

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 Judiciary

BILL: SB 788

INTRODUCER: Senator Ring

SUBJECT: Clerks of Court

DATE: March 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>TR</u>	_____
3.	_____	_____	<u>AFT</u>	_____
4.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 788 revises the procedures by which clerks of courts:

- Collect court-related fees, service charges, costs, and fines.
- Pay jurors.
- Process deposits for a garnishee's attorney fees.
- Conduct tax certificate and tax deed sales.

This bill revises law relating to tax certificates, tax deeds, and the sale of property at public auction. The bill expands the opportunity for the public to purchase tax certificates that would otherwise be issued to the county, and allows property owners to redeem certificates on property after the property is placed on the list of lands available for sale. This bill specifies that the certificateholder who applied for a tax deed must pay for the costs of resale of a tax deed whose sale is cancelled. The payment must be made within 15 days after the clerk provides notice.

Current law requires the clerk to enter land on the list of lands available for taxes if there are no bidders at public sale of a tax deed based on a county-held certificate. This bill additionally requires the clerk to enter land on the list of lands available for taxes if there are no bidders on a tax deed based on an individually held certificate. The bill also requires the clerk to enter the land on the list if the certificateholder fails to timely pay costs of resale or fails to pay amounts due for issuance of a tax deed within 15 days after the date of sale.

Current law provides that if the proceeds of a tax deed sale exceed the amount of the sale and governmental liens, the former property owner and other lienholders must be notified of the excess funds. The bill provides that this notice complies with the notice required by laws regulating holders of unclaimed property. Also, the bill provides that the excess proceeds are presumed payable or distributable on the date the notice is sent. The bill provides greater detail

about how clerks must handle competing liens and requires the clerk to act as an interpleader if lienholders have potentially conflicting claims. The clerk will then be eligible for reasonable fees and costs relating to the interpleader action.

The bill provides a default payment plan, if a person required to pay court-related obligations in a court case and does not enroll in a payment plan which would schedule payments for up to 2 years. If the person does not elect a payment plan, or the clerk does not agree to the payment plan, the default plan requires full payment within 90 days. A person who fails to make payment under a payment plan will have their motor vehicle registration suspended by the Department of Highway Safety and Motor Vehicles, in addition to losing driving privileges which is already a sanction in current law.

In a writ of garnishment action, persons owed a debt may sue and receive judgment against the person who owes the debt. The garnishee, or the bailee of property, is entitled to a \$100 deposit for attorney's fees from the party applying for the writ. The bill provides for direct payment of the deposit from the party applying for garnishment to the garnishee, rather than deposit into the court registry.

II. Present Situation:

Clerks of the Circuit Courts

Chapter 28, F.S., sets out duties and responsibilities of the clerks of the circuit courts. The clerk of court receives payment for court-related fines, monetary penalties, fees, charges and costs imposed by the court on an individual involved in a legal action. The clerk must accept partial payments for court-related fees, service charges, costs and fines if the individual making the payments does so in compliance with an established payment plan.¹

A person seeking to defer payment of fees, service charges, costs or fines imposed by the court must apply directly to the clerk to enroll in a payment plan. The clerk is required to enter into a payment plan with a person that the court has determined is indigent for costs.² The clerk must distribute payments made partially according to a priority schedule set out in law.³

Juror and Witness Compensation and Payments

Jurors may be compensated for their service in certain instances.⁴ Juries may also receive meals and lodging.⁵ Witnesses testifying in a court case may also be paid for their services.⁶ The clerks are responsible for disbursing payments to jurors and witnesses, and may do so by cash or warrant.⁷

¹ Section 28.246(4), F.S.

² *Id.*

³ Section 28.246(5), F.S.

⁴ Section 40.24, F.S., provides that 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.

⁵ Section 40.26, F.S.

⁶ Section 40.32(1), F.S.

⁷ Section 40.32(3), F.S.

Writs of Garnishment

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.⁸ The garnishee is the “person or institution (such as a bank) that is indebted to or is bailee for another whose property has been subjected to garnishment.”⁹ Before issuing the writ, the party applying for the writ must deposit \$100 in the registry of the court. The clerk will disburse the \$100 to the garnishee upon demand at any time after the writ is served for payment or partial payment of the garnishee’s attorney fees. When the \$100 is deposited, the clerk must collect the deposit and the statutory fee of three percent (\$3.00), authorized in law as a service charge for the clerk.¹⁰

Tax Certificates, Tax Deeds, and Sale at Public Auction

Tax Lien Certificates

Tax lien certificates are issued by counties against a specific parcel of real property for unpaid delinquent real property taxes, non-ad valorem assessments, special assessments, interest, and related costs and charges.¹¹ A tax certificate is a lien against the real property which can lead to public sale of the property.

When a tax certificate is redeemed (paid by the property owner), the certificateholder will receive 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 any time before a tax deed is issued or the 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.¹² The tax collector then pays the certificate owner the amount received by the tax collector, less the redemption fee.¹³

A tax certificate having a value of less than \$250 in delinquent taxes on property that has been granted a homestead exemption for the year in which the delinquent taxes were assessed may not be sold at public auction.¹⁴ Instead, the tax collector must issue the tax certificate to the county at the maximum rate of interest allowed. The county may not sell the county-held tax certificate for these tax certificates that are valued under \$250, nor can the county apply for a tax deed.¹⁵

Tax Deeds

After 2 years have passed since of the year the tax certificate is issued as of April 1, and provided that the certificate is not cancelled, the certificateholder may file the certificate and an

⁸ Section 77.01, F.S.

⁹ BLACK’S LAW DICTIONARY (9th ed. 2009).

¹⁰ Sections 77.28 and 28.24(10)(a)1., F.S.

¹¹ Section 197.102(1)(f), F.S.

¹² Section 197.472, F.S.

¹³ *Id.*

¹⁴ Section 197.432(4), F.S.

¹⁵ Sections 197.432(4), 197.4725, and 197.502(3), F.S.

application for a tax deed with the tax collector of the county where the property described in the certificate is located.¹⁶ A certificateholder can apply to obtain a tax deed by paying the tax collector all amounts required for redemption or purchase of all other outstanding tax certificates, and interest, omitted taxes plus interest, delinquent taxes plus interest, and current taxes due.¹⁷

Sale at Public Auction

When property is sold by the clerk of court at a public auction, the certificateholder has the right to bid. If the property is homestead property, in addition to inclusion of delinquent taxes in the bid, the certificateholder must include in the minimum bid an amount equal to one-half of the assessed value of the homestead property.¹⁸ 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.¹⁹ 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.²⁰ Any remaining funds must be applied toward the opening bid.²¹

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.²²

If the property is purchased by someone other than the certificateholder and in a higher amount than the statutory bid, the excess is paid over and disbursed by the clerk in priority order to lienholders and the former property owner as set out in s. 197.582(2), F.S.²³ The clerk must notify by mail all persons having an interest in any balance of undisbursed funds.²⁴

Suspension of Driving Privileges for a Failure to Pay Financial Obligations

Upon receipt of notice from the clerk of court that a person has failed to satisfy a financial obligation owed for a qualifying criminal offense, the Department of Highway Safety and Motor Vehicles must suspend the person’s driver’s license. The DHSMV also must suspend a person’s license and motor vehicle registration if the person fails to pay child support for any case other than a Title IV-D case.²⁵

III. Effect of Proposed Changes:

SB 788 revises the procedures by which clerks of courts:

- Collect court-related fees, service charges, costs, and fines.
- Pay jurors.
- Process deposits for a garnishee’s attorney fees.

¹⁶ Section 197.502(1), F.S.

¹⁷ Section 197.502(2), F.S.

¹⁸ Section 197.542(1), F.S.

¹⁹ Section 197.542(2), F.S.

²⁰ Section 197.542(1) and (2), F.S.

²¹ *Id.*

²² Section 197.502(7), F.S.

²³ Section 197.582, F.S.

²⁴ *Id.*

²⁵ Title IV-D cases are ones in which the Department of Children and Family Services enforces child support owed by filing an action in circuit court. Section 409.2563(1)(f), F.S.

- Conduct tax certificate and tax deed sales.

Payment of Court-related Costs

Current law authorizes persons obligated to pay court-related costs to elect to make payments through a payment plan. This bill provides a default payment plan for persons who fail to enroll in the payment plan. The default plan requires full payment within 90 days after the date on which the court orders the individual to pay or notice is sent of the amount due. To elect to participate in a payment plan, a person must apply within 30 days after the date the person receives notice of the amount due. Current law provides no time limit for applications.

Current law does not specify what information is required in the application for a payment plan. This bill now requires an applicant to include a financial affidavit with the application and a proposed plan of up to 24 months of payments. The clerk has 10 days to agree to the plan. Therefore, if the person owing court-related costs does not elect a payment plan, or the clerk does not agree to the plan, the person owes the full amount within 90 days.

If an individual fails to comply with the payment plan, the clerk must notify the Department of Highway Safety and Motor Vehicles within 30 days. Upon receipt of notice, the DHSMV must, in addition to current authority to suspend the person's driver's license, place a registration stop on all vehicles registered in that person's name. The motor vehicle suspension is similar to that which is currently required for persons who have failed to meet child support obligations.

Juror and Witness Compensation

Current law authorizes the clerk of court to pay jurors and witnesses by cash or warrant. This bill allows the clerk the option of making payment by check, which is already current practice.²⁶

Writ of Garnishment

Current law requires the party applying for the writ to deposit \$100 with the court registry for the payment of the garnishee's attorney fees. This bill requires direct payment of the deposit from the party applying for the writ to the garnishee. As such, the clerk will not need to transfer the funds to the garnishee.

Sale of Tax Certificates

Under current law, a tax certificate valued at less than \$250 in delinquent taxes on property that has been granted a homestead exemption for the year in which the delinquent taxes were assessed may not be sold at public auction.²⁷ Instead, the tax collector must issue the tax certificate to the county at the maximum rate of interest allowed, which is 18 percent. The county must not sell the county-held tax certificate for these tax certificates that are valued under \$250, nor can the county apply for a tax deed.²⁸ However, if all tax certificates and accrued interest represent an amount of \$250 or more, the county must apply for a tax deed if the property is

²⁶ Phone conversation with Randy Long, Clerks of Court (March 7, 2014).

²⁷ Section 197.432(4), F.S.

²⁸ Sections 197.432(4), 197.4725, and 197.502(3), F.S.

valued at least \$5,000, and has discretion to apply for tax deeds on property valued under \$5,000.²⁹ This bill requires the county to allow a person to purchase a county-held tax certificate if all certificates and interest are valued at \$250 or more prior to the time that the tax deed application is made.

Redemption of Tax Certificates

Current law authorizes a certificateholder to redeem a certificate at any time after issuance and before a tax deed is issued or the property is placed on the list of lands available for sale. This bill allows property owners to redeem certificates after the property is placed on the list.

Tax Deeds

Although current law provides a list of costs required to be paid by any certificateholder other than a county, current law does not specify who is responsible for the costs of reselling tax certificates or when payment is due. This bill additionally requires the certificateholder to pay costs of resale, if applicable within 15 days from notice by the clerk, or the clerk will enter the land on the list of lands available for taxes.

Current law requires the clerk to enter land on the list of lands available for taxes if there are no bidders at public sale on county-held certificates. This bill additionally requires the clerk to enter land on the list of lands available for taxes if there are not bidders on individually-held certificates and the certificateholder fails to timely pay costs of resale or fails to pay amounts due for issuance of a tax deed within 15 days after the sale.

Sale at Public Auction

Currently, when property is sold by the clerk of court at a public auction, the certificateholder has the right to bid. If the property is homestead property, in addition to including delinquent taxes in the bid, the certificateholder must include in the minimum bid on property in a tax deed sale an amount equal to one-half of the assessed value of the homestead property.³⁰ In this instance, under the bill, the certificateholder must pay to the clerk moneys to cover the one-half value of the homestead within 15 days after the sale. The bill further provides that if the certificateholder fails to make full payment when due, the clerk considers the sale canceled, and the clerk must enter the land on a list entitled "lands available for taxes."³¹ Under the bill, if at the subsequent sale no one bids at the tax deed sale and the certificateholder fails to pay the monies due within 15 days after the sale, the clerk may not readvertise the sale and must instead place the property on a list entitled "lands available for taxes."

Disbursement of Proceeds of Sale

Current law provides that if the proceeds of a tax deed sale exceed the amount of the sale and government liens, the former property owner and other lienholders must be notified of the excess funds. The bill provides that this notice complies with the notice required by laws regulating

²⁹ Section 197.502(3), F.S.

³⁰ Section 197.542(1), F.S.

³¹ Section 197.542(1) and (2), F.S.

holders of unclaimed property. Also, the bill provides that the excess proceeds are presumed payable or distributable on the date the notice is sent. Therefore, the clerks will only have to provide one notice.

Also, excess proceeds are presumed payable or distributable on the date the notice is sent. The bill provides greater detail about how a clerk must handle competing liens and requires the clerk to initiate an interpleader action in the event of potentially conflicting claims on the funds. The clerk will then be eligible for reasonable fees and costs relating to the interpleader action.

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:

None.

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:

The Department of Revenue (DOR) indicates that there will be no fiscal impact to the DOR from the provisions of this bill.³²

To the extent that this bill provides greater clarity and efficiency in the tax sales certificates and deeds process, the clerks of court may have reduced costs.

³² Department of Revenue, *2014 Legislative Bill Analysis (SB 788)* (on file with the Senate Judiciary Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

Currently, s. 40.32(3)(a) and (b), F.S., require jurors and witnesses receiving compensation for their service to sign the payroll prior to receipt of cash or warrant. The Legislature may wish to consider whether the same requirement should apply to persons paid by check.

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 Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.