

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: CS/SB 386

INTRODUCER: Judiciary Committee and Senator Wright

SUBJECT: Payments to Clerks of the Circuit Courts

DATE: March 30, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 386 authorizes a trial court, when determining the reasonableness of a payment plan, to waive or modify the amount due, or convert part or all of the amount due to community service, upon a finding that the person is indigent or a finding of compelling circumstances.

The bill also provides that a certain portion of traffic fines that the state currently gives to municipalities will be directed instead to the fine and forfeiture fund of the county where the offense occurred, benefiting the clerks of court.

The fiscal impact of the portion allowing a court to modify or waive monies due is indeterminate. The redirection of fines revenue will shift approximately \$9.4 million annually from municipalities to clerks of court.

The bill is effective July 1, 2021.

II. Present Situation:

Clerks of the Court

The clerk of the circuit court is a constitutional officer. Each of Florida's 67 counties are required to elect a clerk of the circuit court¹ to serve as both the clerk of court, completing

¹ FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.

judiciary functions, and as the “*ex officio*”² clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds.”³ The traditional role of the clerk in collecting fines and fees owed to the county has been expanded to collecting the numerous state fines, fees, and charges that are related to the court system.

Payment Plans with a Clerk of the Court

Persons who pay money to the clerk of court for an outstanding fine, penalty, fee, service charge, or court cost are expected to pay in full. Many individuals, however, cannot afford to pay. Section 28.246(4), F.S., authorizes a clerk to accept partial payments and to enter into payment plans with individuals who owe court-related fines or other monetary penalties, fees, charges and costs. Section 57.082(6), F.S., similarly authorizes a clerk to enter into a payment plan with a party who qualifies for civil indigent status and who owes reimbursement to the clerk. Both statutes require that a payment plan limit payments to those within the individual’s ability to pay. Under either statute, monthly payments of no more than 2 percent of the individual’s net pay is presumed to be within an individual’s ability to pay.⁴ The 2 percent limitation is calculated on a per-case basis. The clerk may elect whether to charge a \$5 processing fee for every partial payment or a one-time \$25 fee for setting up a payment plan.⁵

Current law is silent on which forms of payment a clerk must accept. Section 215.322, F.S., allows, but does not require, state and local governments to accept electronic payments. A clerk of court is allowed to surcharge the person who uses a credit card, charge card, bank debit card, or electronic funds transfer in payment of fines, civil penalties, court-ordered payments, or court costs, or other statutorily prescribed revenues an amount sufficient to pay the service fee charges by the financial institution or credit card company for such services.

The court may review the reasonableness of any payment plan.

Court-Related Fines, Penalties, Costs, and Fees Owed

As to any civil penalty for a noncriminal traffic infraction, the court may allow the driver to satisfy the civil penalty by participating in community service until the civil penalty is paid. To qualify, the driver must show “demonstrable financial hardship.”⁶

As to any financial obligation owed in any criminal case, the trial court may convert the statutory financial obligation into community service upon a finding that the offender has an “inability to

² See BLACK’S LAW DICTIONARY (10th ed. 2014) (“*ex officio*” means “By virtue or because of an office; by virtue of the authority implied by office.”).

³ FLA. CONST. art. V, s. 16. This provision also provides that two officials may split the position, one serving as clerk of court and one serving in the *ex officio* position. Additionally, this provision permits the election of a county clerk of court when authorized by general or special law. *Id.*

⁴ An unmarried individual earning the 2021 Florida minimum wage at full-time employment and subtracting the standard federal payroll deduction would pay no more than \$26.80 a month on a clerk’s payment plan.

⁵ Section 28.24(26), F.S.

⁶ Section 318.18(8)(b)1.a., F.S.

pay” the obligation.⁷ The criminal court may convert any financial obligation to a civil judgment.⁸

Distribution of Traffic Fines

Monies collected from traffic fines are distributed among numerous state and local funds. The distribution of 56.4 percent of such fines collected is based on the location where the infraction occurred. If the infraction occurs in a municipality, the state gives 50.8 percent of the fine to the municipality, and gives the other 5.6 percent to the fine and forfeiture fund of the county. If the infraction occurs in the unincorporated area of the county, the state gives the entire 56.4 percent collected to the fine and forfeiture fund of the county.⁹ A fine and forfeiture fund is established in each county with the clerk of the court,¹⁰ and is currently used to, in part, fund the clerks of court in performing court-related functions.

The current distributions between municipalities, counties, and clerks of court has been in place since 2004.¹¹ Prior to 2003, the state gave both counties and municipalities 56.4 percent of traffic fines for offenses committed within their respective jurisdictions.¹²

III. Effect of Proposed Changes:

Payment Plans with a Clerk of the Court

The bill amends s. 28.246(4), F.S., to create a \$10 minimum payment on a payment plan with a clerk of court.¹³

In determining the reasonableness of a payment plan, the bill gives the trial court the power, on its own motion or by petition, to waive, modify, or convert the outstanding fines, fees, costs, or service charges to community service if the court determines that the individual is indigent or, due to compelling circumstances, is unable to comply with the terms of the payment plan. The terms “indigent” and “compelling circumstances” are not defined and thus left to the discretion of the trial court.

Distribution of Traffic Fines

The bill matches the state grant of the distribution of monies collected from traffic fines that occur within a municipality with the current distribution regarding an offense in the unincorporated areas of a county. Accordingly, whether a traffic offense occurs in a municipality or in the unincorporated part of the county, the bill provides that the state gives the same 56.4 percent of the fine collected to the fine and forfeiture fund of the county.

The bill is effective July 1, 2021.

⁷ Section 938.30(2), F.S.

⁸ Section 938.30(6), F.S.

⁹ Section 318.21(2)(g), F.S.

¹⁰ Section 142.01, F.S.

¹¹ Chapter 2004-265, s. 61, Laws of Fla.

¹² Chapter 2003-402, s. 100, Laws of Fla.

¹³ The \$10 minimum payment would only impact a person earning less than \$500 a month net.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared tax revenues as specified in article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

On March 19, 2021, the Revenue Estimating Impact Conference evaluated CS/SB 386 and said this about the portion of the bill regarding waiver and modification of outstanding fines, fees, costs and other court-ordered charges:

The language which allows the court to waive or modify the remaining financial obligations would likely have a negative impact on the collection of outstanding balances; however, uncertainty with the amount of outstanding balances to be waived and discretion of the courts to waive or modify amounts inhibits the ability to assign a specific number on this impact.¹⁴

¹⁴ Office of Economic and Demographic Research, Revenue Estimating Impact Conference, page 197.

The portion of the bill altering the distribution of traffic fines is estimated to reduce fines revenue transferred to the state's 411 municipalities by a total of approximately \$9.4 million annually, with a corresponding increase in revenues to the 67 clerks of court.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.246 and 318.21.

IX. 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 on March 29, 2021:

The committee substitute removed from the bill changes to payment plans other than the provision allowing a court, when reviewing the reasonableness of a payment plan, to convert some or all of the obligation to community service, or modify or waive the balance. The committee substitute also removed from the bill provisions that would limit driver license suspension for a criminal offense that was not driving-related and would allow reinstatement of those currently suspended for non-driving-related offenses. The committee substitute added a provision redirecting traffic fines for offenses committed within a municipality.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁵ E-mail correspondence from the Florida Clerk of Courts Operations Corporation, March 29, 2021 (on file with the Senate Judiciary Committee).