

**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 Governmental Oversight and Accountability

**BILL:** CS/SB 556

**INTRODUCER:** Judiciary Committee and Senator Ring

**SUBJECT:** Clerks of the Court

**DATE:** March 20, 2013      **REVISED:** \_\_\_\_\_

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

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 556 amends laws relating to clerks of circuit courts.

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

- Requires a clerk to maintain electronic filings as it does paper filings.
- Specifies that a clerk may provide, and charge for, services manually or electronically.
- Authorizes a clerk to electronically affix a date and time stamp to filings in lieu of an ink stamp.

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 the threshold overpayment amount for which a clerk must make an automatic refund from \$5 to \$10.

- Limits the state agency court-related fee exemption to the agency itself and the party the agency is representing.
- 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.
- Eliminates an exemption for indigent persons from payment of a charge for issuance of a summons and allows filing fees waived based on a determination of indigence to be included in the calculation of a payment plan.
- 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, and specifies that the property appraiser must provide the copy regardless of whether the petitioner initiates evidence exchange.
- Provides that governmental entities do not have to pay judgment enforcement fees to initiate supplemental proceedings to collect a judgment.

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, 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> Current law does not address requirements to maintain electronic filings.

### 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.

### Charges

Current law authorizes a clerk to charge for services rendered by the clerk's office in recording documents and instruments and in performing the clerk's duties.<sup>4</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. As county recorder, the clerk of the circuit court must record all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk (*id.*). Such instruments include, but are not limited to, deeds, leases, bills of sale, agreements, mortgages, notices or claims of lien, notices of levy, tax warrants, tax executions, notices of lis pendens, judgments, notices of liens for taxes payable to the United States, and certified copies of death certificates (s. 28.222(3), F.S.).

<sup>4</sup> Section 28.24, 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>5</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>6</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>7</sup> State agencies are also exempt from all court-related fees and charges assessed by the clerks.<sup>8</sup>

## Public Records

The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>9</sup> In addition, the Public Records Act<sup>10</sup> guarantees every person a right to inspect and copy any state, county, or municipal record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.<sup>11</sup> Only the Legislature may create a general exemption to public records access requirements.<sup>12</sup>

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.<sup>13</sup> The clerk may charge a fee to certify or furnish copies of requested public records, but specified governmental entities are exempt from such fees if they are entitled by law to view the exempt or confidential record.<sup>14</sup>

Certain records are confidential or exempt<sup>15</sup> from disclosure under public records laws, including personal information of certain individuals such as law enforcement personnel, firefighters,

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<sup>5</sup> Section 28.244, F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 28.345, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> FLA. CONST., art. I, s. 24(a).

<sup>10</sup> Chapter 119, F.S.

<sup>11</sup> Section 119.07(1)(a), F.S.

<sup>12</sup> FLA. CONST., art. I, s. 24(c).

<sup>13</sup> Section 119.011(5), F.S., provides that the “custodian of public records” is the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

<sup>14</sup> Section 119.07(4), F.S.

<sup>15</sup> There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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 2004); and *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).

justices and judges, state attorneys, magistrates, and others as specified by statute.<sup>16</sup> An individual whose information is exempt must submit a written request for exemption with any agency that holds an exempt record.<sup>17</sup> There is no uniform, statewide process, but 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 confidential or exempt information.<sup>18</sup>

### **Indigents**

A person may apply to a clerk of court to seek appointment of a public defender, appointment of an attorney in a civil case eligible for court-appointed counsel, or relief from payment of filing fees and prepayment of costs based upon an inability to pay.<sup>19</sup> A person who obtains certification of indigence from a clerk of court is not required to prepay costs to a court, clerk, or sheriff and is not required to pay filing fees or charges for issuance of a summons.<sup>20</sup>

A person deemed indigent for civil proceedings must be enrolled in a payment plan. Filing fees may not be included in such payment plans.<sup>21</sup>

### **Value Adjustment Board Hearing Records**

Each county in Florida has a value adjustment board that hears objections to ad valorem tax assessments.<sup>22</sup> The clerk of the court usually serves as the county clerk and schedules appearances before the value adjustment board.<sup>23</sup> 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.<sup>24</sup>

### **Financial Obligations Stemming from a Criminal Case**

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.<sup>25</sup> The court may impose a judgment which operates as a civil lien against the debtor's property.<sup>26</sup> A governmental entity that attempts to satisfy such a judgment may do so without bond.<sup>27</sup>

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<sup>16</sup> Section 28.24, F.S. The exempt governmental entities are the state attorney, public defender, guardian ad litem, public guardian, attorney ad litem, criminal conflict and civil regional counsel, private court-appointed counsel paid by the state, and authorized staff of any of the specified governmental entities acting on their behalf.

<sup>17</sup> Section 119.071(4)(d)2., F.S.

<sup>18</sup> Telephone call between Senate Governmental Oversight and Accountability staff and Florida Association of Court Clerks staff (March 18, 2013).

<sup>19</sup> See ss. 27.52(1) and 57.082(1), F.S.

<sup>20</sup> Section 57.081(1), F.S.

<sup>21</sup> Section 57.082(6), F.S.

<sup>22</sup> Section 194.011, F.S.

<sup>23</sup> Section 194.015, F.S.

<sup>24</sup> Section 194.032, F.S.

<sup>25</sup> Section 938.30(2), F.S.

<sup>26</sup> Section 938.30(6), F.S.

<sup>27</sup> *Id.*

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

This bill amends laws relating to the clerks of court.

#### **Electronic Filings and Charges**

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

- Requires a clerk to maintain electronic filings as it does paper filings.
- Specifies that a clerk may provide, and charge for, services manually or electronically.
- Authorizes a clerk to electronically affix a date and time stamp to filings in lieu of an ink stamp.

#### **Clerk as County Recorder**

This bill requires a county recorder to remove recorded court documents from the Official Records pursuant to a sealing or expunction order.

#### **Refunds**

This bill increases the threshold overpayment amount for which a clerk must make an automatic refund from \$5 to \$10.

#### **Fee Exemption**

This bill limits the state agency court-related fee exemption to the agency itself and the party the agency is representing.

#### **Public Records**

This bill:

- Relocates and amends the exemption from public records fees for specified governmental entities to delete the requirement that such entities be entitled by law to view the exempt or confidential record.
- 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 confidential or exempt information appears.

#### **Indigents**

This bill:

- Eliminates an exemption for indigent persons from payment of a charge for issuance of a summons.

- Allows filing fees waived based on a determination of indigence to be included in the calculation of a payment plan.

### **Value Adjustment Board Hearing Records**

Regarding challenges to a property assessment or the denial of a property exemption, this bill:

- Changes the entity that must provide the petitioner a copy of the property record card from the clerk to the property appraiser.
- Specifies that the requirement that a copy of the property record card be provided applies regardless of whether the petitioner has initiated an evidence exchange.

### **Financial Obligations Stemming from a Criminal Case**

This bill:

- Specifies that the current authority of the court to convert a financial obligation into community service is subject to a traffic infraction statute that prescribes a specific process and conditions applicable to community service based on inability to pay a civil traffic penalty.
- Authorizes a governmental entity to initiate supplemental proceedings to collect a judgment for fees and costs without having to pay judgment enforcement fees.

### **Clarifying Changes**

This bill makes clarifying drafting changes.

The bill takes effect July 1, 2013.

## **IV. Constitutional Issues:**

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

Not applicable. This bill does not appear to impact county or municipal government.

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

None.

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

None.

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

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

None.

**B. Private Sector Impact:**

The amendment of s. 57.081(1), F.S., appears to make an indigent person responsible for paying the costs of the service of a summons by a sheriff. The changes to s. 57.082(6), F.S., by the bill appear to require that an indigent person reimburse the clerk for filing fees.

**C. Government Sector Impact:**

The net fiscal impact on clerks of court is indeterminate.

**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.)

**CS by Judiciary on March 6, 2013:**

The CS:

- Removes from the bill all references to the tax lien process.
- Deletes from the bill a provision that allowed the Florida Rules of Judicial Administration to specify entities authorized to access public records that are exempt or confidential.

**B. Amendments:**

None.