

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 481 Clerks of Court

SPONSOR(S): Civil Justice Subcommittee; Pilon

TIED BILLS: None **IDEN./SIM. BILLS:** SB 860

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N, As CS	Cary	Bond
2) Government Operations Subcommittee			
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Relating to the clerks of the circuit courts, this bill:

- Provides guidelines for electronic filing of documents;
- Requires clerks to seal or expunge certain court documents upon court order;
- Requires persons filing a written request to have their personal information disclosed under the public records statutes to specify the document type, name, identification number, and page number of the record that contains the exempt or confidential information;
- Increases the minimum amount the clerks are required to refund without a written request in the event of an overpayment from \$5 to \$10;
- Limits the state agency exemption from having to pay court-related fees to the state agency and the party it is representing;
- Authorizes the filing of electronic affidavits regarding publication of a legal advertisement; and
- Provides that, following the sale of a tax certificate, if a property is redeemed prior to the clerk receiving full payment from the sale at a public auction, the high bidder must submit a written request in order to receive a refund of the deposit.

The bill may have a positive, indeterminate fiscal impact on state revenues and state expenditures. The bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill makes several changes relating to the clerks of courts.

Electronic Filings

The clerk of the circuit court is required to keep all papers with the utmost care and security, arranged in appropriate files.¹ The clerk is also required to ensure that the papers do not leave the office without leave of court.² The statute does not address requirements to maintain electronic filings.

This bill amends s. 28.13, F.S., to address electronic filings. The bill specifically requires clerks to affix a stamp to submissions to the office indicating the date and time when it was filed. The bill also replaces a provision in current law that papers do not leave the office with language that the clerk must ensure that documents must not be removed from the control or custody of the clerk.

Clerk as County Recorder

The clerk of the circuit court generally acts as the county recorder.³ This bill amends s. 28.222, F.S., to add a new subsection (4) requiring the clerk, when acting in his or her capacity as a county recorder, to remove recorded court documents from the Official Records pursuant to a sealing or expunction order.

Public Records

A clerk of court is a custodian of public information and is thus required to provide access and copies of public records, if the requesting party is entitled by law to view the record.⁴ Certain records are exempt from disclosure, including personal information of certain individuals such as law enforcement personnel, firefighters, justices and judges, state attorneys, magistrates, and others as specified by statute.⁵ An individual whose information is exempt must file a written request for exemption with any agency that holds an exempt record.⁶

This bill amends s. 119.071(4)(d)2., F.S. of the public records law to require that a person who submits a written request to make information exempt from public disclosure must specify the document type, name, identification number, and page number of the record that contains the exempt or confidential information.

Refunds

If a clerk of court determines that an overpayment was made, the clerk is required to make a refund if the overpayment exceeds \$5.⁷ If the amount of the overpayment is \$5 or less, the clerk need only refund the amount if the person who made the overpayment submits a written request.⁸ This bill amends s. 24.244, F.S. to increase the minimum from \$5 to \$10.

¹ Section 28.13, F.S.

² *Id.*

³ Section 28.222(1), F.S.

⁴ Section 28.24, F.S.

⁵ Section 119.071(4)(d), F.S.

⁶ Section 119.071(4)(d)2., F.S.

⁷ Section 24.244, F.S.

⁸ *Id.*

Fee Exemption

Certain individuals and groups, such as judges, state attorneys, and public defenders, are exempt from all court-related fees and charges assessed by the clerks of the circuit courts, when acting in their official capacity.⁹ State agencies are also exempt from all court-related fees and charges assessed by the clerks.¹⁰ This bill amends ss. 28.24 and 28.345, F.S., limiting the state agency exemption to the agency and the party it is representing.

Proof of Publication

Numerous statutes require the publication of legal notice for various actions.¹¹ Generally, proof of such publication is made by printed affidavit.¹² This bill amends s. 50.041(2), F.S., to authorize an alternative, electronic affidavit, provided the notarization of the affidavit complies with the electronic notarization statute in s. 117.021, F.S.¹³

Sale at Public Auction

A tax certificate is issued by a local government relating to unpaid delinquent real property taxes, non-ad valorem assessments, special assessments, interest, and related costs and charges, issued in accordance with ch. 172, F.S., and against a specific parcel of real property.¹⁴ An unpaid tax certificate is a lien against the real property that can lead to public sale of the property.

When a tax certificate is redeemed (paid by the property owner), the certificate holder will receive the amount of their investment (the tax certificate face amount) plus the interest accrued up to the date of redemption. A tax certificate can be redeemed anytime before a tax deed is issued or the property is placed on the list of lands available for sale either by redeeming a tax certificate from the investor or by purchasing a county-held tax certificate. The person redeeming or purchasing the tax certificate is required to pay the face amount of the certificate, plus costs and charges and all interest due, which is either the interest rate due on the certificate or a 5% mandatory minimum interest, whichever is greater.¹⁵ The tax collector then pays the certificate owner the amount received by the tax collector, less the redemption fee.¹⁶

When property is sold by the clerk of court at a public auction, the certificate holder has the right to bid. The high bidder must post a nonrefundable deposit of 5% of the bid or \$200, whichever is greater, to be applied to the sale price at the time of full payment.¹⁷ If full payment of the final bid is not made within 24 hours, the clerk cancels all bids, readvertises the sale, and pays all costs of the sale from the deposit.¹⁸ Any remaining funds must be applied toward the opening bid.¹⁹

This bill amends s. 197.542(2), F.S., to provide that if the property is redeemed prior to the clerk receiving full payment from the sale at a public auction, the high bidder must submit a written request in order to receive a refund of the deposit. Upon receipt of a written request, the clerk must refund the cash deposit.

⁹ Section 28.345, F.S.

¹⁰ *Id.*

¹¹ *See, e.g.*, s. 50.011, F.S.

¹² Sections 50.031 and 50.041(1), F.S.

¹³ Section 117.021, F.S., requires that when a document is notarized electronically, it contains an electronic signature that is unique to the notary public, capable of independent verification, retained under the notary public's sole control, and attached to or logically associated with the electronic document.

¹⁴ Section 197.102(1)(f), F.S.

¹⁵ Section 197.472, F.S.

¹⁶ *Id.*

¹⁷ Section 197.542(2), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

B. SECTION DIRECTORY:

Section 1 amends s. 28.13, F.S., relating to electronic filings.

Section 2 creates a new subsection (4) of s. 28.444, F.S., relating to removal of certain recorded court documents from the Official Records, and renumbers subsequent subsections.

Section 3 amends s. 28.24, F.S., relating to service charges.

Section 4 amends s. 28.244, F.S., relating to refunds by the clerk of the circuit court.

Section 5 amends s. 28.345, F.S., relating to exemption from court-related fees and charges.

Section 6 amends s. 50.041, F.S., relating to affidavits for proof of publication.

Section 7 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 8 amends s. 197.542, F.S., relating to sale at public auction.

Section 9 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Clerks of Court believe this bill may have an indeterminate positive impact on state revenues.

2. Expenditures:

The Clerks of Court believe this bill may have an indeterminate positive impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 16, 2011, the Civil Justice Subcommittee adopted three amendments. The amendments:

- Move a provision relating to fee exemptions for state agencies from the statute relating to service charges to the statute relating to fee state agency relations with the clerks; and
- Remove a potentially confusing cross-reference.

The bill was then reported favorably. The analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.