

**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.)

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Prepared By: The Professional Staff of the Judiciary Committee

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BILL: SB 410

INTRODUCER: Senator Bennett

SUBJECT: Electronic Filing of Court and Other Legal Documents

DATE: January 30, 2012

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Cibula	JU	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

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**I. Summary:**

This bill requires that litigants pay a specified surcharge for filing paper versions of court and other legal documents, instead of electronically filing the documents. A surcharge of 3.5 percent of the cost of filing the document electronically will apply to litigants in the courts of this state, the Division of Administrative Hearings, or the Office of the Judges Compensation Claims. Litigants filing paper documents are to pay the surcharge in addition to any other costs incurred if the litigant files a paper document.

The bill provides an exception for indigent persons, as determined by s. 27.52, F.S. This bill creates an unnumbered section of the Florida Statutes.

**II. Present Situation:**

**Electronic Filing of Court Documents**

Notwithstanding a few pilot programs,<sup>1</sup> clerks of court in Florida, generally, did not accept electronic filings of court documents<sup>2</sup> until 2009. In 2009, the Legislature passed and the

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<sup>1</sup> The Manatee County Clerk of Court, for example, piloted one of the first electronic filing processes in the state.

<sup>2</sup> Sections 27.341(1)(b) and 27.5112(1)(b), F.S., define the term "court documents" as including, but not limited to, pleadings, motions, briefs, and their respective attachments, orders, judgments, opinions, decrees, and transcripts.

Governor signed into law Senate Bill 1718,<sup>3</sup> to require each clerk of the court to implement a statewide, uniform electronic filing process for court documents.<sup>4</sup>

To implement the requirements of Florida's electronic filing law, the Florida Supreme Court promulgated statewide standards on July 1, 2009.<sup>5</sup> The standards established 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>6</sup> All electronic filing systems were required to be compatible with the Florida Courts E-Portal developed by the Florida Courts Technology Commission.<sup>7</sup> Designed to the Court's specifications,<sup>8</sup> the electronic filing system, is called the Florida Courts E-Filing Portal, and can be found at [www.myflcourtagency.com](http://www.myflcourtagency.com).

### Florida's Statewide E-Filing Portal

The statewide electronic filing (e-filing) portal became available in January 2011, providing individual Florida bar members<sup>9</sup> with "a uniform, public, Internet-based gateway or access point for the transmission of electronic court records to and from all Florida courts."<sup>10</sup> Accessibility to the portal continues to be phased in.<sup>11</sup> As of January 2012; attorneys can e-file in 40 counties,<sup>12</sup> for cases in at least five of the 10 trial court divisions.<sup>13</sup> Use of e-filing continues to grow incrementally. As of June 30, 2011, 6,822 filings had been submitted through the portal.<sup>14</sup>

An inter-local agreement between the Supreme Court of Florida and the clerks of court established the Florida Courts E-Filing Authority.<sup>15</sup> The Florida E-Filing Authority, comprised of eight circuit court clerks and the Clerk of the Supreme Court, provides governance for the e-filing portal.<sup>16</sup> The Authority is contracted with the Florida Association of Court Clerks and

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<sup>3</sup>Chapter 2009-61, s. 16, Laws of Fla. The Legislature's expressed intent for requiring 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>4</sup>*Id.* Note, that the federal court system already uses its own electronic filing system called PACER (Public Access to Court Electronic Records). PACER, *PACER Home*, <http://www.pacer.gov/> (last visited Jan. 25, 2012).

<sup>5</sup>*In Re: Statewide Standards for Electronic Access to the Courts*, Fla. Admin. Order No. AOSC09-30 (Fla. Jul 1, 2009).

<sup>6</sup>*Id.* at 3.

<sup>7</sup>*Id.*

<sup>8</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"; such records "shall constitute the official record and are equivalent to court records filed in paper." The Supreme Court of Florida, *Standards for Electronic Access to the Courts*, Version 6.0 (Oct. 2011), at s. 1.0.

<sup>9</sup>Non-attorney, self-represented litigants may use public computers available at clerks of court offices, and they must be provided the means to file documents electronically. *Id.* at s. 3.1.21.

<sup>10</sup>Florida Office of the State Courts Administrator, *2010-2011 Annual Report*, at 12.

<sup>11</sup>Gary Blankenship, *E-filing open for business: The new service is being phased in slowly*, THE FLORIDA BAR NEWS, Jan. 15, 2011.

<sup>12</sup>Florida Courts e-Filing Portal, Registration Notice, available at <https://www.myflcourtagency.com/RegistrationNotice.htm> (last visited Jan. 25, 2012).

<sup>13</sup>Office of the State Courts Administrator, *Electronic Initiatives as of November 8, 2011*, available at [http://www.flcourts.org/gen\\_public/technology/bin/Electronic\\_Initiatives\\_Update\\_Chart-%2011-08-11.pdf](http://www.flcourts.org/gen_public/technology/bin/Electronic_Initiatives_Update_Chart-%2011-08-11.pdf) (last visited Jan. 26, 2012).

<sup>14</sup>Florida Office of the State Courts Administrator, *supra* note 8.

<sup>15</sup>The Florida Courts E-Filing Authority is a public agency created by interlocal agreement, as set forth in ch. 163, F.S.

<sup>16</sup>Florida E-Filing Authority, *E-Filing Authority Home*, [http://www.flclerks.com/eFiling\\_authority.html](http://www.flclerks.com/eFiling_authority.html) (last visited Jan. 26, 2012).

Comptrollers (FACC) to make the business decisions related to the development and operation of the Florida e-filing court records portal.<sup>17</sup> The FACC designs, develops, implements, operates, upgrades, supports, and maintains the portal for the benefit of the E-Filing, in adherence to the standards created and approved by the Florida Courts Technology Commission.<sup>18</sup>

Noting positive feedback from lawyers and courts of clerk so far, the Florida Office of State Courts Administrator expects continued benefits realized from the portal's "efficiency, its time-savings, and its cost-effectiveness."<sup>19</sup> Planned future enhancements to the portal include acceptance of e-filings for Florida's appellate courts, and an e-filing program for self-represented litigants.<sup>20</sup>

### **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 use electronic filing in all cases.<sup>21</sup> Electronic filing is mandatory in Manatee County for foreclosure actions and is encouraged for other actions.<sup>22</sup> 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.<sup>23</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>24</sup> The Public Defender for the Second Judicial Circuit handles appeals in the jurisdiction of the First DCA;<sup>25</sup> attorneys in the appellate division currently file electronically in accordance with the court's requirements.

### **Requirements for Officers of the Court to use E-filing Portal**

As of July 1, 2011, state attorneys and public defenders are required to electronically file court documents with the clerk of the court and electronically receive court documents from the clerk of the court.<sup>26</sup> These officers of the court must electronically file through the statewide Florida Courts E-Portal, or if the case type for that county has not yet been approved for the statewide portal, they can electronically file using other means.<sup>27</sup> The Florida Prosecuting Attorneys Association and the Florida Public Defender Association are required to report to the President

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<sup>17</sup> Florida Office of the State Courts Administrator, *supra* note 8.

<sup>18</sup> Florida Office of the State Courts Administrator, *Agreement for the Design, Development, Implementation, Operation, Upgrading, Support, and Maintenance of Statewide E-filing Court Records Portal* (2010), available at [http://www.flclerks.com/e-Filing\\_Authority/Resources/EFA\\_Documents/development\\_agreement\\_FACC\\_6-22.pdf](http://www.flclerks.com/e-Filing_Authority/Resources/EFA_Documents/development_agreement_FACC_6-22.pdf) (last visited Jan. 26, 2012).

<sup>19</sup> Florida Office of the State Courts Administrator, *supra* note 8.

<sup>20</sup> *Id.* "[T]he FACC is working on a specialized e-filing program that, much like tax preparation software packages, will walk a pro se party through a series of questions and create the pleading for him/her."

<sup>21</sup> Manatee County Clerk of the Circuit Court, *E-File and E-Case Initiation*, <http://www.manateeclerk.com/Services/EFiling.aspx> (last visited Jan. 26, 2012).

<sup>22</sup> *Id.*

<sup>23</sup> Chapter 2009-61, s. 17, Laws of Fla.

<sup>24</sup> *In Re: Electronic Filing of Pleadings in the First District Court of Appeal*, AO10-3 (Fla. 1st DCA 2010).

<sup>25</sup> Florida State Courts, *Florida's District Courts*, <http://www.flcourts.org/courts/dca/dca.shtml> (last visited Jan. 26, 2011).

<sup>26</sup> Sections 27.341(1)(a) and 27.5112(1)(a), F.S.

<sup>27</sup> *Id.*

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.<sup>28</sup> 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.<sup>29</sup>

### **Judicial Rules related to E-Filing**

As the court system adjusted to electronic filing in the past few years, the Supreme Court of Florida adopted rules intended to protect the rights of litigants. For example, court records that are electronically filed must be formatted in a manner that complies with all state and federal laws requiring that electronic judicial records be accessible to persons with disabilities.<sup>30</sup>

On October 1, 2011, Rule of Judicial Administration 2.425, went into effect, minimizing public access to private, personal information about litigants. Before filing documents with a court, Rule 2.425 requires truncation or redaction of numerous types of information. With few stated exceptions,<sup>31</sup> social security numbers and bank account numbers should not be included at all; driver's license numbers, passport numbers, or patient numbers must be truncated to only the last four digits; and only a minor's birth year should be used<sup>32</sup> unless the full date of birth is necessary to establish the court's jurisdiction in the matter.<sup>33</sup>

Availability of e-filing for electronically receiving court documents from the clerk of the court does not absolve clerks of court from requirements to provide defendants with paper copies of the record. Even if a clerk of court provides a defendant in a criminal case with a copy of the court reporter's CD-ROM, the defendant is still entitled to receive paper transcripts of the record, as well as paper copies of the record.<sup>34</sup> Clerks of the Court must still prepare paper copies of the transcripts for the parties, because the clerk must prepare copies of the "original transcripts,"<sup>35</sup> and the default format of a transcript is the traditional bound paper format.<sup>36</sup>

### **Fees for E-Filing**

Filing fees for judicial proceedings and service charges for performing court-related functions supply all funding for the clerks of the circuit and county courts.<sup>37</sup> In 1998, Florida voters approved Amendment 7 to the State Constitution, which was placed on the election ballot by the Florida Constitution Revision Commission, and titled Florida Local Option for Selection of Judges and Funding of State Courts. Subsequently, the Florida Constitution has required that "salaries, costs, and expenses of the state courts system" be funded from "adequate and

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<sup>28</sup> Sections 27.341(3) and 27.5112(3), F.S.

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

<sup>30</sup> Fla. R. Jud. Admin. 2.526.

<sup>31</sup> *E.g.* Fla. R. Jud. Admin. 2.425(b)(10) exempts from truncation or redaction "information that is relevant and material to an issue before the court."

<sup>32</sup> Fla. R. Jud. Admin. 2.425(a).

<sup>33</sup> Fla. R. Jud. Admin. 2.425(b).

<sup>34</sup> *Office of Atty. Gen. v. Shore*, 41 So. 3d 966, 970-71 (Fla. 2d DCA 2010).

<sup>35</sup> Fla. R. App. P. 9.140(f)(2)(F)

<sup>36</sup> Fla. R. Jud. Admin. 2.535(f)(1).

<sup>37</sup> FLA. CONST. art. V, s. 14. However, the fees may be supplemented from state revenues appropriated by general law.

appropriate” fees and charges, as provided by general law.<sup>38</sup> The Office of the State Courts Administrator is tasked with preparing and disseminating a manual of court-related filing fees, service charges, costs, and fines imposed pursuant to state law.<sup>39</sup>

To file cases with Florida’s courts, electronically, through the e-filing portal, the regular filing fees established by Florida law are required to be paid, as well as the convenience fees established to offset the use of electronic funds transfer. The convenience fee applies to litigants using the portal regardless of payment type.<sup>40</sup> The portal accepts MasterCard, Discover, and American Express cards, with an associated fee of 3-percent of the cost of filing, or ACH transactions for a \$3.00 flat fee.<sup>41</sup>

### III. Effect of Proposed Changes:

This bill requires payment of a specified surcharge by litigants who are required to electronically file a court or other legal document, but who instead file paper versions of these documents. A surcharge of 3.5 percent of the cost of filing the document electronically would apply to such litigants in the courts of this state, the Division of Administrative Hearings, or the Office of the Judges Compensation Claims. Litigants filing paper documents are to pay the surcharge in addition to any other costs incurred if the litigant files a paper document. More than offsetting the 3-percent convenience fee associated with electronic filing, the 3.5-percent charge set out in the bill, generally, provides litigants an incentive to use the electronic filing portal instead of making paper filings.

The bill provides that the 3.5-percent surcharge does not apply to a person who is indigent, as determined by s. 27.52, Florida Statutes.

The bill provides an effective date of July 1, 2012.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>38</sup> *Id.* at s. 14(b).

<sup>39</sup> Section 28.42, F.S.

<sup>40</sup> Florida Association of Clerks and Comptrollers, Florida ePortal and eFiling Frequently Asked Questions, *available at* [http://www.flclerks.com/e-Filing\\_Authority/eFiling\\_fa1.html](http://www.flclerks.com/e-Filing_Authority/eFiling_fa1.html) (last visited Jan. 27, 2012).

<sup>41</sup> *Id.*

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

The bill provides for a surcharge on paper filings in courts of this state equal to 3.5-percent of the cost of the filing.

**B. Private Sector Impact:**

The bill may have an impact on the private sector, because litigants who are required to electronically file, but who file paper documents in a court of this state, would incur the surcharge set out in this bill.

**C. Government Sector Impact:**

Committee staff does not have data specifying the number of legal documents that are currently filed in paper or electronic formats. Any additional source of funding to the state court system associated with the surcharge set out by the bill may diminish over time if litigants are thereby deterred from filing paper documents. However, generating revenues through this surcharge is not the only government fiscal impact likely to be realized by increased use of e-filing. In addition, the clerks of court and the judiciary may experience reduced costs and increased efficiency. Gains in efficiency likely include increased timeliness in the processing of cases and improved judicial case management.<sup>42</sup> To date, the Revenue Estimating Conference has not scheduled the bill for a determination of its potential impact.

This bill will not impose additional costs on state attorneys and public defenders as they are exempt from filing fees under s. 28.345, F.S.<sup>43</sup>

**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.)

None.

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<sup>42</sup> Section 28.22205, F.S., specifically states that e-filing must give courts the information they need to decide cases more quickly and to improve judicial case management.

<sup>43</sup> Section 28.345, F.S., also provides an exemption from payment of all court related fees and charges to guardians ad litem, public guardians, judges, and state agencies.

B. Amendments:

None.

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

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