal year, the report does offer some insight into statewide collection activity generally. In its report, the following 2007-08 data is illustrated:¹⁶

All Courts—Statewide	Mandatory	Discretionary	Total
A. Fines Court Costs & Other Monetary Penalties			
-Total of Possible Assessments	763,005,164		763,005,164
-Amount Actually Assessed	721,517,351	145,245,750	866,763,102
-Amount Discharged/Waived	61,419,429	4,436,461	65,855,890
-Amount Collected	457,935,343	63,044,565	520,979,908
B. Fees, Service Charges & Costs			
-Total of Possible Assessments	398,490,587		398,490,587
-Amount Actually Assessed	398,752,595	3,274	398,755,868
-Amount Discharged/Waived	4,377,596	55	4,377,652
-Amount Collected	364,508,542	2,859	364,511,401
Total of A & B			
-Total of Possible Assessments	1,161,495,751		1,161,495,751
-Amount Actually Assessed	1,120,269,946	145,249,024	1,265,518,970
-Amount Discharged/Waived	65,797,025	4,436,517	70,233,542
-Amount Collected	822,443,885	63,047,424	885,491,309

¹² Section 938.30(2), F.S.

¹³ *Id.*

¹⁴ Section 938.30(4), F.S.

¹⁵ Florida Association of Court Clerks & Comptrollers, *Payment of Court-Related Fees, Charges, Costs, Fines and Other Monetary Penalties, Annual Report* (Fiscal Year 2007-08).

¹⁶ *Id.* at 3.

Indigent Parties or Intervenors

Under Florida law, any indigent party or intervenor in any judicial or administrative proceeding is entitled to “receive the services of the courts, sheriffs, and clerks . . . despite his or her present inability to pay for [those] services.”¹⁷ Such services include:

- Filing fees;
- Service of process;
- Certified copies of orders or final judgments;
- A single copy of any court pleading, record, or instrument filed with the clerk;
- Examining fees;
- Mediation services and fees;
- Private court-appointed counsel fees;
- Subpoena fees and services;
- Service charges for collecting and disbursing funds; and
- Any other cost or service arising out of pending litigation.

Under existing law, a person who is indigent and cannot afford civil court costs and fees is still entitled to the services of the court system. However, the person must repay the amount for such services.

In March 2008, Florida TaxWatch released a report on the status and cost efficiency of civil filing fees for indigents throughout the state.¹⁸ The study found that, although the law allows for a waiver of court fees by judicial discretion on a case-by-case basis, clerks across the state were not consistent in their enforcement and collection of civil court filing fees from indigent persons.¹⁹ Furthermore, TaxWatch determined that approximately 90 percent of indigent fees are never paid in their entirety.²⁰ The study also compared the cost between aggressive and nonaggressive collection policies and concluded that the more aggressive approaches to collect fees cost the clerks more than not collecting the fees.²¹

Procedures for Determination of Indigence

Criminal Cases

In criminal cases, Florida law and the Florida Rules of Criminal Procedure define the term “indigent” as “a person who is unable to pay for the services of an attorney, including costs of investigation, without substantial hardship to himself or his family.”²² An indigent person seeking the appointment of a public defender must apply to the clerk of court by completing an application, which must include the following information:

¹⁷ Section 57.081(1), F.S.

¹⁸ Florida TaxWatch, *Charging Indigent Floridians Civil Court Filing Fees Raises Questions of Cost Efficiency and Equal Access to the Florida Court System* (March 2008).

¹⁹ *Id.* at 3-4.

²⁰ *Id.* at 4.

²¹ *Id.* at 4-5. The most aggressive collection policy cost an average of \$76.92 per case on the collection of civil indigent filing fees, while the less aggressive clerks spent an average of \$3.35 per case.

²² 14 FLA. JUR 2D *Criminal Laws* s. 558 (citing s. 27.50, F.S., and Fla. R. Crim. P. 3.111(b)(4)).

- Net income, consisting of total salary and wages, minus deductions required by law, including court-ordered support payments;
- Other income, including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public or private employee pensions, unemployment compensation, dividends, interest, rent, trusts, and gifts;
- Assets, including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or in other tangible property;
- All liabilities and debts; and
- If applicable, the amount of any bail paid for the applicant's release from incarceration and the source of the funds.²³

An applicant must attest to the truthfulness of the information provided in the application.²⁴ The applicant must also remit a \$50 application fee within seven days after submitting the application.²⁵ If an applicant fails to pay the fee, the court can assess the fee as part of a sentence or as a condition of probation or as a lien pursuant to current law regarding failure to pay court-ordered obligations in criminal cases.²⁶

The clerk reviews the information provided in the application and makes a determination whether an applicant seeking appointment of a public defender is indigent.²⁷ A person may be deemed indigent if his or her income is equal to or below 200 percent of the current federal poverty guidelines prescribed for the size of the household of the applicant by the U.S. Department of Health and Human Services or if the person receives public assistance or Supplemental Security Income (SSI).²⁸ There is a presumption that an applicant is not indigent if the applicant owns, or has an interest in, personal or real property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000.²⁹

Civil Cases

A person seeking the court appointment of an attorney in a civil case or seeking relief from prepayment of fees and costs based upon the person's inability to pay must apply to the clerk for a determination of civil indigent status.³⁰ The application and determination process for civil indigents is almost identical to the process for a determination of indigence in criminal cases.

²³ Section 27.52(1)(a), F.S.

²⁴ *Id.*

²⁵ Section 27.52(1)(b), F.S. Application fees are deposited in the Indigent Criminal Defense Trust Fund administered by the Justice Administrative Commission. However, the clerk may retain 2 percent of application fees collected monthly for administrative costs prior to remitting the remainder to the Department of Revenue. Section 27.52(1)(d), F.S.

²⁶ Section 27.52(1)(b), F.S.

²⁷ Section 27.52(2), F.S. Current law provides that the clerk's determination of whether a person is indigent is a ministerial act and not a decision based on further investigation or the exercise of independent judgment by the clerk. Section 27.52(2)(d), F.S.

²⁸ Section 27.52(2)(a)1., F.S.

²⁹ Section 27.52(2)(a)2., F.S.

³⁰ Section 57.082(1), F.S.

The applicant must provide the same information required of criminal indigent applicants, and the determination of indigence is made by the clerk based upon the same criteria.³¹

An applicant is not required to pay an application fee for the determination of indigence, unless the person seeks appointment of an attorney in a case under chapter 39, F.S. (proceedings related to children). In those cases, the applicant must submit a \$50 application fee, which must be paid within seven days of submitting the application.³²

Reopen Fees

Circuit Civil Cases

In circuit civil cases, a party reopening any civil action, suit, or proceeding must pay a reopen fee of an amount not to exceed \$50.³³ A case is considered to be reopened when it is previously reported as disposed of and is resubmitted to a court. A litigant is exempt from paying the reopen fee for the following post-judgment activity:

- A writ of garnishment;
- A writ of replevin;
- A distress writ;
- A writ of attachment;
- A motion for rehearing filed within 10 days;
- A motion for attorney's fees filed within 30 days after entry of a judgment or final order;
- A motion for dismissal filed after a mediation agreement has been filed;
- A disposition of personal property without administration;
- Any probate case prior to the discharge of a personal representative;
- Any guardianship pleading prior to discharge;
- Any mental health pleading;
- Motions to withdraw by attorneys;
- Motions exclusively for the enforcement of child support orders;
- A petition for credit of child support;
- A Notice of Intent to Relocate and any order issuing as a result of an uncontested relocation;
- Stipulations;
- Responsive pleadings; or
- Cases in which there is no initial filing fee.³⁴

Some litigants subject to the reopen fee have challenged the application of the fee. For instance, in a recent circuit court case in Pinellas County, litigants filed a suit for declaratory relief asserting that clerks have misinterpreted the application of the reopen fee and have charged

³¹ Section 57.082(1) and (2), F.S.

³² Section 57.082(1)(d), F.S. This fee is transferred monthly to the Department of Revenue for deposit into the Indigent Civil Defense Trust Fund. However, the clerk may retain 10 percent of these application fees for administrative costs prior to remitting the remainder to the department.

³³ Section 28.241(1)(b), F.S.

³⁴ *Id.*

improper reopen fees.³⁵ Although the court dismissed the complaint, it did note that a legislative pronouncement may be the most efficient method of resolving any confusion regarding the definition of “disposed of” in the reopen fee statute; otherwise the definition would evolve through “individual cases that challenge the specific application of the statute.”³⁶ The court also alluded that someone may challenge the reopen fee statute as unconstitutionally vague.³⁷

County Civil Cases

In county court cases, a party reopening any civil action, suit, or proceeding must also pay a reopen fee of no more than \$25 for cases with amounts in controversy not exceeding \$500 and no more than \$50 for all cases with amounts in controversy greater than \$500.³⁸ Identical to the application of circuit court reopen fees, current law provides that a case is considered to be reopened when “a case previously reported as disposed of is resubmitted to a court.”³⁹ The same post-judgment activity exempted from the application of the reopen fee in circuit civil cases is also exempt in county civil cases.

Application of Filing Fees to Counterpetitions

In both county civil and circuit civil cases, a party other than a person paying an initial filing fee who files a pleading in an original civil action for affirmative relief by cross-claim, counterclaim, or third-party complaint must pay a filing fee of \$295.⁴⁰ However, in county civil cases, the fee does not apply when the cross-claim, counterclaim, or third-party complaint requires transfer of the case from county to circuit court.⁴¹

There has been confusion regarding whether the filing of counterpetitions are subject to the \$295 filing fee. For example, in 2008, the Attorney General analyzed whether the clerk is authorized to charge the \$295 for counterpetitions filed in circuit court cases.⁴² The Attorney General concluded that, while the matter was not free from doubt, counterpetitions were not expressly included in the filing fee statute and are not subject to the imposition of the filing fee, and that

³⁵ *Zarra v. Burke*, Case No. 08-1200CI-15 (Cir. Ct. Pinellas Co. 2008).

³⁶ *Id.* at 5. The Second District Court of Appeal also examined the reopen fee statute and opined that:

This certiorari proceeding is not the proper case in which to evolve a definition of “disposition” for purposes of this statute. That definition must come from another source. It seems to me that the most reasonable solution would involve the legislature’s defining this term If that does not occur, the courts must begin to evolve a definition through case law attempting to interpret the statute.

Burke v. Esposito, 972 So. 2d 1024, 1029 (Fla. 2d DCA 2008).

³⁷ *Zarra*, *supra* note 35, at 3.

³⁸ Section 34.041(2), F.S.

³⁹ Section 34.041(2), F.S.

⁴⁰ Sections 28.241(1)(c) and 34.041(1)(c), F.S. In county civil cases, the fee only applies if the relief sought by the party exceeds \$2,500. In both instances, the clerk remits the fee to the Department of Revenue for deposit into the General Revenue Fund.

⁴¹ Section 34.041(1)(c), F.S.

⁴² Fla. Att’y Gen. Opinion 2008-60, 2008 WL 4978374 (Fla. A.G. 2008).

the clerks may wish to work with the Legislature to draft amendatory language that would address the application of this fee.⁴³

Clerk's Fees for Judicial Sales

In any judicial sale of real or personal property pursuant to a judgment or court order, the clerk is authorized to receive service charges related to the judicial sales procedure.⁴⁴ More specifically, the clerk may receive a service charge for services related to making, recording, and certifying the sale and title.⁴⁵ If the judicial sale is conducted by electronic means, the clerk may collect a service charge of \$60 for services in conducting or contracting for the electronic sale.⁴⁶

Sales at Public Auction

Lands that are advertised for sale as a result of an application for a tax deed being filed must be sold at a public auction by the clerk of the circuit court of the county where the lands are located.⁴⁷ The statute governing these sales prescribes the time, place, and other procedures related to the sale. Charges related to the costs of the sale, including costs incurred for the service of notice, are included in the bid of the certificateholder for the property.⁴⁸

Penalties for Certain Noncriminal Traffic Infractions and Criminal Traffic Offenses

Current law authorizes counties to impose a surcharge of up to \$15 for civil traffic infractions and certain criminal traffic violations to fund state court facilities.⁴⁹ Up to 25 percent of the revenue from the surcharge may be used to support local law libraries. Alternatively, certain counties that previously used increased court fees and service charges to secure payment for bonds issued before July 1, 2003, to finance court facilities may impose a similar traffic surcharge to pay off those existing bonds.⁵⁰ However, a county may not impose both charges concurrently.

Procedures for Driver's License Suspension

If a person is charged with a violation of certain criminal traffic offenses or with the commission of any offense constituting a misdemeanor under chapters 320 or 322, F.S., and fails to comply with all of the directives of the court, the clerk of the court must provide notice to the person that he or she must comply with the directives of the court within 30 days after the date of the notice and pay a delinquency fee of up to \$25 to the clerk, or his or her driver's license will be

⁴³ *Id.* The Attorney General noted that a counterpetition is most frequently filed as a component of a responsive pleading such as an *Answer to Petition and Counterpetition for Dissolution of Marriage* or an *Answer to Petition and Counterpetition to Determine Paternity*.

⁴⁴ Section 45.035, F.S.

⁴⁵ Section 45.035(1), F.S. These charges are assessed as costs and must be advanced by a plaintiff prior to the judicial sale.

⁴⁶ Section 45.035(3), F.S. The statute specifies that the \$60 charge is as provided in 45.035(1), F.S. However, in 2008, the service charge in subsection (1) was increased to \$70 from \$60. As a result, the reference to the \$60 charge in s. 45.035(3), F.S., appears to be inconsistent with the \$70 charge in s. 45.035(1), F.S.

⁴⁷ Section 197.542(1), F.S.

⁴⁸ *Id.*

⁴⁹ Section 318.18(13)(a), F.S.

⁵⁰ Section 318.18(13)(b), F.S.

suspended.⁵¹ The notice must be mailed to the person at the address specified on the uniform traffic citation. The clerk may retain the delinquency fee to defray the operating costs of the office.⁵²

Application of Cash Deposit to Fines and Costs

Under existing law, in any prosecution for an offense against the state or any political subdivision thereof, when money has been deposited by or on behalf of the defendant upon a judgment for the payment of costs and a fine, the clerk must, under the direction of the court, apply the money deposited in satisfaction of such costs and fines and return the remainder to the depositor.⁵³

Some clerks have questioned whether s. 903.286, F.S., providing for the disposition of cash bonds posted on behalf of criminal defendants, supercedes or repeals the requirements of s. 939.17, F.S. The Attorney General analyzed this issue in 2006 and noted that money deposited pursuant to s. 939.17, F.S., is separate and distinct from bond money collected and held pursuant to ch. 903, F.S., and is treated separately pursuant to section 939.17, F.S.⁵⁴ Therefore, the Attorney General concluded that s. 903.286, F.S., does not supercede or repeal by implication the provisions of s. 939.17, F.S.

III. Effect of Proposed Changes:

This bill proposes policies designed to facilitate the application and collection of certain fees, service charges, costs, and fines used to support the operation of the clerks of court and the state courts system.

Application and Indigent Intake Fees in Criminal Cases (Section 1)

The bill provides for a new \$10 application fee for a person seeking indigent status for court appointment of an attorney in a criminal case. In addition, an existing \$50 fee – renamed by the bill as an indigent intake fee – must be paid within seven days of submission of the application. If an applicant fails to pay either fee, the court may assess the application fee or the indigent intake fee as part of the sentence, as a condition of probation, or as a lien.

The provision in current law allowing the clerk to retain 2 percent of the application fees for monthly administrative costs is removed. As a result, all fees collected by the clerk from a person seeking to be deemed indigent will be transferred monthly to the Department of Revenue for deposit in the indigent Criminal Defense Trust Fund, which is administered by the Justice Administrative Commission. In practice, clerks will no longer retain any of the application or indigent intake fees collected, although the bill requires clerks to perform additional duties in the determination of indigence.

⁵¹ Section 322.245(1), F.S.

⁵² *Id.*

⁵³ Section 939.17, F.S.

⁵⁴ Fla. Att'y Gen. Opinion 2006-19, 2006 WL 1516401 (Fla. A.G. 2006).

Determination of Indigence in Criminal Cases (Section 1)

Under the bill, in an application seeking indigence status in a criminal case, a person must authorize the clerk in writing to conduct an indigence background review and provide other necessary information, in addition to the information required by existing law. In order to determine indigence, the clerk will utilize the Comprehensive Case Information System (CCIS).⁵⁵ The clerk will review criminal and financial records, as well as other relevant records accessed through the CCIS, to determine eligibility for a court-appointed attorney in his or her criminal case.

Indigent Intake Fees in Chapter 39 Civil Cases (Section 6)

The bill changes the name of the “\$50 application fee” to the “\$50 indigent intake fee” for appointment of an attorney in chapter 39 cases (proceedings relating to children) only. The provision in current law which allows the clerk to retain 10 percent of application fees collected in chapter 39 appointment cases monthly for administrative costs is removed. In effect, the clerks will not retain any of the indigent intake fees collected, and these amounts will be transferred to the Department of Revenue for deposit into the Indigent Civil Defense Trust Fund.

Reopen Fees (Sections 2 and 4)

The bill clarifies the application of the reopen fee in both county and circuit court civil cases. The changes to the application of the reopen fee in county civil cases mirror those changes in circuit civil cases. The bill clarifies when the reopen fee must be collected in certain post-judgment activity by providing that a case is considered to be reopened when activity occurs after all appeals or time to file an appeal from a final order or final judgment have been exhausted. No reopen fees may be assessed by the clerk in circuit and civil matters until 90 days have passed from when a final order or final judgment is filed with the clerk. The bill also provides that once a case is reopened, no additional reopen fee may be assessed until the reopening pleading, motion, or other paper requiring action is resolved.

The bill specifies that reservation of jurisdiction by a court in a case does not exempt the case from application of the reopen fee. In existing law, certain post-judgment activity is excluded from the application of the reopen fee. The bill expands these exclusions to include motions to enforce stipulations and motions for contempt in both county civil and circuit civil actions.

⁵⁵ The Comprehensive Case Information System (CCIS), offered by Florida’s Clerks of Court, is a secured single point of search for statewide court case information. The information that may be accessed includes criminal history records, inmate data, and driver’s license information through links to the websites of the Florida Department of Law Enforcement, the Department of Corrections, and the Department of Highway Safety and Motor Vehicles. Comprehensive Case Information System (CCIS) Website, <https://www.flccis.com/ccis/> (last visited March 11, 2009).

Application of Filing Fees to Counterpetitions (Sections 2 and 4)

In both county civil and circuit civil contexts, the bill expressly includes counterpetitions within the ambit of pleadings subject to the \$295 filing fee which is applicable to the filing of cross-claims, counterclaims, counterpetitions, and third-party complaints. The bill specifies that in both county civil and circuit civil cases, a litigant must pay a \$295 filing fee upon the filing of a counterpetition.

In the county civil context, the bill also specifies that the filing fee may not be charged for the filings of cross-claims, counterclaims, counterpetitions, and third-party complaints if the filing requires transfer of the case from small claims to county court. However, if the case is transferred from small claims to county court as a result of such filing, the filer must pay the standard filing fee for the court to which the case is being transferred.

Collection Activity by Clerks (Section 3)

Under existing law, the clerk of court cannot initiate collection activity regarding any fees, service charges, fines, court costs, and liens related to the appointment and services of a public defender until these costs are unpaid for a period of 90 days. The bill shortens this period by providing that a clerk of court may pursue the collection of these obligations if these court-related costs remain unpaid for 60 days.

The bill changes the percentage of the original amount owed to be assessed as a collection fee which may be added to any balance owed when the clerk pursues collection of these obligations. A collection fee, including any reasonable attorney's fee paid to any attorney or collection agent, may be added up to 25 percent (rather than the current 40 percent) of the balance owed if the amount owed is referred to the attorney or collection agency after it remains unpaid for 60 days and is paid within 90 days. If the amount owed is not referred to the attorney or collection agency until 90 days after it is due and are paid, on or after the 90th day, a collection fee of up to 40 percent may be added to the amount owed.

Service Charges for Judicial Sales (Section 5)

The bill clarifies that the clerk shall charge a fee of \$60 if a judicial sale is conducted by electronic means, in addition to the \$70 fee already assessed for clerk services in making, recording, and certifying the sale and title. It also clarifies that the \$60 service charge will be paid by the winning bidder.

Electronic Tax Deed Sales (Section 7)

The bill specifies that the costs of electronic tax deed sales must be added to the other charges for the costs of these sales, including charges related to notice, which are included in the bid of the certificateholder for the property.

Surcharges for Noncriminal Traffic Infractions and Other Criminal Violations (Section 8)

The bill increases the surcharge imposed to fund a state court facility, which a board of county commissioners or local government may charge in addition to other penalties for noncriminal traffic infractions and other criminal traffic violations, to \$30 from \$15.

Surcharges for Securing Payment on Bonds Issued by the County (Section 8)

The bill authorizes the board of county commissioners or certain local governments to charge a surcharge for any traffic infraction or criminal traffic offense for the purpose of securing payment of the principal and interest on bonds issued by the county on or after July 1, 2009, to fund state court facilities. A judge may not waive this surcharge.

The bill sets a limit for the amount of the surcharge established by a specific formula⁵⁶ and provides that the bonds may be refunded if savings will be realized on payments of debt service and the refunding bonds are scheduled to mature on or before the maturity date of the bonds being refunded. If the revenues generated exceed the debt service on the bonds, the surplus revenues may be used to:

- Pay the debt service on the bonds;
- Fund other state court facility construction projects certified by the chief judge as necessary to address unexpected growth in caseloads, emergency requirements to accommodate public access, threats to the safety of the public, judges, staff, and litigants, or other exigent circumstances; or
- Support local law libraries in or near the county courthouse or annexes.

This provision is almost identical to the language providing for surcharges to secure payment on bonds issued by the county on or after July 1, 2003.⁵⁷

Notice of Suspension of License (Section 9)

The bill eliminates the clerk's duty to mail a reminder notice to a person who has failed to comply with court directives ordered in the person's criminal traffic case or the person's misdemeanor traffic case under chapters 320 or 322, F.S., because the Department of Highway Safety and Motor Vehicles already provides this notice.

Under the bill, the \$25 delinquency fee collected in conjunction with the notice of suspension of license continues to be retained by the clerks to defray the operating costs of the office.

⁵⁶ The bill provides that the surcharge may not exceed an amount per violation calculated as the quotient of the maximum annual payment of the principal and interest on the bonds, divided by the number of traffic citations certified as paid by the clerk of the court of the county on August 15 of each year. This quotient must be rounded up to the next highest dollar amount.

⁵⁷ See s. 318.18(13)(b), F.S.

Financial Obligations in Criminal Cases (Section 10)

The bill clarifies that a person who is an inmate and is liable for payment of an obligation to the court may not be required to appear for examination under oath concerning his or her financial ability to pay the obligation.

Comprehensive Court Enforcement Program (Section 11)

Under the bill, a judge is authorized to carry out the provisions of the Comprehensive Court Enforcement Program in any case, not just criminal cases, to ensure compliance with court-imposed financial obligations.

Legislative Workgroup (Section 12)

A legislative workgroup is established under the bill to review court-related fees, service charges, costs, and fines. The workgroup will consist of seven members:

- One Senator appointed by the Senate President;
- One Representative appointed by the Speaker of the House of Representatives;
- Two clerks of a circuit court appointed by the Florida Association of Court Clerks and Comptrollers;
- One circuit court judge appointed by the Florida Supreme Court;
- One county court judge appointed by the Florida Supreme Court; and
- One member of the American Collectors Association International appointed by the Government Services program.

The workgroup must report to the President of the Senate and the Speaker of the House of Representatives by January 1, 2010. The bill provides that this section of law expires January 1, 2010.

The Legislature may wish to consider extending the statutory expiration date of January 1, 2010 (e.g., to June 30, 2010) because if the report cannot be completed in the prescribed timeframe, the law would expire before the report is received. Furthermore, the current expiration date precludes the Legislature from extending the date during the 2010 Regular Session if it determines that additional time is needed to accomplish the objectives of the workgroup.

Application of Cash Deposit to Fines and Costs (Section 13)

The bill repeals the section of Florida Statutes that requires the clerk, in prosecutions for an offense against the state, to apply the money deposited on behalf of a defendant to any costs or fines and return the remainder to the depositor. Deposits made by criminal defendants will now be governed by s. 903.286, F.S. rather the repealed statute. Under s. 903.286, F.S., the clerk of court is authorized to withhold from a criminal defendant's cash bond sufficient funds to satisfy any unpaid court fees, court costs, and criminal penalties. Thus, clerks can now accomplish the application of these funds to court obligations without court action.

Effective Date (Section 14)

The bill provides an effective date of July 1, 2009.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Criminal defendants seeking the court-appointment of a public defender will be subject to an additional \$10 fee. Additionally, these persons will be subject to a detailed review by the clerk of any personal information contained in the Court Comprehensive Information System (CCIS).

Litigants in certain civil actions who wish to file counterpetitions will be subject to a \$295 filing fee.

Clarification of when reopen fees apply, in addition to expanding the post-judgment activity exempt from the application fee, may relieve certain litigants in civil cases from additional costs.

Depending upon the duration of delinquency, individuals delinquent on certain costs related to court-appointed representation in criminal matters and subject to collection activities may be subject to lower costs due to the reduction in the percentage of collection fees which may be added to the original amount owed.

C. Government Sector Impact:**State Government**

To the extent that the provisions of the bill improve the collection of fees, service charges, costs, and fines, the clerks of court and the state court system may benefit from the increased revenues.

The bill creates a legislative workshop that will presumably be administered by the Legislature using existing resources.

Local Governments

In criminal indigence cases, the clerk will perform additional duties related to background review, but will retain none of the fees collected from applicants seeking to be determined indigent for purposes of having an attorney appointed for representation. In Chapter 39 civil actions, clerks will no longer retain the indigent intake fee collected with applications for attorney appointment in these cases.

Revenue for clerks will likely increase due to clarifying language that the clerk can collect an additional \$60 service charge for judicial sales conducted by electronic means and by clarifying that the costs associated with electronic tax deed sales will be added to the other costs of the sale.

Local governments adopting the surcharge ordinance will likely see additional revenue from increased surcharges for certain noncriminal traffic infractions and other criminal violations. Additionally, local governments may use these funds to pay the principal and interest on bonds issued by the county on or after July 1, 2009, and use any surplus to fund state court facilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 11, 2009:

The committee substitute:

- Requires a person seeking to be declared indigent for appointment of a criminal attorney to authorize the clerk's indigent background review and provide any additional information necessary for the clerk's review;
- Creates a \$10 application fee in addition to a \$50 indigent intake fee for indigent applicants in criminal cases;
- Removes the provision allowing the clerk of court to retain 2 percent of the indigent application fees collected;
- Requires the clerk of court to conduct an indigence background review using the Comprehensive Case Information System in criminal cases;
- Clarifies that circuit and county civil cases are considered to be reopened after all appeals or time to file an appeal from a final order or final judgment has been exhausted;
- Provides that the reopen fee in circuit and county civil cases does not apply until 90 days after a final judgment or order is entered;
- Expands the type of reopening activity that is exempt from the application of the fee in circuit and county civil cases;
- Provides that the reservation of jurisdiction by a court in a case does not exempt the case from application of the reopen fee in circuit and county civil cases;
- Clarifies that counterpetitions in circuit court, and counterpetitions where the relief requested is greater than \$2,500 in county court, are subject to a \$295 filing fee;
- Provides that the clerk may initiate collection activity if any fees, service charges, fines, court costs, and liens remain unpaid for 60 days or more;
- Changes the percentage of the original amount owed to be assessed as a collection fee which may be added to any balance owed when the clerk pursues collection of these obligations;
- Allows the clerk of court to collect an additional \$60 service charge if a judicial sale is conducted by electronic means and clarifies that the winning bidder is responsible for paying this service charge;
- Provides that, in chapter 39 civil cases, the \$50 application fee for court-appointed representation is renamed an "indigent intake fee";
- Removes the authority for clerks to retain 10 percent of the \$50 indigent application fee in chapter 39 civil cases;
- Provides that the costs of electronic tax deed sales will be added to the other costs of the sale, including the costs of providing notice of the sale;
- Increases the authorized county and local government surcharges to \$30 from \$15 for certain noncriminal traffic infractions and other criminal traffic violations;
- Authorizes the imposition of a surcharge for any infraction or violation for the purpose of paying the principal and interest on bonds issued by the county on or after July 1, 2009;
- Clarifies that the Department of Highway Safety and Motor Vehicles, not the clerk of court, provides notice to persons regarding the suspension of driver's licenses for failure to pay certain court obligations due to traffic offenses;
- Creates a legislative workgroup to review court-related fees, service charges, costs, and fines rather than a joint select legislative committee;
- Clarifies that a state inmate is not required to appear before the court for examination regarding his or her ability pay a financial obligation in a criminal case;

- Provides that a judge shall have jurisdiction to carry out the Comprehensive Court Enforcement Program Act in any case, not just criminal cases; and
- Repeals the section of the Florida Statutes that requires the clerk, in prosecutions for an offense against the state, to apply the money deposited on behalf of a defendant to any costs or fines and return the remainder to the depositor.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
