

STORAGE NAME: h0039a.go

DATE: February 13, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 39

RELATING TO: Public Records/Copy fees charged by the Clerk of the Circuit Court

SPONSOR(S): Representative Stabins

STATUTE(S) AFFECTED: s. 28.24

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS YEAS 1 NAYS 4
- (2) FINANCE & TAXATION
- (3)
- (4)
- (5)

I. SUMMARY:

HB 39 clarifies how much the clerks of the circuit courts may charge for copies of certain records. This bill provides that the clerk shall charge \$1.00 per page for copies of those records actually recorded in the Official Records books. For all other copies, the clerk must charge a fee as provided for in s. 119.07, F.S. That section provides that copies of not more than 14 inches by 8 ½ inches may not cost more than 15 cents per one-sided copy. An additional 5 cents may be charged for each two-sided copy. For all other copies a fee representing the actual cost of duplication may be charged.

Currently, clerks across the state charge varying fees for copies (see attached Summary Report, 1996 Clerk of the Circuit Court Survey). Some clerks copy certain records at no charge. This bill appears to resolve the controversy surrounding the fees that the clerks are statutorily authorized to charge for records in their custody.

HB 39 does not appear to have a fiscal impact on state government because clerks of the circuit courts are not appropriated state funds. The fiscal impact on county governments is indeterminate. See Section III., Fiscal Analysis & Economic Impact Statement.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 28, F.S., governs the clerks of the circuit courts. Each clerk is a record custodian of the Official Records books. Section 28.001(1), F.S., defines "Official Records" as "each instrument that the clerk of the circuit court is required or authorized to record in the series of books call 'Official Records' as provided for in s. 28.222." Section 28.222, F.S., provides that the clerk must record certain instruments such as deeds, leases, bills of sale, mortgages, notices or claims of lien, and judgments in the Official Records books.

Clerks are also custodians of court records and may also hold certain miscellaneous records such as audits, personnel records, and office records. In 61 of Florida's 67 counties, the clerk also acts as the custodian of certain county records, such as minutes of meetings of the Board of County Commissioners (see attached Summary Report, 1996 Clerk of the Circuit Court Survey, p.1).

Section 28.24, F.S., provides the charges that clerks of the circuit courts must assess for their services. For example, s. 28.24(8)(a), F.S., provides that clerks must charge \$1.00 per page for "making copies by photographic process of **any instrument in the public records** consisting of pages of not more than 14 inches by 8 ½ inches... (emphasis added)."

Various interpretations of the phrase "**any instrument in the public records**" have led to varied applications of s. 28.24(8)(a), F.S., among the clerks. Some clerks have concluded that the phrase "**any instrument in the public records**" requires them to charge \$1.00 for any record in their custody, rather than only instruments recorded in the Official Records books. Alternately, the Attorney General opined in AGO 94-60 that s. 28.24(8)(a), F.S., does not require clerks to charge \$1.00 per page for all public records, but only for "instruments" -- an ambiguous term which is statutorily undefined. However, the recent court opinion in *WFTV, Inc. v. Wilken* held that the \$1.00 fee in s. 28.24(8)(a), F.S., applied to all court records. The court in *Wilken* did not address fees for county or miscellaneous records. See *WFTV, Inc. v. Wilken*, 675 So.2d 674 (Fla. 4th DCA 1996)(affirming that the Legislature has the authority to determine fees charged for copies of court records).

Section 28.24 (8)(b), F.S., provides that clerks must charge \$5.00 per page for "making copies by photographic process of **any instrument in the public records** of more than 14 inches by 8 ½ inches... (emphasis added)."

In order to determine what fees each clerk of the circuit court charged for various records in their custody, the Committee on Governmental Operations staff conducted a survey (see 1996 Clerk of the Circuit Court Survey, attached as Appendix A to the Summary Report, 1996 Clerk of the Circuit Court Survey, hereinafter "Report"). Staff disseminated the survey to each clerk of the circuit court on September 23, 1996, and received responses from all 67 clerks by January 7, 1996. According to the results of this survey, clerks across the state charge varying fees for public records in their custody. For example, most clerks charge \$1.00 per page for copying case files, dockets, and court minutes, which are **court records** (see Report, p.4). Nonetheless, as to juror payrolls, which are also court records, only 39 of 67 clerks charge \$1.00 per

page for copies (see Report, p.4). The remaining clerks charge 25 cents, 15 cents, 10 cents, or are not sure what they would charge if a member of the public requests a copy of a juror payroll (see Report, p.4). Most clerks charge \$1.00 per page for copying board of county commissioner meeting minutes, documents in the Official Record books, and Official Records indexes, which are **county records** (see Report, p.3). However, a majority of clerks charge only 15 cents per page for accounting records, which are also county records (see Report, p.3). Charges for copies of various **miscellaneous records** such as audits, personnel records, contracts, financial records, operational records, and other records range from \$1.00 per page to no charge at all (see Report, pp.5-6).

B. EFFECT OF PROPOSED CHANGES:

HB 39 appears to clarify what the clerks of the circuit courts must charge for copies of public records. This bill provides that clerks must charge \$1.00 per page for public records actually recorded in the Official Records books. For all other copies, clerks can only charge a fee as provided for in s. 119.07, F.S. That section provides that copies not more than 14 inches by 8 ½ inches may not cost more than 15 cents per one-sided copy, unless otherwise prescribed by law. An additional 5 cents may be charged for each two-sided copy. For all other copies, a fee representing the actual cost of duplication may be charged.

HB 39 also strikes the statutory provision requiring that clerks of the circuit courts charge \$5.00 per page for copying any instrument larger than 14 inches by 8 ½ inches. This bill allows clerks to charge a copying fee pursuant to s. 119.07, F.S., for these larger copies. Section 119.07(1)(a), F.S., provides that the fee for copies larger than 14 inches by 8 ½ inches may not exceed the "actual cost of duplication of the record," which is defined as only the materials and supplies used to make the copy, not labor or overhead.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

N/A

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

This bill does not appear to directly increase anyone's taxes.

b. Does the bill require or authorize an increase in any fees?

This bill does not appear to increase any fees.

c. Does the bill reduce total taxes, both rates and revenues?

This bill does not appear to reduce total taxes.

d. Does the bill reduce total fees, both rates and revenues?

This bill will lower fees charged by some clerks of the circuit courts for copies of certain records in their possession. See Section III.B., FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

HB 39 does not appear to reduce or eliminate an entitlement to government services or a subsidy.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Certain members of the public appear to be the beneficiaries of this bill in counties where this bill will reduce fees charged by clerks for copying certain records. This fee reduction may make it easier for members of the public to obtain these records. It appears that the public at large may ultimately pay the costs of implementing these lower fees because each clerk's office is publicly supported by taxpayer money.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

HB 39 does not appear to directly increase or decrease the allowable options of individuals or private organizations/associations to conduct their own affairs, except to the extent that reducing copying fees may increase access to public records.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

This bill does not appear to prohibit or create new government interference with any presently lawful activity.

5. Family Empowerment:

HB 39 does not appear to have any discernible effect on families or family relationships.

- a. If the bill purports to provide services to families or children:

N/A

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Amends s. 28.24(8), F.S., to require that clerks of the circuit courts charge \$1.00 per page for copying public records actually recorded in the Official Records books; strikes the provision requiring the clerk to charge \$5.00 per page for copying instruments of more than 14 inches by 8 ½ inches; and provides that the fee for copies of all other public records in the custody of the clerk is as provided for in s. 119.07, F.S.

Section 2 -- Provides an effective date of July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

None.

1. Non-recurring Effects:

2. Recurring Effects:

3. Long Run Effects Other Than Normal Growth:

4. Total Revenues and Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate.

This bill may impact counties where the clerk operates as a fiscal unit of the county pursuant to Chapter 145, F.S. If the clerk currently charges more than 15 cents per page for copies of records other than those actually recorded in the Official Records books, then this bill would reduce the amount of money that the clerk collects and forwards to the county.

For a clerk that does not operate as a fiscal unit of the county and is a fee officer pursuant to ss. 218.35 and 218.36, F.S., the fee limitation proposed by this bill would reduce the clerk's income -- if the clerk charged more than 15 cents per page for copies other than those actually recorded in the Official Records.

It may be difficult to accurately forecast the overall fiscal impact of HB 39 on county governments because the clerks of the circuit courts do not use identical accounting systems (see State of Florida Office of the Auditor General, A Study of the Accounting Systems and Methodologies Used by the Clerks of the Circuit Courts to Account for Court-Related Revenues and Expenses, May 15, 1995, hereinafter "Study"). "[T]here does not currently exist a Statewide uniform accounting and

reporting system which provides meaningful, comparable, and reliable information and data to the State Legislature ... regarding costs incurred by the Clerks to the operate the Circuit and County Courts and revenues being generated from available funding sources to cover such costs (see Study, p.7)."

3. Long Run Effects Other Than Normal Growth:

See above response.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Members of the public who wish to copy public records held by the clerk would be able to obtain these copies more cheaply in those counties where certain copy fees will decrease. However, the public at large may ultimately pay for some individuals to access public records more cheaply.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

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V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

One amendment was adopted which retained the \$5.00 per page charge for making copies of any instrument in the public records larger than 14 inches by 8 ½ inches.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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