

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 Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: CS/SB 170

INTRODUCER: Judiciary Committee and Senator Bennett

SUBJECT: Electronic Filing and Receipt of Court Documents

DATE: March 14, 2011 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. O'Connor	Maclure	JU	Fav/CS
2. Hendon	Sadberry	BJA	Pre-meeting
3.		BC	
4.			
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 requires each state attorney and public defender to implement a process by which the state attorney and public defender can electronically file court documents with the clerk of the court and electronically receive court documents from the clerk of the court. The bill also defines the term "court documents." The bill further expresses the expectation of the Legislature that the state attorneys and public defenders consult with specified entities in implementing the electronic filing and receipt process. The Florida Prosecuting Attorneys Association and the Florida Public Defender Association are required to report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, on the progress made in implementing the electronic filing and receipt system.

This bill creates sections 27.341 and 27.5112, Florida Statutes.

II. Present Situation:

Electronic Filing of Court Documents

In 2009, the Legislature passed and the Governor signed into law Senate Bill 1718 (2009 Regular Session).¹ This bill required each clerk of the court to implement a statewide, uniform electronic filing process for court documents using standards to be specified by the Supreme Court.² The Legislature's expressed intent for requiring the implementation of electronic filing was "to reduce judicial costs in the office of the clerk and the judiciary, increase timeliness in the processing of cases, and provide the judiciary with case-related information to allow for improved judicial case management."³

The federal court system already uses an electronic filing system called PACER (Public Access to Court Electronic Records).⁴ Additionally, there are 13 state courts and the District of Columbia using statewide electronic filing systems.⁵ Those courts are: Alabama, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, New Jersey, New York, North Carolina, North Dakota, Ohio, Texas, and Washington.⁶

Supreme Court Standards

In response to SB 1718, the Florida Supreme Court promulgated statewide standards for electronic filing on July 1, 2009.⁷ The Court specified that electronic filing would be implemented through "a single statewide Internet portal for electronic access to and transmission of court records to and from all Florida courts."⁸ All electronic filing systems were required to be compatible with the Florida Courts E-Portal developed by the Florida Courts Technology Commission.⁹ The Court specified that electronic court records submitted to the portal must be "capable of being printed as paper, or transferred to archival media, without loss of content or material alteration of appearance"; such records "shall constitute the official record and are equivalent to court records filed in paper."¹⁰

Status of Implementation

Proviso language from the fiscal year 2010-11 General Appropriations Act required the state courts system to "accelerate the implementation of the electronic filing requirements ... by implementing five of the ten trial court divisions by January 1, 2011."¹¹

¹ Chapter 2009-61, Laws of Fla.

² *Id.* at s. 16.

³ *Id.*

⁴ PACER, *PACER Home*, <http://www.pacer.gov/> (last visited Feb. 4, 2011).

⁵ American Bar Association, *Electronic Filing Resource Page*, <http://www.abanet.org/tech/lrc/research/efiling/home.html> (last visited Feb. 1, 2011).

⁶ *Id.*

⁷ *In Re: Statewide Standards for Electronic Access to the Courts*, AOSC09-30 (Fla. July 1, 2009).

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ Florida Supreme Court, *Standards for Electronic Access to the Courts*, 6 (June 2009).

¹¹ Chapter 2010-152, s. 7, Laws of Fla., proviso accompany specific appropriation 3238.

The electronic filing system is called the Florida Courts E-Filing Portal and can be found at www.myflcourtaccess.com. The portal is currently functional, with nine counties signed on for the initial program.¹² Clerks in these counties are currently working with volunteer attorneys to use the portal on a pilot basis before the portal opens to all attorneys.¹³ A second set of counties was recently approved to be added over time.¹⁴ By motion of the Florida E-Filing Authority, an entity made up of eight circuit court clerks and the Clerk of the Supreme Court that provides governance for the e-filing portal,¹⁵ the portal is currently programmed for the following five civil divisions: circuit civil, county civil, family, probate, and juvenile dependency.¹⁶ Although the portal is not yet programmed for electronic filing for criminal divisions, to date 28 counties have been granted approval by the Florida Courts Technology Commission¹⁷ to implement electronic filing in criminal divisions, and an additional six counties have applied and are pending approval.¹⁸ Some of these counties have requested approval for electronic filing in criminal divisions for systems they are currently using on the local level, while others may have requested approval in anticipation of the statewide portal's expansion into all divisions.

Other Electronic Filing Efforts

Distinct from the statewide portal, there have been other electronic filing efforts in Florida for several years. For example, the Manatee County Clerk of Court received approval from the Supreme Court in 2005 to utilize electronic filing in all cases.¹⁹ Electronic filing is mandatory in Manatee County for foreclosure actions and is encouraged for other actions.²⁰ On the appellate level, the First District Court of Appeal (First DCA) began implementing an electronic filing program in 2009 at the direction of the Legislature.²¹ When the program first began, attorneys had the option of filing documents electronically or in paper. However, effective September 1, 2010, all attorneys were required and non-attorneys were encouraged to file all pleadings

¹² The nine counties currently signed on to use the e-filing program are: Lake, Columbia, Duval, Gulf, Holmes, Lee, Miami-Dade, Putnam, and Walton. Gary Blankenship, *E-filing open for business: The new service is being phased in slowly*, THE FLORIDA BAR NEWS, Jan. 15, 2011, available at <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/0a29309ae461bfdc85257810006684b5!OpenDocument> (last visited Jan. 31, 2011).

¹³ *E-filing is underway*, THE FLORIDA BAR NEWS, Feb. 1, 2011, available at <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/a3867c4f16e4e48c852578220047644a!OpenDocument> (last visited Feb. 1, 2011).

¹⁴ New counties are: Broward, Orange, Marion, Collier, Franklin, Jackson, and Leon. *Id.*

¹⁵ Florida E-Filing Authority, *E-Filing Authority Home*, http://www.flclerks.com/eFiling_authority.html (last visited Feb. 1, 2011).

¹⁶ Minutes for the Florida E-Filing Authority meeting (Dec. 8, 2010) (on file with the Senate Committee on Judiciary).

¹⁷ The Florida Courts Technology Commission has been tasked with evaluating electronic filing applications "to determine whether they comply with the technology policies established by the supreme court." *In Re: Amendments to the Florida Rules of Judicial Administration—Rule 2.236*, 41 So. 3d 128,133 (Fla. 2010).

¹⁸ Counties granted approval for at least one criminal division: Alachua, Broward, Calhoun, Clay, Dixie, Duval, Flagler, Gadsden, Glades, Gulf, Holmes, Jackson, Lake, Lee, Leon, Manatee, Monroe, Okaloosa, Orange, Palm Beach, Polk, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, and Volusia; counties pending approval for at least one criminal division: Bay, Brevard, Citrus, Pinellas, Sumter, and Taylor. Florida State Courts, *Electronic Initiatives as of January 21, 2011*, http://www.flcourts.org/gen_public/technology/bin/efilingchart.pdf (last visited Feb. 2, 2011).

¹⁹ Manatee County Clerk of the Circuit Court, *E-File and E-Case Initiation*, <http://www.manateeclerk.com/Services/EFiling.aspx> (last visited Feb. 2, 2011).

²⁰ *Id.*

²¹ Chapter 2009-61, s. 17, Laws of Fla.

electronically.²² The Public Defender for the Second Judicial Circuit handles appeals in the jurisdiction of the First DCA;²³ attorneys in the appellate division currently file electronically in accordance with the court's requirements.

III. Effect of Proposed Changes:

This bill requires offices of the state attorney and the public defender to implement an electronic process to file court documents with the clerk of the court and receive court documents from the clerk of the court. The term "court documents" as defined in the bill includes, but is not limited to, pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts. The Florida Prosecuting Attorneys Association is required by the bill to file a report with the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, describing the progress that each office has made to implement an electronic filing system. For any office of the state attorney that has not fully implemented an electronic filing system by that date, the report must also include a description of the additional activities that are needed to complete the system and the additional timeframe anticipated. The bill provides identical requirements for the Florida Public Defender Association on behalf of each office of the public defender. The bill expresses the Legislature's intent that offices of the state attorney and public defender consult with each other within the same circuit as well as with clerks of the court serving each office, the Florida Court Technology Commission, and any authority that governs the operation of a statewide portal for the electronic filing and receipt of court documents.

The bill language does not specify whether offices of the state attorney and public defender are being directed to electronically file and receive court documents through the statewide portal or other means, such as filing directly with clerks in their circuits. The bill does not appear to require state attorneys or public defenders to design entirely new systems; rather it directs them to develop the technological capability and implement a process for electronic filing and receipt, which may be possible through revision of their existing data or case management systems. The extent of necessary changes will likely vary among the offices depending on the existing information technology already in place. Consulting with each other and the additional entities specified by the bill will allow offices of the state attorney and public defender to benefit from any existing knowledge those entities are able to provide to facilitate the transition to electronic filing.

This bill provides that it takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and meets one of a number of

²² *In Re: Electronic Filing of Pleadings in the First District Court of Appeal*, AO10-3 (Fla. 1st DCA 2010).

²³ Florida State Courts, *Florida's District Courts*, <http://www.flcourts.org/courts/dca/dca.shtml> (last visited Feb. 2, 2011).

enumerated exceptions. If none of the constitutional exceptions apply, and if the bill becomes law, cities and counties are not bound by the law unless the Legislature has determined that the bill fulfills an important state interest and approves the bill by a two-thirds vote of the membership of each house.²⁴

Counties are required by Article V, Section 14 of the Florida Constitution to fund the cost of communications services for public defenders' offices and state attorneys' offices. The Legislature by general law has prescribed that communications services include "[a]ll computer networks, systems and equipment."²⁵ Senate Bill 170 requires that offices of the state attorney and offices of the public defender implement processes to electronically file court documents. Counties would be required to provide any funds associated with implementation of the electronic filing process. However, an expenditure in compliance with this bill does not appear to constitute a mandate because it relates to an existing constitutional duty on the part of the counties.

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:

None.

C. Government Sector Impact:

This bill requires each state attorney and public defender to implement a process for electronic filing. As referenced in the Municipality/County Mandates Restrictions section of this bill analysis, any funding necessary to implement the process would be provided by the county. The bill expresses the legislative expectation that once electronic filing is implemented, it will reduce costs associated with paper filing, increase timeliness in the processing of cases, and provide the judiciary and the clerk of court with case-related information to allow for improved judicial case management. As noted previously, the extent of necessary updates will vary among offices depending on the existing information technology already in place. If any office is unable to implement electronic filing because the financial burden is too great for a particular county, that fact could be

²⁴ FLA. CONST. art. VII, s. 18(a).

²⁵ Section 29.008(2)(f), F.S.

relayed to the Legislature in the progress report due on March 1, 2012, as specified in the bill.

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 February 8, 2011:

The committee substitute:

- Replaces legislative intent language for the implementation of electronic filing for offices of the state attorney and public defender with language requiring such implementation;
- Specifies that the required electronic filing process should also have the capability to receive documents from the clerk;
- Replaces the phrase “design and implement a system” with “develop the technological capability and implement a process”;
- Defines the term “court documents”; and
- Includes the legislative expectation that offices of the state attorney and public defender consult with specified entities.

B. Amendments:

None.