

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 Committee on Appropriations

BILL: PCS/CS/CS/SB 556 (846588)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Governmental Oversight and Accountability Committee; Judiciary Committee; and Senator Ring

SUBJECT: Clerks of the Court

DATE: April 15, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|-------------|
| 1. | Brown | Cibula | JU | Fav/CS |
| 2. | Naf | McVaney | GO | Fav/CS |
| 3. | Babin | Diez-Arguelles | AFT | Fav/CS |
| 4. | Babin | Hansen | AP | Pre-meeting |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

PCS/CS/CS/SB 556 updates statutes relating to clerks of circuit courts (clerks of court).

The Revenue Estimating Conference (REC) has not reviewed this bill. Staff estimates that the bill will not affect state revenue. The provision that increases the threshold for an automatic refund of overpayment from \$5 to \$10 will increase clerk of court revenue by an indeterminate amount.

The bill:

- Prescribes requirements related to electronic court filings.
- Requires removal of recorded court documents from the Official Records pursuant to a sealing or expunction order.
- Increases the threshold overpayment amount for which a clerk must make an automatic refund from \$5 to \$10.

- Clarifies that the state agency court-related fee exemption applies only to the agency and the party the agency is representing.
- Specifies the information required to request maintenance of a public record.
- Requires the property appraiser to provide value adjustment board petitioners with the property record card when requested.
- Exempts governmental entities from judgment enforcement fees when initiating supplemental proceedings to collect a judgment.

This bill substantially amends the following sections of the Florida Statutes: 28.13, 28.222, 28.24, 28.244, 28.345, 101.151, 119.0714, 194.032, and 938.30.

II. Present Situation:

Filings

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

Clerk of Court as County Recorder

The clerk of court generally acts as the county recorder.³ Current law does not require a clerk of court to remove recorded court documents from the Official Records pursuant to a sealing or expunction order.

Charges

Current law authorizes a clerk of court to charge for services rendered by the clerk's office in recording documents and instruments and in performing the clerk's duties.⁴

Refunds

If a clerk of court determines that an overpayment is made, the clerk must make a refund if the overpayment exceeds \$5.⁵ 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.⁶

¹ Section 28.13, F.S.

² *Id.*

³ Section 28.222(1), F.S. As county recorder, the clerk of the circuit court must record all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk. *Id.* Such instruments include, but are not limited to, deeds, leases, bills of sale, agreements, mortgages, notices or claims of lien, notices of levy, tax warrants, tax executions, notices of lis pendens, judgments, notices of liens for taxes payable to the United States, and certified copies of death certificates. Section 28.222(3), F.S.

⁴ Section 28.24, F.S.

⁵ Section 28.244, F.S.

⁶ *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 court, when acting in their official capacity.⁷ State agencies are also exempt from all court-related fees and charges assessed by the clerks of court.⁸

Public Records

The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.^{9,10} Only the Legislature may create a general exemption to public records access requirements.¹¹

A clerk of court is a custodian of public records.¹² As custodian, clerks are required to provide access and copies of public records, if the requesting party is entitled by law to view a given record. The clerk may charge a fee to certify or furnish copies of requested public records.¹³ Statutes exempt specified governmental entities from payment of such fees in certain instances.

Certain records are confidential or exempt¹⁴ 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.¹⁵ An individual whose information is exempt must submit a written request for exemption with any agency that holds an exempt record.¹⁶ There is no uniform, statewide process, but a clerk of court usually requires a person requesting maintenance of the exemption to specify the document type, name, identification number, and page number of the court record or official record that contains the confidential or exempt information.¹⁷

⁷ Section 28.345, F.S.

⁸ *Id.*

⁹ FLA. CONST., Art. I, s. 24(a).

¹⁰ Section 119.07(1)(a), F.S.

¹¹ FLA. CONST., Art. I, s. 24(c).

¹² Section 119.011(5), F.S., provides that the “custodian of public records” is the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

¹³ Section 119.07(4), F.S.

¹⁴ There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62, August 1, 1985.

¹⁵ Section 28.24, F.S. The exempt governmental entities are the state attorney, public defender, guardian ad litem, public guardian, attorney ad litem, criminal conflict and civil regional counsel, private court-appointed counsel paid by the state, and authorized staff of any of the specified governmental entities acting on their behalf.

¹⁶ Section 119.071(4)(d)3., F.S.

¹⁷ Telephone call between Senate Governmental Oversight and Accountability staff and Florida Association of Court Clerks staff (March 18, 2013).

All information related to juvenile justice cases is confidential, except in limited circumstances.¹⁸ The clerk must keep official court records of juvenile justice cases separate from other records of the circuit court, and these juvenile justice records are not open to inspection by the public; however, parents, guardians, attorneys, law enforcement agencies, the Department of Juvenile Justice, the Parole Commission, the Department of Corrections and the Justice Administrative Commission may access these records.¹⁹

Value Adjustment Board Hearing Records

Each county in Florida has a value adjustment board that hears objections to ad valorem tax assessments.²⁰ The clerk of the court usually serves as the county clerk and schedules appearances before the value adjustment board.²¹ The petitioner may request a copy of the property record card containing relevant information used in computing the current assessment, which the clerk of court is required to provide.²²

Financial Obligations Stemming from a Criminal Case

A court may require a person that owes money for a criminal case, which may include restitution, court costs, cost of prosecution, and cost of a public defender, to appear before the court to determine the person's financial ability to pay the obligation.²³ The court may convert the financial obligation into an obligation to perform community service²⁴

A governmental entity that attempts to satisfy such a judgment may do so without bond.²⁵

III. Effect of Proposed Changes:

This bill updates statutes relating to the clerks of court.

Electronic Filings and Charges

The bill:

- Requires a clerk of court to maintain electronic filings as it does paper filings.
- Specifies that a clerk of court may charge for services that are provided manually or electronically.
- Authorizes a clerk of court to electronically affix a date and time stamp to filings in lieu of an ink stamp.

¹⁸ Section 985.04(1), F.S.

¹⁹ Section 985.045(2), F.S.

²⁰ Section 194.011, F.S.

²¹ Section 194.015, F.S.

²² Section 194.032, F.S.

²³ Section 938.30(2), F.S.

²⁴ Section 938.30(2), F.S.

²⁵ Section 938.30(6), F.S.

Clerk of Court as County Recorder

The bill requires a county recorder to remove recorded court documents from the Official Records pursuant to a sealing or expunction order.

Refunds

The bill increases the threshold overpayment amount from \$5 to \$10, for which a clerk of court must make an automatic refund.

Fee Exemption

The bill clarifies that the state agency court-related fee exemption is limited to the agency and the party the agency is representing.

Public Records

The bill:

- Relocates the exemption from public records fees for specified governmental entities and amends the exemption to delete the requirement that such entities be entitled by law to view the exempt or confidential record.
- Requires requests for maintenance of public records exemptions to specifically include the document type, name, identification number, and page number of the court record or official record where the confidential or exempt information appears.
- Clarifies that public defender offices can access the official records of juveniles prior to being appointed to represent the juvenile, but only if the public defender is expected to appear on behalf of the juvenile.

Value Adjustment Board Hearing Records

Regarding challenges to a property assessment or the denial of a property exemption, the bill:

- Shifts the duty to provide the petitioner with a copy of the property record card from the clerk of court to the property appraiser, and the bill exempts the property appraiser from that requirement if the property appraiser makes the property record card available online.
- Specifies that the requirement that a copy of the property record card be provided applies regardless of whether the petitioner has initiated an evidence exchange.

Financial Obligations Stemming from a Criminal Case

The bill:

- Specifies that the current authority of the court to convert a financial obligation into community service is subject to s. 318.18, F.S., a specific process applicable to community service based on the inability to pay a civil traffic penalty.

- Authorizes a governmental entity to initiate supplemental proceedings to collect a judgment for fees and costs without having to pay judgment enforcement fees.

Clarifying Changes

The bill makes clarifying drafting changes.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to impact county or municipal government.

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:

The REC has not reviewed this bill. Staff estimates that the bill will not affect state revenue. The provision that increases the threshold for an automatic refund of overpayment from \$5 to \$10 will increase clerk of court revenue by an indeterminate amount.

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.)

Recommended CS/CS/CS by Appropriations Subcommittee on Finance and Tax on April 4, 2013:

The committee substitute grants public defender offices access to official records of juveniles prior to the public defender being officially appointed to represent the juvenile, but only if the public defender is expected to appear on behalf of the juvenile.

CS/CS by Governmental Oversight and Accountability on March 21, 2013:

The CS/CS:

- Removes from the CS a provision that would eliminate an exemption for indigent persons from payment of a charge for issuance of a summons.
- Removes from the CS a provision that would allow filing fees waived based on a determination of indigence to be included in the calculation of a payment plan.
- Amends the provision that requires the property appraiser to provide a copy of the property record card to the petitioner in certain hearings to exempt the property appraiser from providing a copy of the property record card if it is available online.

CS by Judiciary on March 6, 2013:

The CS removes from the bill:

- All references to the tax lien process.
- A provision that allowed the Florida Rules of Judicial Administration to specify entities authorized to access public records that are exempt or confidential.

- B. **Amendments:**

None.