

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 643 Clerks of Court

SPONSOR(S): Justice Appropriations Subcommittee; Civil Justice Subcommittee; Pilon and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/CS/SB 556

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Cary	Bond
2) Justice Appropriations Subcommittee	11 Y, 0 N, As CS	Toms	Jones Darity
3) Judiciary Committee	17 Y, 0 N	Cary	Havlicak

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 a person filing a written request to have his or her personal information redacted 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; and
- Allows public defenders to have access to official records of juveniles on whose behalf they are expected to appear.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2013.

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 ss. 28.13 and 28.345, F.S., to address electronic filings. The bill requires the clerk to affix a stamp, which may be electronic, 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 require 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 records and is thus required to provide access to and copies of public records if the requesting party is entitled by law to view the record.⁴

Certain information held by clerks of court is exempt from public record requirements pursuant to state statute or judicial rule.⁵ Any information made confidential under state or federal constitutional or statutory law is confidential if contained in a court record.⁶

Certain personal information of some agency personnel, including law enforcement personnel, firefighters, justices and judges, state attorneys, magistrates, and specified others, is made exempt⁷ from public records requirements by state law.⁸ If such exempt information is held by an agency other than the employer of a specified person, the person must submit a written request for maintenance of the exemption to that agency.⁹ There is no uniform, statewide process, but a clerk of court usually

¹ Section 28.13, F.S.

² *Id.*

³ Section 28.222(1), F.S.

⁴ See art. I, s. 24(a) of the Florida Const., ch. 119, F.S., and s. 28.24, F.S. The Florida Constitution provides a process by which the Legislature may make certain records or portions of records exempt from public disclosure (Art. I, Sec. 24(c), FLA. CONST.).

⁵ See art. I, s. 24, FLA CONST. and Florida Rule of Judicial Administration 2.420.

⁶ Florida Rule of Judicial Administration 2.420(c)(7).

⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems 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, 53 (Fla. 5th DCA 2004), rev. den. 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *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).

⁸ Section 119.071(4)(d), F.S.

⁹ Section 119.071(4)(d)2., F.S.

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 exempt information.¹⁰

This bill amends s. 119.0714, F.S., to require that a person who submits such written request to maintain the identification and location information exemption in a court record or official record to also specify the document type, name, identification number, and page number of the record that contains the exempt information.

This bill amends s. 985.045, F.S., to allow public defenders to have access to official records of juveniles on whose behalf they are expected to appear in detention or other hearings prior to an appointment of representation.

Refunds

If a clerk of court determines that an overpayment was made, the clerk is required to make a refund if the overpayment exceeds \$5.¹¹ 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.¹² This bill amends s. 28.244, F.S., to increase the minimum from \$5 to \$10.

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.¹³ State agencies are also exempt from all court-related fees and charges assessed by the clerks.¹⁴ This bill amends ss. 28.24 and 28.345, F.S., limiting the state agency exemption to the agency and the party the agency is representing.

Value Adjustment Board

Each county in Florida has a value adjustment board that hears objections to ad valorem tax assessments.¹⁵ The clerk of the court usually serves as the county clerk and schedules appearances before the value adjustment board.¹⁶ The petitioner may request a copy of the property record card containing relevant information used in computing the current assessment, which the clerk is required to provide.¹⁷ The bill amends s. 194.032, F.S., to require the property appraiser to provide the property record card to the petitioner regardless of whether the petitioner initiates evidence exchange, unless the property record card is available online from the property appraiser.

Criminal Financial Obligations

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.¹⁸ The court may impose a judgment which operates as a civil lien against the debtor's property.¹⁹ A governmental entity that attempts to satisfy such a judgment may do so without bond.²⁰ The bill amends s. 938.30, F.S., to provide that a governmental entity may

¹⁰ Telephone call with Florida Association of Court Clerks staff (March 4, 2013).

¹¹ Section 24.244, F.S.

¹² *Id.*

¹³ Section 28.345, F.S.

¹⁴ *Id.*

¹⁵ Section 194.011, F.S.

¹⁶ Section 194.015, F.S.

¹⁷ Section 194.032, F.S.

¹⁸ Section 938.30(2), F.S.

¹⁹ Section 938.30(6), F.S.

²⁰ *Id.*

satisfy the judgment without bond and without the payment of statutory fees associated with judgment enforcement.

B. SECTION DIRECTORY:

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

Section 2 amends s. 28.222, F.S., relating to clerk to be county recorder.

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

Section 4 amends s. 28.244, F.S., relating to refunds.

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

Section 6 amends s. 101.151, F.S., relating to specifications for ballots.

Section 7 amends s. 119.0714, F.S., relating to court files, court records, and official records.

Section 8 amends s. 194.032, F.S., relating to hearing purposes and timetable.

Section 9 amends s. 938.30, F.S., relating to financial obligations in criminal cases and supplementary proceedings.

Section 10 amends s. 985.045, F.S., relating to court records.

Section 11 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any 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:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Florida Association of Court Clerks anticipates an indeterminate, positive impact on the Clerks of Court due to the increased efficiencies in day-to-day office operations this bill provides.

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 March 13, 2013, the Civil Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The first amendment allows the Clerks of Court to provide a public record in an electronic format if the requester consents to that method of delivery. The second amendment was a technical fix to remove several spaces between the section and the subsection of a statutory reference. The third amendment removes the tax certificate sections of the bill.

On April 4, 2013, the Justice Appropriations Subcommittee adopted three amendments and reported the bill favorable as a committee substitute. The three amendments:

- Removes a provision relating to the prepayment of filing fees where a certification of indigence was obtained; removes a section revising requirements relating to waived fees in payment plan calculations;
- Requires the property appraiser to provide the property record card to the petitioner regardless of whether the petitioner initiates evidence exchange, unless the property record card is available online from the property appraiser; and
- Allows public defenders to have access to official records of juveniles on whose behalf they are expected to appear.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.