

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 1636

INTRODUCER: Judiciary Committee and Senator Ring

SUBJECT: Collection of Court-Related Fees, Services Charges, Costs, and Fines

DATE: March 27, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maclure	Maclure	JU	Fav/CS
2.			FT	
3.			JA	
4.			RC	
5.				
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 collection of court-related fees, service charges, costs, and fines by the state courts system. Specifically, the bill:

- Requires each judicial circuit to implement the Comprehensive Court Enforcement Program, which is currently an optional program that uses a civil proceeding to recover court costs and fines imposed in conjunction with a criminal conviction, but which were not collected through the criminal proceedings.
- Requires the court to bring any person – other than a state inmate – who is liable for payment of a financial obligation in a criminal case before the court for an examination of his or her ability to pay.
- Directs the clerk of court to record in the official records a court order imposing county-authorized additional court costs when a person is convicted of a felony, misdemeanor, delinquent act, or criminal traffic violation, and provides that the order becomes a lien attaching to the person’s real and personal property.
- Provides for a 13-member joint select legislative committee consisting of five senators and eight representatives for the purpose of reviewing the methods currently used by each

circuit court and county court of Florida to collect court-related fees, service charges, costs, and fines.

This bill substantially amends the following sections of the Florida Statutes: 938.30, 938.301, and 939.185. The bill also creates language that does not appear to be intended for codification in the Florida Statutes.

II. Present Situation:

Civil Court Fees and Costs

Court costs, fees, and collection rates were 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 State 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 over time. Most clerks utilize sanctions against driver’s licenses or liens. Further, almost 90 percent of the clerks responding to OPPAGA’s survey use private collection agencies in the 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

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.

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 the clerks to retain two-thirds of the funds collected to fund their offices.⁷

Indigent Parties or Intervenors

Under Florida law, any party 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."⁸ 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.⁹ 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.¹⁰ Furthermore, TaxWatch determined that approximately 90 percent of indigent fees are never paid in their entirety.¹¹ The study also compared the cost between aggressive and

⁶ *Id.* at 4.

⁷ *Id.* at 2.

⁸ Section 57.081, F.S.

⁹ Florida TaxWatch, *Charging Indigent Floridians Civil Court Filing Fees Raises Questions of Cost Efficiency and Equal Access to the Florida Court System* (March 2008).

¹⁰ *Id.* at 4.

¹¹ *Id.*

nonaggressive collection polices and concluded that the more aggressive approaches to collect fees cost the clerks more than not collecting the fees.¹²

Financial Obligations in Criminal Cases

In 1998, the Legislature created the Comprehensive Court Enforcement Program Act,¹³ 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 supplementary proceedings.¹⁴ Under the supplemental proceedings, if a person is liable for a financial obligation related to a criminal case, the court may require him or her to appear before the court for an examination of his or her ability to pay the obligation.¹⁵ 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.¹⁶ 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.¹⁷

Among the remedies available to the court are:

- Ordering that non-exempt property belonging to the person but in the hands of another be applied toward satisfaction of the obligation;
- Entering a judgment on the court-ordered financial obligation, which judgment constitutes a lien against the person's property;
- Ordering the person to comply with a payment schedule, failure to comply with which may be deemed civil contempt;
- Imposing on the person administrative costs related to enforcing compliance under the statute; and
- Referring any proceedings under this statute to a special magistrate, who shall make recommendations to the court.¹⁸

Assessment of Additional Court Costs

Under s. 939.185, F.S., a county may adopt an ordinance providing for an additional court cost – not to exceed \$65 – to be imposed when a person pleads guilty to or is found guilty of any felony, misdemeanor, delinquent act, or criminal traffic offense.¹⁹ The collections are allocated as follows:

¹² *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.

¹³ Chapter 98-247, L.O.F.

¹⁴ Section 938.301, F.S.

¹⁵ Section 938.30(2), F.S.

¹⁶ *Id.*

¹⁷ Section 938.30(4), F.S.

¹⁸ Section 938.30(5), (6), (8), (10), and (11), F.S.

¹⁹ Section 939.185(1)(a), F.S. Certain counties are authorized to impose by ordinance an additional surcharge of \$85. See s. 939.185(1)(b), F.S.

- 25 percent for innovations to supplement state funding for the elements of the state court system;
- 25 percent for legal aid programs;
- 25 percent for law libraries; and
- 25 percent for support of teen court programs, juvenile assessment centers, and other juvenile alternative programs.²⁰

III. Effect of Proposed Changes:

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

Financial Obligations in Criminal Cases

The bill requires each judicial circuit to implement the Comprehensive Court Enforcement Program, which is currently an optional program that uses a civil proceeding to recover court costs and fines imposed in conjunction with a criminal conviction, but which were not collected via the criminal proceedings. The bill amends the program to provide that any person – other than a state inmate – who is liable for payment of a financial obligation in a criminal case shall appear before the court for an examination concerning his or her ability to pay. Current law gives the court discretion whether to require such hearings.

Assessment of Additional Court Costs

The bill directs the clerk of court to record in the official records a court order imposing county-authorized additional court costs, under s. 939.185, F.S., when a person commits a felony, misdemeanor, delinquent act, or criminal traffic violation. The bill further provides that the order becomes a lien attaching to the person's real and personal property. The lien shall be enforceable in the manner provided by law for other liens. The bill creates an exception under which a lien will not attach to real or personal property protected from forced sale under the homestead and other exemption provisions of s. 4, Article X of the State Constitution.

Joint Select Committee

This bill calls for the Legislature to create a 13-member joint select committee for a period of one year, consisting of five senators appointed by the President of the Senate and eight representatives appointed by the Speaker of the House of Representatives, to review the methods currently used by each circuit court and county court of Florida to collect court-related fees, service charges, costs and fines.²¹ This bill provides that the committee must submit recommendations to the President of the Senate and the Speaker of the House of Representatives for an effective, uniform statewide method to collect court-related fees, service charges, costs, and fines.

²⁰ *Id.*

²¹ It appears that, in referring to a review of methods “used by each circuit court and county court” to collect these moneys, the bill contemplates examining the role of the courts and the clerks in the collection process. Typically, judges are responsible for assessing and enforcing fines and fees, and the clerks of court are responsible for collecting the moneys.

The bill provides an effective date of July 1, 2008.

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:

An individual liable for a financial obligation in a criminal case will be required to appear before the court for an examination concerning his or her ability to pay and may be subject to imposition of a payment schedule as well as other sanctions.

An individual who fails to pay county court costs imposed for a felony, misdemeanor, delinquent act, or criminal traffic violation will have a lien attached against his or her property.

C. Government Sector Impact:

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 joint select committee that will presumably be administered by the Legislature using existing resources.

VI. Technical Deficiencies:

Line 55 (and line 10 of the title) uses the term “the clerk of courts.” The Legislature may wish to change this term to “the clerk of court” or “the clerks of court,” as those terms are more commonly used in ch. 28, F.S., governing the clerks.

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 25, 2008:

The committee substitute differs from the original bill adding the following:

- A requirement for courts to implement the Comprehensive Court Enforcement Program, which currently is an optional program using a civil proceeding to recover court costs and fines imposed in conjunction with a criminal conviction;
- A requirement for a person – other than a state inmate – who owes a financial obligation in a criminal case to appear before the court for an examination of his or her ability to pay the obligation; and
- A requirement for the clerk of court to record a court order imposing additional county costs in certain cases, which order attaches as a lien against the property of the person responsible for payment of the costs.

- B. **Amendments:**

None.