

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to affect any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Civil Court Fees and Costs for Indigents

Any party in any judicial or administrative proceeding is entitled to “receive the services of the courts, sheriffs, and clerks . . . despite his or her present inability to pay for [those] services.”¹ Such services include:

- Filing fees;
- Service of process;
- Certified copies of orders or final judgments;
- A single copy of any court pleading, record, or instrument filed with the clerk;
- Examining fees;
- Mediation services and fees;
- Private court-appointed counsel fees;
- Subpoena fees and services;
- Service charges for collecting and disbursing funds; and
- Any other cost or service arising out of pending litigation.

However, the person must repay the amount for such services.

There are two versions of the federal poverty measure – poverty thresholds and poverty guidelines.² “The poverty thresholds are the original version of the federal poverty measure.”³ They are updated each year by the Census Bureau and are used mainly for statistical purposes. “The poverty guidelines are the other version of the federal poverty measure. They are issued each year in the Federal Register by the Department of Health and Human Services (HHS).”⁴ The guidelines are used for administrative purposes and may be used to determine eligibility for federal programs. These programs may use the guidelines “or percentage multiples of the guidelines to determine eligibility.”⁵

Currently, the income threshold for an indigent person “is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services.”⁶ The poverty guidelines for 2008 are as follows⁷:

¹ Section 57.081, F.S.

² United States Department of Health and Human Services, The 2007 HHS Poverty Guidelines, One Version of the [U.S.] Federal Poverty Measure, <http://aspe.hhs.gov/poverty/> (last visited March 10, 2008).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Section 57.082(2)(a)1., F.S.

⁷ Federal Register, Vol. 73, No. 15, January 23, 2008, pp. 3971-3972. See <http://aspe.hhs.gov/poverty/08poverty.shtml>

Persons in Family or Household	48 Contiguous States and D.C.
1	\$10,400
2	14,000
3	17,600
4	21,200
5	24,800
6	28,400
7	32,000
8	35,600
For each additional person, add	3,600

Fee Collection

Court costs, fees, and collection rates were the subject of a report prepared by the Office of Program Policy Analysis and Government Accountability (OPPAGA) in March 2007.⁸ As noted in the OPPAGA report, Florida voters approved Revision 7 to Article V of the state constitution in 1998, which allocated more costs to the state, effective July 1, 2004. To that end, the Legislature directed the state to pay for specified elements of the state courts system and required the 67 county clerks of court to fund their offices using revenues derived from fines, fees, service charges, and court costs assessed in both civil and criminal proceedings.⁹ “Except under certain conditions, one-third of [those] funds are transmitted to the state to help fund the operation of the state courts system.”¹⁰ Further, the report noted that “[i]n Fiscal Year 2005-06, clerks of court remitted \$93.7 million in court-related collections to the state after funding their own operations. These funds offset 23% of the \$405.4 million cost of the state courts system during that year.”¹¹ OPPAGA found that statewide, clerks collected 71% of assessed court fines, fees, service charges and court costs in Fiscal Year 2005-2006.¹²

Florida TaxWatch conducted a report on the status and cost efficiency of civil filing fees for indigents throughout the state in March 2008.¹³ The study found that while the law allows for a waiver of court fees by judicial discretion on a case by case basis, clerks across the state were not consistent in their enforcement and collection of civil court filing fees from indigent persons.¹⁴ Furthermore, TaxWatch determined that around 90% of indigent fees are never paid in their entirety.¹⁵ The study also compared the cost between aggressive and nonaggressive collection polices of the clerks and

⁸ Office of Program Policy Analysis and Government Accountability, Report No. 07-21, Clerks of Court Generally Are Meeting the System’s Collections Performance Standards 1 (March 2007).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Florida TaxWatch, Charging Indigent Floridians Civil Court Filing Fees Raises Questions of Cost Efficiency and Equal Access to the Florida Court System, (March 2008).

¹⁴ *Id.*

¹⁵ *Id.*

concluded that the more aggressive approaches for collection of the fees cost the clerks more than not collecting the fees.¹⁶

Effect of Proposed Changes

Under the bill, an indigent party as determined by 200% of the poverty guidelines who is seeking court services would not be required to pay court costs and fees.

C. SECTION DIRECTORY:

Section 1 amends s. 57.082, F.S., relating to the determination of civil indigent status.

Section 2 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The fiscal impact of this bill on state revenues is indeterminate, but could be significant. See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This will have an indeterminate but likely significant negative fiscal impact on those counties which aggressively pursue and collect payment of court fees from indigent persons. See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the bill, a person does not have to pay for court costs if he or she meets 200% of the poverty guidelines. As a result, a person who is unable to afford court costs and fees may find it easier to participate in legal proceedings.

D. FISCAL COMMENTS:

The clerk of court would collect less revenue for civil court services because some people would not be required to pay court costs and fees. Currently, the Legislature directs the state to pay for specified elements of the state courts system and requires county clerks to fund their offices using revenues derived from fines, fees, service charges, and court costs assessed in both civil and criminal

¹⁶ *Id.* The most aggressive collection policy cost an average of \$76.92 per case on the collection of civil indigent filing fees, while the less aggressive clerks spent an average of \$3.35 per case.

proceedings. Except under certain conditions, one-third of those funds are transmitted to the state to help fund the operation of the state courts system. The state could receive significantly less revenue due to the provisions of this bill. However, the impact of this bill is indeterminate because it is not known how many people would qualify for indigent status.

According the Florida Association of Court Clerks, "this bill has the potential of having a significant impact on not only the revenues and resulting budgets of the Clerks of Court, but also that of General Revenue and other state and local funds." The Florida Association of Court Clerks state that this bill could have a negative fiscal impact of approximately \$4.7 million on the clerks revenues.¹⁷ This number was derived using the percentage of filing fees associated with indigent contracts, and a sample of County Clerks total filing fees collected. This calculation does not take into account the finding of the Florida TaxWatch report, cited previously, which found that while the law allows for a waiver of court fees by judicial discretion on a case by case basis, clerks across the state were not consistent in their enforcement and collection of civil court filing fees from indigent persons. Furthermore, TaxWatch determined that around 90% of indigent fees are never paid in their entirety.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take any action requiring 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A

¹⁷ E-mail correspondence on file with Committee on Courts, Florida Association of Court Clerks, March 14, 2008.