

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 481 Clerks of Court

**SPONSOR(S):** Civil Justice Subcommittee, Pilon

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 860

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N, As CS	Cary	Bond
2) Government Operations Subcommittee	14 Y, 0 N, As CS	Naf	Williamson
3) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	Toms	Jones Darity
4) Judiciary Committee			

### 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 persons filing a written request to have their personal information protected under the general agency personnel information public record exemption to specify the document type, name, identification number, and page number of the court record or official record;
- 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 payment of court-related fees to the state agency and the party it is representing;
- Provides that certain fines should not be deposited into the clerk's Public Records Modernization Trust Fund;
- Authorizes the filing of electronic affidavits regarding publication of a legal advertisement; and
- Provides that following the sale of a tax certificate, if a property is redeemed prior to the clerk receiving full payment from the sale at a public auction, the high bidder must submit a written request in order to receive a refund of the deposit.

The bill may have a positive impact on the Clerks of the Court due to the increased efficiencies in day-to-day office operations the bill provides.

## 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.<sup>1</sup> The clerk is also required to ensure that the papers do not leave the office without leave of court.<sup>2</sup> The statute does not address requirements to maintain electronic filings.

This bill amends s. 28.13, F.S., to address electronic filings. The bill specifically requires clerks to affix a stamp 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.<sup>3</sup> This bill amends s. 28.222, F.S., to add a new subsection (4) requiring 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.<sup>4</sup>

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

Certain personal information of some agency personnel, including law enforcement personnel, firefighters, justices and judges, state attorneys, magistrates, and specified others, is made exempt<sup>7</sup> from public records requirements by state law.<sup>8</sup> 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.<sup>9</sup> Currently, 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 exempt information.<sup>10</sup>

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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.

<sup>4</sup> 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, s. 24(c) of the Fla. Const.).

<sup>5</sup> See art. I, s. 24 of the Florida Const. and Florida Rule of Judicial Administration 2.420.

<sup>6</sup> Florida Rule of Judicial Administration 2.420(c)(7).

<sup>7</sup> 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), review denied 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).

<sup>8</sup> Section 119.071(4)(d), F.S.

<sup>9</sup> Section 119.071(4)(d)2., F.S.

<sup>10</sup> Telephone call with Florida Association of Court Clerks staff (January 10, 2012).

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.

### ***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.<sup>11</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>12</sup> This bill amends s. 24.244, 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 clerk of the circuit court, when acting in their official capacity.<sup>13</sup> State agencies are also exempt from all court-related fees and charges assessed by the clerk.<sup>14</sup> This bill amends ss. 28.24 and 28.345, F.S., limiting the state agency exemption to the agency and the party it is representing.

### ***Public Records Modernization Trust Fund***

The clerk's Public Records Modernization Trust Fund was established for the clerks to deposit 10 percent of all court-related fines they collect. The trust fund is used for equipment, maintenance of equipment, personnel training, and technical assistance<sup>15</sup>. This bill amends s. 28.37, F.S. to provide that certain fines should not be deposited into the clerk's trust fund. Those fines include penalties assessed and collected by counties or municipalities.

### ***Proof of Publication***

Numerous statutes require the publication of legal notice for various actions.<sup>16</sup> Generally, proof of such publication is made by printed affidavit.<sup>17</sup> This bill amends s. 50.041(2), F.S., to authorize an alternative, electronic affidavit, provided the notarization of the affidavit complies with the electronic notarization statute in s. 117.021, F.S.<sup>18</sup>

### ***Sale at Public Auction***

A tax certificate is issued by a local government relating to unpaid delinquent real property taxes, non-ad valorem assessments, special assessments, interest, and related costs and charges, issued in accordance with ch. 172, F.S., and against a specific parcel of real property.<sup>19</sup> An unpaid 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 receives 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

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<sup>11</sup> Section 24.244, F.S.

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

<sup>13</sup> Section 28.345, F.S.

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

<sup>15</sup> Section 28.24(12)(d), F.S.

<sup>16</sup> *See, e.g.*, s. 50.011, F.S.

<sup>17</sup> Sections 50.031 and 50.041(1), F.S.

<sup>18</sup> Section 117.021, F.S., requires that when a document is notarized electronically, it contains an electronic signature that is unique to the notary public, capable of independent verification, retained under the notary public's sole control, and attached to or logically associated with the electronic document.

<sup>19</sup> Section 197.102(1)(f), F.S.

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>20</sup> The tax collector then pays the certificate owner the amount received by the tax collector, less the redemption fee.<sup>21</sup>

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>22</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>23</sup> Any remaining funds must be applied toward the opening bid.<sup>24</sup>

This bill amends s. 197.542(2), F.S., to provide that if the property is redeemed prior to the clerk receiving full payment from the sale at a public auction, the high bidder must submit a written request in order to receive a refund of the deposit. Upon receipt of a written request, the clerk must refund the cash deposit.

#### B. SECTION DIRECTORY:

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

Section 2 creates a new subsection (4) of s. 28.222, F.S., relating to removal of certain recorded court documents from the official records, and renumbers subsequent subsections.

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

Section 4 amends s. 28.244, F.S., relating to refunds by the clerk of the circuit court.

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. 28.37, F.S., relating to fines, fees, service charges, and costs remitted to the state.

Section 7 amends s. 50.041, F.S., relating to affidavits for proof of publication.

Section 8 amends s. 119.0714, F.S., relating to court files, court records, and official court records.

Section 9 amends s. 197.542, F.S., relating to sale at public auction.

Section 10 provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

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<sup>20</sup> Section 197.472, F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Section 197.542(2), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

See "fiscal comments" section.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See "fiscal comments" section.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**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.<sup>25</sup>

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This 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**

Civil Justice Subcommittee

On November 16, 2011, the Civil Justice Subcommittee adopted three amendments and passed HB 481 as a committee substitute. The amendments:

- Moved a provision relating to fee exemptions for state agencies from the statute relating to service charges to the statute relating to fee state agency relations with the clerks; and
- Removed a potentially confusing cross-reference.

Government Operations Subcommittee

On January 11, 2012, the Government Operations Subcommittee adopted one amendment and passed CS/HB 481 as a committee substitute. The amendment clarified that the additional public record exemption requirement applies to records held by clerks of court, not to all agency records.

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<sup>25</sup> Florida Association of Court Clerks, 2012 Impact Statement/Bill Analysis, HB 481, November 8, 2011

Justice Appropriations Subcommittee

On January 30, 2012, the Justice Appropriations Subcommittee adopted one amendment and passed CS/CS/HB 481 as a committee substitute. The amendment provides that certain fines should not be deposited into the clerk's Public Records Modernization Trust Fund.

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