

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 443 Electronic Filing and Receipt of Court Documents

**SPONSOR(S):** Criminal Justice Subcommittee; Boyd and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/CS/SB 170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Williams	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N	Toms	Jones Darity
3) Judiciary Committee			

### SUMMARY ANALYSIS

In 2009, the Legislature passed SB 1718, which 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. The Legislature's 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."

CS/HB 443 creates ss. 27.341 and 27.5112, F.S., which are both entitled, "Electronic filing and receipt of court documents." The bill requires that offices of the state attorney and the public defender electronically file court documents with the clerk of the court and electronically receive court documents from the clerk of the court.

The bill specifies that electronic filing and receipt of court documents is expected by the Legislature to:

- Reduce costs for the offices of the state attorney and the public defender, the clerk of court, and the judiciary;
- 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.

The bill further expresses the expectation of the Legislature that each office of the state attorney and the public defender consult with specified entities in implementing the bill's electronic filing and receipt of court documents requirement.

The bill also requires the Florida Prosecuting Attorneys Association and the Florida Public Defender Association to report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, on the progress made to use the Florida Courts E-Portal, or other clerks' offices portals for purposes of electronic filing and receipt of court documents.

The bill requires that offices of the state attorney and of the public defender electronically file court documents with the clerk of the court and electronically receive court documents from the clerk of the court. Therefore, counties would be required to provide any funds associated with implementation of the electronic filing process. However, some State Attorneys and Public Defenders have begun implementing electronic filing.

The bill has an effective date of July 1, 2011.

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background - Electronic Filing of Court Documents**

The clerks and courts have been collaborating on e-filing for many years. While many individual efforts have been made by some clerks' offices, there has been a move in the last four years toward a statewide approach to implement e-filing.<sup>1</sup>

In February 2006, the Florida Supreme Court (Court) issued Administrative Order SC06-3, establishing the Electronic Filing Committee as an ad hoc committee of the Florida Courts Technology Commission.<sup>2</sup> The purpose of the committee was, "to assist the Supreme Court and the Office of the State Courts Administrator by evaluating proposed plans submitted by clerks of courts, pursuant to Rule 2.090, Florida Rules of Judicial Administration, to implement the electronic filing of documents as well as subsequent documentation submitted prior to the discontinuation of follow-up filings."<sup>3</sup>

Meetings held resulted in the E-filing Operational Policies for Florida Statewide Electronic Filing Portal document, developed by the Florida Association of Court Clerks (FACC) and the Office of the State Courts Administrator (OSCA).<sup>4</sup> On April 30, 2008, the Court, in conference, approved the "E-filing Operational Policies, Florida Statewide Electronic Filing Portal" (E-Portal) document.<sup>5</sup> At the committee's request, FACC submitted a proposal to build a portal based on the Court's and National Center for State Courts' (NCSC) standards under the Court's jurisdiction on November 1, 2006. In 2007, FACC began development of the E-Portal.<sup>6</sup>

**SB 1718**

In 2009, the Legislature passed SB 1718, requesting that, no later than July 1, 2009, the Court set statewide standards for electronic filing of court documents and requiring each clerk of the court to implement a statewide, uniform electronic filing process using the standards specified by the Court.<sup>7</sup> The standards should specify the required information for the duties of the clerks of court and the judiciary for case management.<sup>8</sup> The Legislature's 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."<sup>9</sup>

The federal court system already uses an electronic filing system called PACER (Public Access to Court Electronic Records).<sup>10</sup> Additionally, there are 13 states and the District of Columbia using statewide electronic filing systems.<sup>11</sup> Those states are: Alabama, Arizona, California, Colorado,

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<sup>1</sup> Florida Clerks of Court Operations Corporation, *E-filing Implementation: Status Report of E-filing Implementation By Florida Clerks Of The Circuit Court* (March 1, 2010). ([www.flccoc.org/reportsforms/CCOCEFilingReport.pdf](http://www.flccoc.org/reportsforms/CCOCEFilingReport.pdf)) (last accessed March 18, 2011).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Florida Supreme Court, Standards for Electronic Access to the Courts, (June 2009).

([http://www.flcourts.org/gen\\_public/technology/bin/Standards-ElectronicAccess.pdf](http://www.flcourts.org/gen_public/technology/bin/Standards-ElectronicAccess.pdf)) (last accessed March 17, 2011).

<sup>6</sup> Florida Clerks of Court Operations Corporation, *E-filing Implementation: Status Report of E-filing Implementation By Florida Clerks Of The Circuit Court* (March 1, 2010). ([www.flccoc.org/reportsforms/CCOCEFilingReport.pdf](http://www.flccoc.org/reportsforms/CCOCEFilingReport.pdf)) (last accessed March 18, 2011).

<sup>7</sup> Chapter 2009-61, L.O.F.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> PACER, *PACER Home*, (<http://www.pacer.gov/>) (last accessed March 17, 2011).

<sup>11</sup> American Bar Association, *Electronic Filing Resource Page*, (<http://www.abanet.org/tech/ltrc/research/efiling/home.html>) (last accessed March 17, 2011).

Connecticut, Delaware, New Jersey, New York, North Carolina, North Dakota, Ohio, Texas, and Washington.<sup>12</sup>

### Supreme Court Standards

In response to SB 1718, the Court promulgated statewide standards for electronic filing on July 1, 2009.<sup>13</sup> 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.”<sup>14</sup> All electronic filing systems were required to be compatible with the Florida Courts E-Portal.<sup>15</sup> 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.”<sup>16</sup> Such records will constitute the official record and be equivalent to court records filed in paper.<sup>17</sup>

### E-Portal

As noted above, FACC began development of an E-Portal in 2007. The development of the E-Portal was completed in the fall of 2009.<sup>18</sup> Currently, E-Portal provides e-filing and e-recording capability to users with a single statewide login. Users may utilize the E-Portal web interface to submit documents to clerks and recorders. The E-Portal also supports automated interfaces with other submitter systems and supports transmissions to and from the local case and recording systems using national XML standards. The E-Portal also provides electronic notifications and service on behalf of filers.<sup>19</sup>

### 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 of section 16 of chapter 2009-61, Laws of Florida, by implementing five of the ten trial court divisions by January 1, 2011.”<sup>20</sup>

The E-Portal is currently functional, with nine counties signed on for the initial program.<sup>21</sup> 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.<sup>22</sup> A second set of counties was recently approved to be added over time.<sup>23</sup> By motion of the Florida E-filing Authority, an entity made up of eight circuit court clerks and the clerk of the Florida Supreme Court provides governance for the e-filing portal.<sup>24</sup> The portal is currently programmed for the following five civil divisions: circuit civil, county civil, family, probate, and juvenile dependency.<sup>25</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> Supreme Court of Florida. *Statewide Standards for Electronic Access to the Courts*, Administrative Order AOSC09-30, (Fla. July 1, 2009). (<http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-30.pdf>) (last accessed March 17, 2011).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Florida Supreme Court, *Standards for Electronic Access to the Courts*, (June 2009).

([http://www.flcourts.org/gen\\_public/technology/bin/Standards-ElectronicAccess.pdf](http://www.flcourts.org/gen_public/technology/bin/Standards-ElectronicAccess.pdf)) (last accessed March 17, 2011).

<sup>17</sup> *Id.*

<sup>18</sup> Florida Clerks of Court Operations Corporation, *E-filing Implementation: Status Report of E-filing Implementation By Florida Clerks Of The Circuit Court* (March 1, 2010). ([www.flccoc.org/reportsforms/CCOCEFilingReport.pdf](http://www.flccoc.org/reportsforms/CCOCEFilingReport.pdf)) (last accessed March 18, 2011).

<sup>19</sup> [http://www.flclerks.com/eFiling\\_faq.html](http://www.flclerks.com/eFiling_faq.html) (last accessed March 18, 2011).

<sup>20</sup> s. 7 ch. 2010-152, L.O.F., proviso accompany specific appropriation 3238.

<sup>21</sup> 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.

(<http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/0a29309ae461bfdc85257810006684b5!OpenDocument>) (last accessed March 17, 2011).

<sup>22</sup> *E-filing is underway*, THE FLORIDA BAR NEWS, Feb. 1, 2011.

(<http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/a3867c4f16e4e48c852578220047644a!OpenDocument>) (last accessed March 17, 2011).

<sup>23</sup> New counties are: Broward, Orange, Marion, Collier, Franklin, Jackson, and Leon. *Id.*

<sup>24</sup> Florida E-filing Authority, *E-filing Authority Home*, [http://www.flclerks.com/eFiling\\_authority.html](http://www.flclerks.com/eFiling_authority.html) (last accessed March 17, 2011).

<sup>25</sup> Minutes from the Florida E-filing Authority meeting (Dec. 8, 2010) (on file with House Criminal Justice Subcommittee staff).

Although the portal is not yet programmed for e-filing for criminal divisions, as of March 4, 2011, 28 counties have been granted approval by the Florida Courts Technology Commission<sup>26</sup> to implement e-filing in criminal divisions, and an additional six counties have applied and are pending approval.<sup>27</sup> Some of these counties have requested approval for e-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 e-filing efforts in Florida for several years. For example, the Manatee County Clerk of Court received approval from the Florida Supreme Court in 2005 to utilize e-filing in all cases.<sup>28</sup> E-filing is mandatory in Manatee County for foreclosure actions and is encouraged for other actions.<sup>29</sup> On the appellate level, the First District Court of Appeal (First DCA) began implementing an e-filing program in 2009 at the direction of the Legislature.<sup>30</sup>

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 electronically.<sup>31</sup> The Public Defender for the Second Judicial Circuit handles appeals in the jurisdiction of the First DCA,<sup>32</sup> attorneys in the appellate division currently file electronically in accordance with the court's requirements.

### **Effect of the Bill**

CS/HB 443 creates ss. 27.341 and 27.5112, F.S., which are both entitled, "Electronic filing and receipt of court documents." The bill requires that offices of the state attorney and the public defender electronically file court documents with the clerk of the court and electronically receive court documents from the clerk of the court.

The bill specifies that electronic filing and receipt of court documents is expected by the Legislature to:

- Reduce costs for the offices of the state attorney and the public defender, the clerk of court, and the judiciary;
- 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.

The bill further expresses the expectation of the Legislature that each office of the state attorney and the public defender within the same circuit, consult with each other as well as with the clerks of the court for the circuit, 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.

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<sup>26</sup> 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). (<http://www.floridasupremecourt.org/decisions/2010/sc10-241.pdf>) (last accessed March 17, 2011).

<sup>27</sup> 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](http://www.flcourts.org/gen_public/technology/bin/efilingchart.pdf) (last accessed March 17, 2011).

<sup>28</sup> Manatee County Clerk of the Circuit Court, *E-File and E-Case Initiation*, <http://www.manateeclerk.com/Services/EFiling.aspx> (last accessed March 17, 2011).

<sup>29</sup> *Id.*

<sup>30</sup> Section 17, Ch. 2009-61, L.O.F.

<sup>31</sup> *In Re: Electronic Filing of Pleadings in the First District Court of Appeal*, AO10-3 (Fla. 1st DCA 2010) (<http://www.1dca.org/orders/10-3.pdf>) (last assessed March 17, 2011).

<sup>32</sup> Florida State Courts, *Florida's District Courts*, <http://www.flcourts.org/courts/dca/dca.shtml> (last accessed March 17, 2011).

The bill defines the term “court documents” to include pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts.

The bill also requires the Florida Prosecuting Attorneys Association and the Florida Public Defender Association to report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, on the progress made to use the Florida Courts E-Portal, or other clerks’ offices portals for purposes of electronic filing and receipt of court documents. State attorney and public defender offices that have not fully implemented an electronic filing and receipt system by March 1, 2012, must include in the report a description of the additional activities that are needed to complete the system for that office and the projected time necessary to complete the additional activities.

**B. SECTION DIRECTORY:**

**Section 1.** Creates s. 27.341, F.S., relating to electronic filing and receipt of court documents.

**Section 2.** Creates s. 27.5112, F.S., relating to electronic filing and receipt of court documents.

**Section 3.** Provides an effective date of July 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See “Fiscal Comments.”

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

See “Fiscal Comments.”

2. Expenditures:

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 “all computer networks, systems and equipment.”<sup>33</sup>

The bill requires that offices of the state attorney and of the public defender electronically file court documents with the clerk of the court and electronically receive court documents from the clerk of the court. Therefore, counties would be required to provide any funds associated with implementation of the electronic filing process. However, some State Attorneys and Public Defenders have begun implementing electronic filing.

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

None.

**D. FISCAL COMMENTS:**

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

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<sup>33</sup> Section 29.008(2)(f), F.S.

judiciary and the clerk of court with case-related information to allow for improved judicial case management.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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 "all computer networks, systems and equipment."<sup>34</sup>

To the extent that counties are obligated to fund the cost associated with the implementation of the electronic filing process required by the bill, the bill could constitute a mandate as defined in Article VII, Section 18 of the Florida Constitution for which no funding source is provided.

Laws that have an insignificant fiscal impact are exempt from the requirements of Article VII, Section 18 of the Florida Constitution. For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Based on Florida's estimated population on April 1, 2010,<sup>35</sup> a bill that has a statewide fiscal impact on counties and municipalities in aggregate or in excess of \$1.87 million would be characterized as a mandate.

It is unknown at this time how much counties would be required to spend on the electronic filing requirements of the bill. If the fiscal impact is less than \$1.87 million, the impact is insignificant, and an exemption to the mandates provision exists.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, the Criminal Justice Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment:

- Requires the offices of the state attorney and of the public defender to electronically file court documents with the clerk of the court and to electronically receive court documents from the clerk of the court.
- Expresses the expectation of the Legislature that each office of the state attorney and the public defender consult with specified entities in implementing the bill's electronic filing and receipt of court documents requirement.
- Requires the Florida Prosecuting Attorneys Association and the Florida Public Defender Association to report to the President of the Senate and the Speaker of the House of

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<sup>34</sup> Section 29.008(2)(f), F.S.

<sup>35</sup> <http://edr.state.fl.us/Content/population-demographics/reports/econographicnews-2010v1a.pdf>

Representatives by March 1, 2012, on the progress made to use the Florida Courts E-Portal, or other clerks' offices portals for purposes of electronic filing and receipt of court documents.

This analysis is drafted to the Committee Substitute.