

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1111 Fines and Fees
SPONSOR(S): Rizo and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1310

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N	Leshko	Jones
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Constitution mandates that there be an elected clerk of the circuit court (clerk) in each of Florida's 67 counties. The clerks collect court fines, fees, service charges, and court costs related to court dispositions and are authorized to charge fees to perform various functions. A portion of these fines, fees, charges, and costs collected are retained by the clerks for the purpose of funding the court-related functions of the clerk. A person who owes such fines, fees, charges, and costs and who qualifies as indigent, may apply to enter into a payment plan.

Under ss. 318.15 and 322.245, F.S., a person's driver license and driving privilege may be suspended for various reasons, including failing to comply with civil penalties or other court directives within a specified time period; failing to enter into or comply with the terms of a penalty payment plan; or failing to pay child support.

A person's driver license and privilege may not be reinstated until the person:

- Complies with all obligations and penalties imposed or with other specified court directives; and
- Presents a certificate of compliance to a driver license office along with a nonrefundable service charge of \$60.

HB 1111 amends ss. 28.24 and 28.246, F.S., relating to clerk of circuit court payment plans, to:

- Require a one-time administrative processing charge of \$25.00 to be collected for every payment plan.
- Authorize a clerk to accept monthly payments electronically, by mail, or in person and to send notices regarding upcoming or missed payments electronically or by mail.
- Require a payment plan to provide a grace period.
- Allow any down payment to be paid in monthly increments.
- Authorize a court to review and modify a payment plan or reduce, waive, or convert any outstanding amounts owed to community service on its own motion or by petition.
- Require a payment plan to include all outstanding amounts owed in all open cases for a person in that county.
- Prohibit a clerk from referring an incarcerated person's account to collections or from notifying DHSMV that an incarcerated person has failed to pay or otherwise comply with the terms of a payment plan.
- Authorize specified persons to petition a court to terminate his or her payment plan.

The bill also amends s. 322.29, F.S., to require a person applying for the return of his or her license to present to DHSMV a certificate of compliance issued by the clerk of the court instead of by the court and to clarify that such a person is only required to pay a single nonrefundable \$60 service fee to DHSMV.

The bill may have a negative indeterminate impact on state and local governments. See Fiscal Comments.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Clerks of the Circuit Court

The Florida Constitution mandates that there be an elected clerk of the circuit court (clerk) in each of Florida's 67 counties. The clerk may also serve as ex officio clerk of the board of county commissioners, auditor, official records recorder, and custodian of all county funds.¹ As an officer of the court, the clerk serves in a ministerial capacity, and his or her duties and authority are conferred entirely by law.² Such duties include the performance of court-related functions, such as:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing case assignment, reopening, reassignment, and appeals;
- Processing of bond forfeiture payments;
- Data collection and reporting;
- Determination of indigent status; and
- Paying reasonable administrative costs to enable the clerks to carry out these functions.³

Payment Plans

Court costs, fines, and other dispositional assessments are enforced by court order and collected by clerks.⁴ A person may apply to the clerk of court to enter into a payment plan if that person is "indigent," which means he or she:

- Has an income equal to or below 200 percent of the federal poverty guidelines; or
- Is receiving:
 - Temporary Assistance for Needy Families-Cash Assistance;
 - Poverty-related veterans' benefits; or
 - Supplemental Security Income.^{5, 6}

A monthly payment amount is presumed to correspond to the indigent person's ability to pay if the amount does not exceed the greater of:

- Two percent of an indigent person's annual net income divided by 12; or
- Twenty-five dollars.⁷

A clerk is required to charge a fee of \$5 per month for receipt or disbursement of all partial payments, with the exception of restitution payments, that are not subject to an administrative processing service charge.⁸ However, a clerk is authorized to accept a one-time administrative processing charge of \$25.00 for setting up a payment plan in lieu of the \$5.00 monthly fee.⁹

¹ The clerk of the circuit court is elected by the county's electors to serve a four-year term. Art. V, s. 16 and Art. VIII, s. 1, Fla. Const.

² "Ministerial" means acting "in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgment or discretion as to the propriety of the action taken." The clerk may appoint deputies, for whose acts the clerk is liable, which deputies have the same power as the clerk, excepting the power to appoint deputies. Ss. 28.06 and 112.312(17), F.S.

³ S. 28.35(3)(a), F.S.

⁴ S. 28.246(3), F.S.

⁵ S. 27.52(2)(a), F.S.

⁶ A person who is released from incarceration and has outstanding court obligations must contact the clerk within 30 days after release to pay fees, service charges, court costs, and fines in full, or to apply for enrollment in a payment plan. S. 28.246(4)(b), F.S.

⁷ S. 28.246(4)(b), F.S.

⁸ S. 28.24(27), F.S.

⁹ S. 28.24(27)(c), F.S.

Moreover, clerks may require a down payment to establish a payment plan in an amount that is the lesser of 10 percent of the total amount owed or \$100. This down payment amount does not include the one-time administrative processing charge.¹⁰

A clerk shall establish all terms of a payment plan, however, a court may review the reasonableness of a payment plan.¹¹

Driver License Suspension in Florida

Section 318.15, F.S., requires a clerk to notify the Department of Highway Safety and Motor Vehicles (DHSMV) if a person fails to:

- Comply with civil penalties within a specified time period;
- Enter into or comply with the terms of a penalty payment plan;
- Attend driver improvement school; or
- Appear at a scheduled hearing.¹²

Section 322.245, F.S., requires a clerk to notify DHSMV if a person fails to:

- Comply with all directives of a court, imposed based on a violation of a criminal offense, within the time allotted by the court; or
- Pay child support.¹³

Upon receipt of such notice from a clerk, pursuant to either ss. 318.15 or 322.245, F.S., DHSMV must immediately issue an order suspending the driver license and driving privilege of such person. The order must inform the person that he or she may contact the clerk to establish a payment plan to make partial payments for court-related fines, fees, service charges, and court costs.¹⁴

A person's driver license and privilege may not be reinstated until the person:

- Complies with the terms of a periodic payment plan or a revised payment plan with the clerk; complies with all obligations and penalties imposed; or complies with all court directives including payment of a delinquency fee; and
- Presents a certificate of compliance issued by the court to a driver license office along with a nonrefundable service charge of \$60.^{15, 16}

Effect of Proposed Changes

The bill amends s. 28.24, F.S., to remove a clerk's authorization to collect a \$5.00 monthly fee for accepting and disbursing partial payments, instead requiring a one-time administrative processing charge of \$25.00 to be collected for every payment plan which may be paid in five equal monthly payments of \$5.00.

The bill amends s. 28.246, F.S., to:

- Allow a clerk to accept monthly payments electronically, by mail, or in person in accordance with the terms of an established uniform payment plan form.
- Require a payment plan to provide an individual who is not in custody with a 30-day grace period within which to make the first payment.
- Require a payment plan to provide an individual released from incarceration a 90-day grace period within which to make the first payment.
- Allow any down payment required by a clerk to establish a payment plan to be paid in monthly increments.

¹⁰ S. 28.246(4)(b), F.S.

¹¹ *Id.*

¹² S. 318.15(1)(a), F.S.

¹³ S. 322.245(1-2), F.S.

¹⁴ Ss. 318.15(1) and 322.245(3), F.S.

¹⁵ S. 318.15(2), F.S.

¹⁶ S. 322.29(2), F.S.

- Authorize a court to review and modify a payment plan or reduce, waive, or convert any outstanding fees, service charges, costs, or fines to community service on its own motion or by petition. However, the bill prohibits a court from waiving restitution or child support.
- Require a payment plan to include all fines, service charges, fees, or court costs assessed in all open cases for a person in that county.
- Prohibit a clerk from referring an incarcerated person's account to collections or from notifying DHSMV that an incarcerated person has failed to pay or otherwise comply with the terms of a payment plan.
- Authorize a person who is indigent, receives public assistance, or whose income is below 200 percent of the federal poverty level to petition a court to declare that financial obligations under his or her payment plan have been met and to terminate the payment plan if, up to the date of the petition, the person made timely payments for:
 - Twelve consecutive months for any financial obligation that was \$500 or less;
 - Twenty-four consecutive months for any financial obligation that was more than \$500, but less than or equal to \$1,000; or
 - Thirty-six consecutive months for any financial obligation that was more than \$1,000.
- Authorize a clerk to send notices regarding upcoming or missed payments electronically or by mail.
- Prohibit a clerk from pursuing collection of any fees, service charges, fines, court costs, and liens for the payment of attorney fees from an individual who is incarcerated.

The bill amends s. 322.29, F.S., to require a person applying for the return of his or her license suspended under ss. 318.15 or 322.245, F.S., to present to DHSMV a certificate of compliance issued by the clerk of the court instead of by the court. The bill also clarifies that such a person is only required to pay a single nonrefundable \$60 service fee to DHSMV in order to obtain the return of his or her license.

The bill makes other conforming and technical changes.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 28.24, F.S., relating to service charges.

Section 2: Amends s. 28.246, F.S., relating to payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.

Section 3: Amends s. 318.15, F.S., relating to failure to comply with civil penalty or to appear; penalty.

Section 4: Amends s. 322.245, F.S., relating to suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.

Section 5: Amends s. 322.29, F.S., relating to surrender and return of license.

Section 6: Amends s. 27.52, F.S., relating to determination of indigent status.

Section 7: Amends s. 34.191, F.S., relating to fines and forfeitures; dispositions.

Section 8: Amends s. 57.082, F.S., relating to determination of civil indigent status.

Section 9: Reenacts s. 318.20, F.S., relating to notification; duties of department.

Section 10: Reenacts s. 775.083, F.S., relating to fines.

Section 11: Reenacts s. 938.27, F.S., relating to judgment for costs of prosecution and investigation.

Section 12: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may have a negative indeterminate impact on state and local governments as the bill potentially reduces revenue generation in several ways, by:

- Prohibiting an on-going collection of \$5 monthly fees for accepting and disbursing partial payments.
- Authorizing a court to reduce or waive fees, service charges, costs, or fines, or convert such fees, charges, costs, or fines to community service.
- Authorizing a court to terminate a payment plan before it is completed.

The bill may have a positive indeterminate impact on private parties as they may be required to pay less fees, service charges, costs, or fines as described above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce a clerk's ability to raise revenue; however, an exemption may apply as the bill may have only an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES