

STORAGE NAME: h1781z.jud
DATE: June 25, 1999

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
FINAL ANALYSIS**

BILL #: HB 1781
RELATING TO: Clerks of Circuit Court
SPONSOR(S): Representative Arnall
COMPANION BILL(S): CS/SB 1282(s) & CS/SB 0264(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY YEAS 8 NAYS 0
- (2) CRIMINAL JUSTICE APPROPRIATIONS YEAS 9 NAYS 0
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

HB 1781 died on the House Calendar. However, provisions of this bill were passed in CS/SB 1282. CS/SB 1282 was approved by the Governor on June 8, 1999. (Chapter# 99-259)

II. SUMMARY:

The bill amends various statutory provisions relating to the clerk of the circuit court. It requires that a register of the Official Records be kept at all branch offices where instruments may be filed for recording. It extends the time in which to compensate witnesses or jurors. It eliminates the \$1,000 cap on the 5% deposit required of the successful bidder at the time of sale in any judicial sale. It provides eligibility for employees of clerks of courts to receive extra or bonus compensation from public funds. It imposes a time frame in which a minor must pay fines assessed for citation of possession or purchase of tobacco product. Finally, the bill repeals provisions relating to: a) the preparation of audit claims forms no longer done by the State Comptroller, b) the recordation of plats on antiquated media, and c) the collection of certain court costs and surcharges.

The Office of State Courts Administrator anticipates that the bill will have a negligible fiscal effect.

The bill provides that it will be effective upon becoming law.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Clerks of Courts

Clerks of the circuit courts are elected pursuant to the provisions of section 1 of Article VIII of the Florida Constitution. The duties of the clerk may be set out through special or general law, which may be divided as if between two officers, one serving as the clerk and the other serving as the county financial officer (i.e., clerk for the board of county commissioners, auditor, recorder and custodian of all county funds). See §16, art. V, Fla. Const. There may also be a clerk of the county court.

Chapter 28, F.S., provides for the commission, office and duties of clerks of the circuit courts of Florida. In addition to the duties set out in chapter 28, F.S., the clerks of the circuit court perform a number of duties under other chapters, including issuances of marriage licenses, recordings of plats, and collection or administration of fines and court charges imposed for a variety of criminal and noncriminal violations.

Recording of Instruments

The clerk of the circuit court is the official recorder of all instruments to be recorded in the county. See § 28.222, F.S. In 1998, voters approved a constitutional amendment to permit the recording of instruments in branch offices of the clerks of the court. See § 1, art. VIII, Fla. Const. Previously, this constitutional section prohibited the official recording of any instrument at any office other than at the county seat office. However, branch offices could be established elsewhere by resolution of the governing county body or if needed.

The clerk must keep a register of recorded instruments to include the time and date of filing, the filing number of the recorded instrument, the kind of instrument, and the names of the parties to the instrument. The instruments must be recorded in one general series [of books] called "Official Records" for the county. [*Note:* Clerks no longer keep records in "books" due to available technology].

In conformity with the earlier version of the constitutional provision, s. 28.07, F.S., currently provides that the Official Records of the county must be kept at the county seat although all other records and books may be kept in other offices within the county. The Official Records must be open to the public, under the supervision of the clerk. The following instruments are to be recorded by the clerk upon presentation and payment for services:

- Deeds, leases, bills of sale, agreements, mortgages, notices or claims of lien, notices of levy, tax warrants, tax executions, and other instruments relating to the ownership, transfer, or encumbrance of or claims against real or personal property or any interest in it; extensions, assignments, releases, cancellations, or satisfactions of mortgages and lien; and powers of attorney relating to any of the instruments.
- Notices of lis pendens.
- Judgments, including certified copies of judgments, and assignments, releases, and satisfactions of the judgments.
- That portion of a certificate of military, air force or naval force discharge, separation, or service.
- Notices of liens for taxes payable to the United States and other liens in favor of the United States, and certificates discharging, partially discharging, or releasing the liens.
- Certified copies of bankruptcy petitions, decrees of adjudication in the proceedings, and orders approving the bonds of trustees appointed in the proceedings.
- Certified copies of death certificates authorized for issuance by the Department of Health and Rehabilitative Services, and certified copies of death certificates issued by another state.
- Any other instruments required or authorized by law to be recorded.

Compensation for Witnesses and Jurors

The clerks of the court disburse money to jurors and witnesses to compensate them for their services. See § 40.32, F.S. Beginning each fiscal year during any quarterly fiscal period, the clerk of the court submits requests to the Office of the State Courts Administrator (OSCA) for monies necessary to compensate jurors and witnesses. See § 40.29, F.S. The OSCA either endorses as requested or reduces the amount in the request which is then submitted to the State Comptroller which in turn issues a warrant for the amount drawn from the treasury to the clerk of the court. See §§ 40.29 and 40.30, F.S. There are procedures set in statute for securing additional monies if the amount approved and disbursed for jurors and witnesses exceeds the amount needed or requested. See §§ 40.31, 40.32, and 40.33, F.S. The clerk of the court has 10 days after the juror or witness serves to compensate him or her for her services. See § 40.32, F.S.

Fines and Court Costs

The clerks of the courts have a number of responsibilities under chapter 142, F.S., including the issuance of certificates for compensation on claims against the county out of the County Fine and Forfeiture Fund. Although not statutorily required, they have also assumed responsibility from the State Comptroller for preparation of claims forms for auditing purposes.

Extra Compensation

Section 215.425, F.S., prohibits the payment of extra compensation to certain local, county, or state employee after services have been rendered or a contract relating to salary, wages or retirement has been executed.¹ Any such extra compensation has to be approved by law through 2/3 vote of the Legislature. Currently, the following persons are exempt from the restriction on extra compensation paid under this section: 1) state employees who are included within the senior management group under rules adopted by the Department of Management Services, 2) county or municipal employees under policies adopted by county or municipal ordinances, and 3) plainclothes deputies under s. 30.49 for purposes of providing clothes and maintenance allowances.

The Office of the Attorney General has issued a number of opinions regarding the appropriateness of "extra compensation" under this statutory provision. The Attorney General has repeatedly stated that the prohibition against compensation for work already performed is for the purpose of carrying "out a basic and fundamental principle that public funds may be used only for a public purpose and it is contrary to this policy to use public funds to give extra compensation for work which has already been performed for an agreed upon wage." AGO 97-21, March 31, 1997. Over the years, the Florida Legislature has authorized certain entities under certain circumstances, to offer extra compensation paid in addition to an employee's salary or other compensatory agreement. The clerks of the court are not exempt from such prohibition.

B. EFFECT OF PROPOSED CHANGES:

Section 1 amends s. 28.001, F.S., relating to definitions in the chapter on clerks of the circuit court, to remove unnecessary reference to the "books" which constitute the "Office Records". The clerks no longer keep records in books.

Section 2 amends s. 28.07, F.S., relating to the office of the clerk of the circuit court, to provide that instruments presented for recording in the Official Records may be accepted for filing and recording at any branch office designated by the governing county body. The bill does not modify the current statutory requirement that the Official Records be kept at the main county seat office.

Section 3 amends s. 28.222, F.S., relating to the clerk of the circuit court as official recorder, to remove the reference to the "books". It also requires the "register" of Official Records to be available at each branch office where instruments may be filed for recording. This amendment implements the recent constitutional amendment authorizing recording at branch offices.

¹ Section 215.425, F.S., formerly s. 11, Art. XVI, State Const. 1885, was one of several constitutional provisions converted to statutory law by s. 10, Art. XII, State Const. 1968.

Section 4 amends s. 40.32, F.S., relating to compensation of jurors and witnesses, to extend the time in which to pay jurors and witnesses from 10 days to 20 days after their services are rendered. This would allow clerks of the court more time to process requests for monies to pay jurors and witnesses from the Office of State Courts Administrator.

Section 5 amends s. 45.031, F.S., relating to judicial sales procedures, to require a successful bidder to pay a full 5% deposit at the time of a judicial sale, removing the current \$1,000.00 cap.

Section 6 amends s. 177.091, F.S. (Supp. 1998), relating to plats for recording, to eliminate the option of providing a plat for recording in the obsolete form of an original drawing made through a particular process.

Section 7 amends s. 177.111, F.S., relating to instructions for filing plats, to delete the provision requiring that the photographic copy of the plat be on cloth.

Section 8 amends s. 215.425, F.S., to exclude employees of a clerk of the court from the prohibition against receipt of extra compensation provided the clerk of the court has implemented a written policy to that effect.

Section 9 amends s. 569.11, F.S., relating to certain noncriminal violations by minors. It imposes a time frame of 30 days after the date of citation in which a minor must pay a fine imposed for violations of this section including tobacco possession or misrepresentation of age or military service for purposes of securing a tobacco product. If a court appearance is mandatory, then the fine must be paid within 30 days after the date of the hearing.

Section 10 amends s. 741.09, F.S., relating to marriage licenses and certificate records, to delete obsolete provisions regarding keeping records in books. The clerks no longer keep records in books.

Section 11 repeals s. 142.17, F.S., relating to duties of the state comptroller to prepare blanks and forms for auditing claims against the county paid out of the County Fine and Forfeiture fund. The duty under this section is no longer performed by the State Comptroller.

It repeals s. 938.09, F.S., relating to court costs fees assessed on fines for crimes against handicapped or disabled persons. These provisions were rendered unnecessary after the repeal of the Handicapped and Elderly Security Assistance Act in chapter 426, F.S., in 1998.² See Chapter 98-28, L.O.F.

It also repeals s. 938.11, F.S., relating to court costs fees assessed on fines for crimes against handicapped or disabled persons. These provisions were rendered unnecessary after the repeal of the Handicapped and Elderly Security Assistance Act in chapter 426, F.S., in 1998.³ See Chapter 98-28, L.O.F.

Section 15 provides that the act is to take effect upon becoming law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

² The crime prevention program was never implemented. The grant program was established in 1984 to assist housing authorities to develop programs to reduce the criminal victimization of handicapped and elderly residents. But in 1993, the trust fund associated with the program was repealed, due in part to judge's rare imposition of the fines and consequently, insufficient monies for the trust funds.

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No. The bill permits but does not require counties to designate branch offices for filing and recording instruments.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The bill does not reduce or eliminate an agency or program.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill will allow citizens to record documents at local court branches.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The bill raises the minimum deposit required of the successful bidder at a judicial sale. This will restrict the ability of some to participate in the process.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

The bill does not purport to provide services to families or children.,

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

The bill does not create or change a program providing services to families or children..

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

ss. 28.001, 28.07, 28.222, 40.32, 45.031, 177.091, 177.111, 215.425, 569.11, and 741.09, F.S.

The bill repeals ss. 142.17, 938.09, and 938.11, F.S.

E. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Not estimated. The Office of State Courts Administrator has determined the fiscal impact of the bill to be insignificant.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

According to the Office of State Courts Administrator, the following table details the amount appropriated for jurors and witnesses in the last two fiscal years.

<i>Jurors and Witnesses</i>				
	Budgeted	Expenditure	Witnesses	Juror Days (Jurors)
FY 1996-97	\$4,886,910	\$4,786,024	58,320	495,198 (345,000)
FY 1997-98	\$5,136,910	\$4,867,880	44,400	519,548 (373,700)

It is indeterminate what benefit, if any, the clerks of the courts may derive from the extension of time to compensate jurors and witnesses, other than to have more time to process requests for

compensation. Under current law, clerks of the court submit quarterly estimated requests for monies to compensate jurors and witnesses. These requests are processed through the Office of State Courts Administrator and subsequently the Comptroller who disburses the monies to the clerks of the court. If there are insufficient funds, some counties pay their jurors and witnesses out of county budgets and seek reimbursement later or issue a certificate to the juror or witness as a form of I.O.U.. Each county varies as to the time of receipt of funds, the period between deposit in its account and actual disbursement to the juror or witness, and the sufficiency of the funds available for timely disbursement.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. **FISCAL COMMENTS:**

N/A

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

The bill may require a county to expend funds to implement the records provisions. Such expenditure has not been estimated, but it is likely to be insignificant.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

The bill does not reduce a city or county's revenue raising authority.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

The bill does not reduce the amount of state tax shared with cities or counties.

VI. COMMENTS:

A recent constitutional amendment shifted the major costs of Florida's judicial system from the counties to the state. See § 14, art. V, Fla. Const. It sets out certain costs to be borne solely by the state, certain costs to be borne fully by the counties, and other costs to be paid from fees. However, where state or federal law prohibit the imposition of such fees for funding a court-related function, the state is responsible for providing supplemental funding. *Id.* The county is only required to fund the cost of communications services as determined by general law. In light of the impending determination of Article V costs, it is not exactly clear whether and how the salaries and benefits of the employees of clerks of the court would fall within this consideration since specific judicial and court operational activities and current funding resources have not yet been fully identified. The provision that bonus compensation may be paid based upon a written policy of

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the clerk, however, would likely make such compensation a "local requirement" subject to county funding under the 1998 Article V amendment.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The final bill is virtually identical to the House bill as amended in committee, except that a provision by the House Judiciary Committee allowing judicial sale deposits to be reduced below 5% by judicial order was not included in the Senate version. Additionally, a House Criminal Justice Committee amendment would have specifically prohibited Clerk employee salary bonuses from impacting state appropriations. Interpreted as a local requirement under Article V, the statutory pre-condition should not be necessary to achieve the intended result.

VIII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Michael W. Carlson

Staff Director:

Don Rubottom

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Michael W. Carlson

Staff Director:

Don Rubottom