

**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 Judiciary

BILL: SB 556

INTRODUCER: Senator Ring

SUBJECT: Clerks of the Court

DATE: March 5, 2013

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Brown   | Cibula         | JU        | <b>Pre-meeting</b> |
| 2. |         |                | GO        |                    |
| 3. |         |                | AFT       |                    |
| 4. |         |                | AP        |                    |
| 5. |         |                |           |                    |
| 6. |         |                |           |                    |

**I. Summary:**

SB 556 makes numerous changes to laws relating to clerks of circuit courts.

The bill authorizes or requires a clerk to electronically perform existing duties. Specifically, the bill:

- Requires the clerk to maintain electronic filings.
- Authorizes a clerk to charge for services rendered electronically.
- Authorizes the clerk to affix electronically a date and time stamp to filings.
- Authorizes the clerk to provide public records electronically.

This bill makes the following changes to the law on the sale of tax lien certificates and tax deeds:

- Requires the holder of a tax lien certificate to pay for all title searches requested by the tax collector before a tax deed sale.
- Authorizes the clerk to collect from the tax lien certificate holder all amounts listed in the opening bid, in advance of a sale of property.
- Specifies the amount of interest accumulating on a tax lien certificate held by a county which must be included in the opening bid for a tax deed.
- Clarifies that land on the list of lands available for taxes escheats to the county 3 years after the land was offered for public sale.
- Specifies the procedure for the sale of tax deeds, including bids, payment of all amounts required for a tax deed, and the cancellation and abandonment of tax deed applications.

- Deletes a provision which required that a clerk refund fees to a certificateholder if a tax deed sale on the property is cancelled.

The bill makes other changes as follows:

- Requires a county recorder to remove recorded court documents from the Official Records pursuant to a sealing or expunction order.
- Increases to \$10 from \$5 the threshold requirement for which a clerk must refund an overpayment.
- Clarifies which public entities are not required to pay for access to public records maintained by the clerk.
- Permits a clerk of court to provide a requesting party with access to records that are exempt or confidential if the requesting party is authorized to have access under general law or the Rules of Judicial Administration.
- Requires requests for maintenance of a public records exemption to include the document type, name, identification number, and page number of the court record or official record that contains the exempt information.
- During an administrative review of property taxes, requires a property appraiser, rather than a clerk, to provide a copy of a property record card to a petitioner upon receipt of the petition from the clerk.
- Clarifies that governmental entities do not have to pay fees to enforce judgments for court costs and fines in criminal cases.

This bill substantially amends the following sections of the Florida Statutes: 28.13, 28.222, 28.24, 28.244, 28.345, 57.081, 57.082, 101.151, 119.0714, 194.032, 197.502, 197.542, 197.582, and 938.30.

## II. Present Situation:

### Filings

The clerk of the circuit court is required to keep all papers with the maximum 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.

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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.

## Refunds

If a clerk of court determines that an overpayment is made, the clerk must 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. 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. Certain records are confidential or 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>

## 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>10</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 his or her 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>11</sup> The tax collector then pays the certificate owner the amount received by the tax collector, less the redemption fee.<sup>12</sup>

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<sup>4</sup> Section 28.244, 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.

<sup>10</sup> Section 197.102(1)(f), F.S.

<sup>11</sup> Section 197.472, F.S.

<sup>12</sup> *Id.*

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>13</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>14</sup> Any remaining funds must be applied toward the opening bid.<sup>15</sup>

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

This bill revises the responsibilities of the clerks of court.

#### **Electronic Filings and Communications**

This bill:

- Updates the law requiring the clerk of courts to maintain paper filings by adding electronic filings.
- Authorizes the clerk to affix electronic, rather than just ink, time and date stamps to filings.
- Authorizes clerks to render services electronically and charge for those services.

#### **Tax Certificates, Liens, and Sales of Property**

##### **Tax Lien Certificates**

The bill:

- Clarifies that the clerk can charge and collect a title search fee at the time of application for a tax deed, and requires the certificateholder to pay for additional title searches requested by the tax collector. The opening bid for a tax deed will include the amount of these fees.
- Adds accrued delinquent taxes to the amounts included in the opening bid for a tax deed.
- Adds costs for the service of notice to property owners whose property is scheduled to be sold for taxes.

##### **Tax Deed and Initial Sale of Property**

This bill:

- Authorizes the clerk before the sale of a tax deed to collect from a tax lien certificateholder all amounts that are included in the opening bid for a tax deed. These amounts include all costs and fees relating to the sale and the amount of tax certificates and accrued delinquent taxes, and exclude interest and funds required to be paid to cover one-half value of the homestead. The bill also clarifies that interest does not accrue on documentary stamp taxes and recording fees collected before the sale.

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<sup>13</sup> Section 197.542(2), F.S.

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

<sup>15</sup> *Id.*

- Clarifies that interest accrues on the opening bid on county-held certificates through the month of sale that the property is on the list on lands available for payment of taxes.
- Provides that interest accrues on individual certificates from the month after the property is placed on the list of lands available for sale through the month of sale that the tax deed is purchased.
- Provides that the opening bid for a tax deed of property must reflect the homestead status on the property on the latest tax roll. But, if the property is bought by the titleholder, the amount for one-half value of the homestead is not included in the opening bid.
- Clarifies that the amounts of fees and costs comprising the opening bid for a tax deed includes amounts that were not paid by the holder of the tax lien certificate before the sale.
- Requires a certificateholder who is the only bidder for a tax deed to pay any additional amounts due for the tax deed, such as documentary taxes and recording fees, within 7 days after notification of the amounts by the clerk. If the certificateholder does not pay, the sale is canceled and the clerk must readvertise the property sale within 30 days.
- Provides that if property is redeemed before the clerk receives full payment for issuing the tax deed, the high bidder must request the refund deposit in writing.
- Authorizes certificateholders to request in writing that the tax collector cancel a tax deed application up to 2 business days before the scheduled sale date.
- Deletes a requirement that a clerk refund fees to a certificateholder if a tax deed sale is cancelled.
- Extends the time for the clerk to reschedule a tax deed sale, provided that proper notice is given to the property owner and lienholders.
- Requires the certificateholder to bear the costs of rescheduled tax deed sales, including costs for additional title searches. However, the clerk must consider the tax deed application abandoned if the certificateholder refuses to pay the additional costs.
- If after a second attempt to sell a tax deed on homestead property for which the certificateholder remains the only bidder for the tax deed and the certificateholder refuses to pay the additional amount of one-half the value of the property, the clerk must place the property on the list of lands available for taxes.
- If after a second attempt to sell a tax deed on nonhomestead property for which the certificateholder remains the only bidder for the tax deed and the certificateholder refuses to pay any additional amounts due for the tax deed, such as documentary taxes and recording fees, the clerk must cancel the tax deed application and may not readvertise the property.

### **Disbursement of Sale Proceeds**

After a sale, provisions stipulate how the clerk must distribute excess proceeds. If the opening bid includes amounts for the redemption of tax certificates, accrued delinquent taxes, or omitted taxes, the clerk must pay these amounts to the tax collector before distributing remaining funds. If current taxes are due on the day of sale, the clerk may not distribute excess funds to the tax collector to pay the current taxes, and the high bidder takes title to the property subject to the current taxes.

### **Other Duties of the Clerk**

This bill:

- Requires county recorders to remove recorded court documents from the Official Records when a sealing or expunction order is issued.
- Provides that if a public record is exempt or confidential, the only entities that have access are those that Florida law or the Florida Rules of Judicial Administration authorize.
- 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 exempt information appears.
- During a challenge to a property assessment or the denial of a property tax exemption, the property appraiser must give the petitioner a copy of the property record card at the time that the appraiser receives the petition from the clerk, regardless of whether the petitioner has initiated an evidence exchange.
- Clarifies that public entities are not required to pay statutory fees associated with the enforcement of financial obligations in criminal cases.

The bill takes effect July 1, 2013.

#### **IV. Constitutional Issues:**

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

None.

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

This bill effectively authorizes public records exemptions to be created by the Supreme Court in the Rules of Judicial Administration. This appears to be inconsistent with Article I, s. 24 of the Florida Constitution which authorizes only the Legislature to create exemptions from public records laws. The authorization may also be inconsistent with Article III, s. 1 of the Florida Constitution which vests the legislative power of the state in the Legislature.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

To the extent that the bill increases fees associated with the sale of a tax deed the bill will reduce the amount of excess proceeds from the sale which would otherwise be paid to

other lienholders and the former property owner. Moreover, the bill may require holders of tax lien certificates to pay additional fees to apply for a tax deed.

C. **Government Sector Impact:**

The clerks of courts expect an indeterminate positive fiscal impact associated with the bill.

**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.

B. **Amendments:**

None.