

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Finance and Tax

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BILL: CS/SB 788

INTRODUCER: Judiciary Committee and Senator Ring

SUBJECT: Clerks of Court

DATE: April 1, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 788 makes various changes to clerk of court procedures. It:

- Authorizes clerks of court to pay jurors and witnesses by check.
- Requires persons applying for a writ of garnishment to pay required deposits directly to the person whose property is being garnished, rather than to the court.
- Prohibits the redemption of tax certificates after tax deed payments are received.
- Establishes a deadline for paying costs of public sale.
- Clarifies the disbursement of funds remaining after a public sale.

The Revenue Estimating Conference (REC) has not reviewed the impact of this bill. Staff expects insignificant reductions to court service charges.

**II. Present Situation:**

The present situation for each section of the bill is discussed below in Section III, Effect of Proposed Changes.

### III. Effect of Proposed Changes:

#### Section 1 – Juror and Witness Compensation

Present situation: Jurors may be compensated for their service in certain instances.<sup>1</sup> The clerk of court (clerk) is responsible for disbursing payments to jurors and witnesses, and may do so by cash or warrant.<sup>2</sup>

Proposed change: The bill allows the clerk the option of making payment by check, which is current practice.<sup>3</sup>

#### Sections 2 and 3 - Writs of Garnishment

Present situation: Persons who have sued to recover a debt and received a judgment have the right to a writ of garnishment against the person who owes the debt.<sup>4</sup> The party applying for the writ must deposit \$100 in the registry of the court, and the clerk will disburse the \$100 to the person whose property is being garnished. When the \$100 is deposited, the clerk also must collect the statutory fee of three percent (\$3.00), authorized in law as a service charge for the clerk.<sup>5</sup>

Proposed change: The bill requires the party applying for the writ to pay the \$100 deposit directly to the person whose property is being garnished.

#### Sections 4 and 6 -- Sale of Tax Certificates

Present situation: When a property owner fails to pay property taxes, the county tax collector sells tax certificates to investors; the tax certificate is awarded to the investor who will pay the unpaid taxes and demand the least amount of interest.<sup>6</sup>

A tax certificate is a lien against the real property which can lead to public sale of the property. After two years, the owner of the tax certificate can apply for a tax deed.<sup>7</sup> Upon application for a tax deed, the clerk will conduct a public auction, at which the property is sold to the highest bidder.<sup>8</sup>

When a tax certificate pertains to homestead property and represents less than \$250 in delinquent taxes, the tax collector cannot sell the certificate, but rather is required to issue the certificate to the county.<sup>9</sup> These certificates continue to accrue interest at the rate of 18 percent per year.<sup>10</sup>

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<sup>1</sup> Jurors who are not regularly employed or who do not continue to receive regular wages while serving as a juror are entitled to receive \$15 per day for the first 3 days of service and \$30 for each day thereafter. Section 40.24(3)(a) and (b), F.S.

<sup>2</sup> Section 40.32(3), F.S.

<sup>3</sup> Phone conversation with Randy Long, Clerks of Court (March 7, 2014).

<sup>4</sup> Section 77.01, F.S.

<sup>5</sup> Sections 77.28 and 28.24(10)(a)1., F.S.

<sup>6</sup> See s. 197.432, F.S.

<sup>7</sup> Section 197.502(1), F.S.

<sup>8</sup> Section 197.542, F.S.

<sup>9</sup> Section 197.432(4), F.S.

<sup>10</sup> See ss. 197.432(4) and 197.172(2), F.S.

Proposed change: The bill requires tax collectors to sell a tax certificate that represents less than \$250 on homestead property when the property has multiple certificates and all certificates and interest total more than \$250. In this situation, only the current certificate can be offered for sale.

### **Section 5 – Redemption of Tax Certificates**

Present situation: A property owner may redeem tax certificates issued on his or her property by paying the face amount of the certificates along with any accrued interest, costs and charges.<sup>11</sup> The property owner has until a tax deed is issued to redeem tax certificates issued on his or her property.

Proposed change: The bill prohibits a property owner from redeeming a tax certificate after the purchaser has made full payment for a tax deed, including documentary stamp taxes and recording fees.

### **Sections 6 and 7 – Applications for Tax Deed**

Present situation: After a tax certificate has been issued for two years, the holder of a tax certificate may file an application for a tax deed with the tax collector of the county where the property described in the certificate is located.<sup>12</sup> The applicant must pay the tax collector an amount sufficient to redeem all other outstanding tax certificates, omitted taxes plus interest, delinquent taxes plus interest, and current taxes due.<sup>13</sup> The tax collector must notify the legal titleholder of the property for sale, mortgagees, lienholders, other certificateholders, legal titleholders of properties contiguous to the property for sale, and other interested persons that the tax deed application has been received.<sup>14</sup>

When the property is sold at a public auction, statutes establish a “minimum bid.”<sup>15</sup> The minimum bid must include all of the costs paid by the tax deed applicant, the amount of tax certificates and tax delinquencies that have accrued since the tax deed application was filed, as well as interest at a rate of 1.5 percent per month from the date the tax deed application was filed until the date of sale.<sup>16</sup> Also, if the property is homestead property, the minimum bid must include an amount equal to one-half of the assessed value of the homestead property.<sup>17</sup>

The certificateholder is not required to buy the property, but he or she 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>18</sup> If full payment of the final bid is not made when due, the clerk cancels all bids, immediately readvertises the sale to be held within 30 days, and pays all costs of the sale from the deposit.<sup>19</sup> Any remaining funds must be

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<sup>11</sup> Section 197.472(1), F.S.

<sup>12</sup> Section 197.502(1), F.S.

<sup>13</sup> Section 197.502(2), F.S.

<sup>14</sup> Section 197.502(4), F.S.

<sup>15</sup> Section 197.542(1), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Section 197.542(2), F.S.

<sup>19</sup> Section 197.542(1) and (2), F.S.

applied toward the opening bid.<sup>20</sup> Current law appears to presume that whenever an individual certificateholder applies for a tax deed and the property is subject to a public auction, someone – likely the certificateholder – will purchase the property. The statutes do not specify what the clerk is to do with property that does not sell at successive public auctions.

If no one bids at a public sale on a county-held certificate, the clerk must enter the land on a list of “lands available for taxes” and must immediately notify the county commission and all other certificateholders that the property is available.<sup>21</sup> During the first 90 days after the property is listed, the county may purchase the land for the bid. If the county does not purchase the land, the county provide notice, within the 90-day period, to each legal titleholder of contiguous property that the property is being placed on the list of lands available for taxes.

Proposed change: For properties that do not sell at public auction after an individual certificateholder has applied for a tax deed, the bill authorizes the clerk to enter the property on the list of lands available for taxes. The bill requires the certificateholder to pay costs of resale, if applicable, within 15 days from notice by the clerk, or the clerk will enter the property on the list of lands available for taxes.

The bill removes the requirement that the clerk notify all other certificateholders that the property is being entered on the list of lands available for taxes. The bill also removes the requirement that the county notify contiguous property owners that the land has been placed on the list of lands available for taxes.

Under current law, public sales held after a prior sale was canceled must be held within 30 days after the canceled sale. The bill extends this time period to a maximum of 60 days. The sale must be readvertised within 30 days and the subsequent sale must be held within 30 days after the readvertisement.

## **Section 8 – Disbursement of Proceeds of Public Sale**

Present situation: If the property is purchased for an amount higher than the statutory minimum bid, the excess is disbursed by the clerk to lienholders, in priority order.<sup>22</sup> The clerk must notify by mail all persons having an interest in any balance of undisbursed funds.<sup>23</sup>

With regard to funds that remain unclaimed, Florida provides a process for delivering unclaimed property in possession of the state to property owners.<sup>24</sup> After a statutory holding period, property in possession of state entities – including courts – is treated as unclaimed property and is subject to unclaimed property statutes. Money held by a court for longer than one year after it is payable or distributable is considered unclaimed property.<sup>25</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> Section 197.502(7), F.S.

<sup>22</sup> Section 197.582(2), F.S.

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

<sup>24</sup> See ch. 717, F.S.

<sup>25</sup> Section 717.113, F.S.

Section 717.117(4), F.S., requires that government entities holding property provide notice to apparent owners that the government entity is in possession of property to which the apparent owner may be entitled.

Proposed change: The bill requires that the clerk ensure that excess funds are paid according to priorities of claims. If a lienholder appears to be entitled to priority, the bill requires the clerk to withhold payment on a junior claim until a court determines the proper distribution of funds. The bill authorizes the clerk in any such action to request reasonable costs and fees from the court.

With respect to money remaining from public sale after payment of all claims, the bill provides that the notice required by s. 197.582, F.S., satisfies the notice requirement regarding unclaimed property, and that for purposes of the 1-year holding period, the money is considered payable and distributable on the date of the notice.

#### **Section 9 – Effective Date**

The bill takes effect July 1, 2014.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

A. Tax/Fee Issues:

The REC has not reviewed the impact of CS/SB 788. Staff expects an insignificant reduction to court service charges.

B. Private Sector Impact:

This bill requires the certificateholder who applies for a tax deed to pay the costs of resale within 15 days from notice by the clerk, or the clerk will enter the land on the list of lands available for taxes.

**C. Government Sector Impact:**

To the extent that this bill provides greater clarity and efficiency in the sale of tax certificates and tax deed application processes, the clerks of court may have reduced costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 28.246, 40.32, 77.28, 197.432, 197.472, 197.502, 197.542, 197.582, and 322.245.

**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 11, 2014:**

The committee substitute removed the following provisions of the bill:

- The requirement that a person obligated to pay court-related costs pay in full in 90 days if the person fails to elect a payment plan or if the clerk rejects the person's payment plan;
- The requirement that the clerk notify the Department of Highway Safety and Motor Vehicles to suspend a person's motor vehicle registration if the person failed to pay court-related obligations;
- The requirement that the clerk notify persons holding certificates if there are no bidders at the public sale and the clerk enters the land on a list of land available for taxes;
- A provision that authorized rather than required clerks to initiate interpleader actions.

**B. Amendments:**

None.