

**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 860

INTRODUCER: Senator Wise

SUBJECT: Clerks of Court

DATE: January 18, 2012

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

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|----------|----------------|-----------|--------------------|
| 1. | O'Connor | Cibula         | JU        | <b>Pre-meeting</b> |
| 2. |          |                | GO        |                    |
| 3. |          |                | BC        |                    |
| 4. |          |                |           |                    |
| 5. |          |                |           |                    |
| 6. |          |                |           |                    |

**I. Summary:**

Senate Bill 860 makes a number of changes relating to the clerks of the circuit courts. Specifically, the bill:

- Provides guidelines for managing electronic filing;
- Requires a 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;
- Increases the threshold to \$10 from \$5 below which clerks are not required to make a refund of an overpayment without a written request;
- Limits the state agency exemption from having to pay court-related fees to the state agency and the party it is representing;
- Requires persons filing a written request to have their personal information exempt from disclosure 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;
- Authorizes the use of an electronic affidavit for proof of 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 the following sections of the Florida Statutes: 28.13, 28.222, 28.24, 28.244, 28.345, 50.041, 119.071, and 197.542.

## 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, readvertises 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:**

Senate Bill 860 makes a number of changes relating to the clerks of the circuit courts. These changes are described more specifically below.

#### **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 clerk's office indicating the date and time when it was filed. The bill also replaces a provision in current law which prohibits a clerk from allowing filed

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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.*

papers to be taken from the clerk's office with a requirement that the clerk ensure that documents are not removed from the control or custody of the clerk.

### **Clerk as County Recorder**

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.

### **Refunds**

This bill amends s. 24.244, F.S., to increase the threshold to \$10 from \$5 below which clerks are not required to make a refund of an overpayment without a written request.

### **Fee Exemption**

This bill amends s. 28.345, F.S. by adding a new subsection (2), limiting the state agency fee exemption to the agency and the party it is representing.

### **Public Records**

This bill amends s. 28.24, F.S., to specify that the term "copy of a public record" in reference to a record held by a clerk means a facsimile, replica, photograph, or other reproduction of a record.

The bill also amends s. 119.071(4)(d)2., F.S., 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.

### **Proof of Publication**

This bill amends s. 50.041(2), F.S., to authorize an alternative, electronic affidavit to prove publication of legal notices, provided the notarization of the affidavit complies with the electronic notarization statute in s. 117.021, F.S.<sup>18</sup>

### **Sale at Public Auction**

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 in accordance with s. 197.182(1)(c), F.S.

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<sup>18</sup> 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.

**Effective Date**

This bill takes effect upon becoming 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:**

According to the Florida Association of Court Clerks, "the bill would provide for increased efficiencies in day-to-day office operations," thus the bill is anticipated to "have an indeterminate, positive fiscal impact on the office of the Clerk."<sup>19</sup>

The Office of the State Courts Administrator (OSCA) estimates a non-recurring negative fiscal impact of \$14,202,000 and a recurring negative fiscal impact of \$2,540,400. The recurring impact, according to OSCA, includes annual maintenance, while the non-recurring impact includes initial licensing along with development and training.<sup>20</sup>

**VI. Technical Deficiencies:**

Lines 61-62 appear to add an unnecessary cross-reference. Additionally, the change is covered by s. 28.345, F.S.

Line 69 appears to contain a typographical error in the phrase "copy of public a record."

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<sup>19</sup> Memorandum from the Florida Association of Court Clerks (ACC) to the Senate Committee on Budget, Senate Bill 860 Clerks of Court (Jan. 6, 2012) (on file with the Senate Committee on Judiciary).

<sup>20</sup> Office of the State Courts Administrator, *2012 Judicial Impact Statement, SB 860* (Dec. 6, 2011) (on file with the Senate Committee on Judiciary).

The new provision that adds subsection (2) to s. 28.345, F.S., at line 269, appears to be worded in a way that might inadvertently eliminate all fee exemptions other than the state agency exemption.

Line 435 refers to exempt or confidential information specified in s. 119.071(4)(d). The information specified in that provision is exempt, rather than confidential. The Legislature may wish to remove the word “confidential” on line 435 of the bill.

Line 458 appears to contain a cross-reference error. Section 197.182(1)(c) requires the tax collector to automatically refund overpayments of taxes of more than \$10 *resulting from taxpayer error (emphasis added)*, if identified within a 4-year period of limitation. It is not clear that a purchaser of a property at a public auction is a taxpayer within the meaning of this statute.

**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.

**B. Amendments:**

None.