

**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 Governmental Oversight and Accountability Committee

BILL: CS/SB 860

INTRODUCER: Judiciary Committee and Senator Wise

SUBJECT: Clerks of Court

DATE: February 17, 2012 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Cibula	JU	Fav/CS
2.	Seay	Roberts	GO	Pre-meeting
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes  
 B. AMENDMENTS.....  Technical amendments were recommended  
 Amendments were recommended  
 Significant amendments were recommended

**I. Summary:**

This bill makes numerous changes relating to clerks of circuit courts. Specifically, the 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 protected under the general agency personnel information public record exemption to specify the document type, name, identification number, and page number of the court record or official record;
- 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 payment of 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.

This bill substantially amends sections 28.13, 28.222, 28.24, 28.244, 28.345, 50.041, 119.0714, and 197.542 of the Florida Statutes.

## **II. Present Situation:**

### **Electronic Filings**

The clerk of the circuit court is required to keep all papers with the utmost care and security, arranged in appropriate files.<sup>1</sup> The clerk is also required to ensure that the papers do not leave the office without permission from the court.<sup>2</sup>

### **Clerk as County Recorder**

Pursuant to statute, the clerk of the circuit court generally acts as the county recorder.<sup>3</sup> Current law does not require a clerk to remove recorded court documents from the Official Records pursuant to a sealing or expunction order as part of his or her duties.

### **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.<sup>4</sup> 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.<sup>5</sup>

### **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.<sup>6</sup> State agencies are also exempt from all court-related fees and charges assessed by the clerks.<sup>7</sup>

### **Public Records**

A clerk of court is a custodian of public records and is thus required to provide access and copies of public records, if the requesting party is entitled by law to view a given record. Certain records are exempt from disclosure under public records laws, including personal information of certain individuals such as law enforcement personnel, firefighters, justices and judges, state attorneys, magistrates, and others as specified by statute.<sup>8</sup> An individual whose information is exempt must submit a written request for exemption with any agency that holds an exempt record.<sup>9</sup>

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<sup>1</sup> Section 28.13, F.S.

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

<sup>3</sup> Section 28.222(1), F.S.

<sup>4</sup> Section 24.244, F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 28.345, F.S.

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

<sup>8</sup> Section 119.071(4)(d), F.S.

<sup>9</sup> Section 119.071(4)(d)2., F.S.

### **Proof of Publication**

Numerous statutes require the publication of legal notice for various actions.<sup>10</sup> Generally, proof of such publication is made with a printed affidavit.<sup>11</sup>

### **Sale at Public Auction**

Tax lien certificates are issued by counties against a specific parcel of real property for unpaid delinquent real property taxes, non-ad valorem assessments, special assessments, interest, and related costs and charges.<sup>12</sup> A 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 percent mandatory minimum interest, whichever is greater.<sup>13</sup> The tax collector then pays the certificate owner the amount received by the tax collector, less the redemption fee.<sup>14</sup>

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 percent of the bid or \$200, whichever is greater, to be applied to the sale price at the time of full payment.<sup>15</sup> If full payment of the final bid is not made within 24 hours, the clerk cancels all bids, advertises the sale, and pays all costs of the sale from the deposit.<sup>16</sup> Any remaining funds must be applied toward the opening bid.<sup>17</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 28.13, F.S., requiring clerks to affix a stamp on papers and electronic filings submitted to the clerk's office indicating the date and time of filing; providing that the clerk shall not permit any attorney or other person to remove filed documents from the control or custody of the clerk except as otherwise provided by law.

**Section 2** amends s. 28.222, F.S., requiring the clerk, when acting in his or her capacity as county recorder, to remove recorded court documents from the Official Records pursuant to a sealing or expunction order.

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<sup>10</sup>See, e.g., s. 50.011, F.S.

<sup>11</sup> Sections 50.031 and 50.041(1), F.S.

<sup>12</sup> Section 197.102(1)(f), F.S.

<sup>13</sup> Section 197.472, F.S.

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

<sup>15</sup> Section 197.542(2), F.S.

<sup>16</sup> *Id.*

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

**Section 3** amends s. 28.24, F.S., transferring the service charge exemption for specified government entities to s. 28.345, F.S.

**Section 4** amends s. 28.244, F.S., increasing the threshold from \$5 to \$10 to which clerks are not required to make a refund of an overpayment without a written request.

**Section 5** amends s. 28.345, F.S., providing that clerks of court shall provide records to specified government entities without a service charge; specifying that the term “copy of a public record” for the purposes of this section means any facsimile, replica, photograph, or other reproduction of a record; providing that the exemptions in this section apply only to state agencies, state entities, and the party that an agency or entity is representing.

**Section 6** amends s. 50.041, F.S., authorizing an alternative, electronic affidavit to prove publication of legal notices provided the notarization of the affidavit complies with the requirements of the electronic notarization statute in s. 117.021, F.S.

**Section 7** amends s. 119.0714, F.S., requiring 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 information.

**Section 8** amends s. 197.542, F.S., providing that if a property is redeemed prior to the clerk receiving full payment from the sale at a public action, the high bidder must submit a written request in order to receive a refund of the deposit.

**Section 9** provides that this act shall take effect upon becoming a law.

#### **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:**

None.

**C. Government Sector Impact:**

None.

**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 – January 19, 2012:**

The Committee Substitute:

- Deleted an unnecessary cross-reference;
- Corrected a typographical error;
- Clarified that an existing fee exemption will continue to apply to state agencies as well as other state entities;
- Removed the word “confidential” where it is inaccurate; and
- Corrected an erroneous cross-reference.

**B. Amendments:**

None.