

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 481 Clerks of Court  
**SPONSOR(S):** Civil Justice Subcommittee, Pilon  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 860

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary	Bond
2) Government Operations Subcommittee		Naf	Williamson
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

### SUMMARY ANALYSIS

Relating to the clerks of the circuit courts, this bill:

- Provides guidelines for electronic filing of documents;
- Requires clerks to seal or expunge certain court documents upon court order;
- Requires persons filing a written request to have their personal information protected under the general agency personnel information public record exemption to specify the document type, name, identification number, and page number of the record that contains the exempt or confidential information;
- Increases the minimum amount the clerks are required to refund without a written request in the event of an overpayment from \$5 to \$10;
- Limits the state agency exemption from payment of court-related fees to the state agency and the party it is representing;
- Authorizes the filing of electronic affidavits regarding publication of a legal advertisement; and
- Provides that following the sale of a tax certificate, if a property is redeemed prior to the clerk receiving full payment from the sale at a public auction, the high bidder must submit a written request in order to receive a refund of the deposit.

The bill may have a positive, indeterminate fiscal impact on state revenues and state expenditures. The bill does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

This bill makes several changes relating to the clerks of courts.

##### ***Electronic Filings***

The clerk of the circuit court is required to keep all papers with the utmost 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 leave of court.<sup>2</sup> The statute does not address requirements to maintain electronic filings.

This bill amends s. 28.13, F.S., to address electronic filings. The bill specifically requires clerks to affix a stamp to submissions to the office indicating the date and time when it was filed. The bill also replaces a provision in current law that papers do not leave the office with language that the clerk must ensure that documents must not be removed from the control or custody of the clerk.

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

The clerk of the circuit court generally acts as the county recorder.<sup>3</sup> This bill amends s. 28.222, F.S., to add a new subsection (4) requiring the clerk, when acting in his or her capacity as a county recorder, to remove recorded court documents from the Official Records pursuant to a sealing or expunction order.

##### ***Public Records***

A clerk of court is a custodian of public records and is thus required to provide access to and copies of public records, if the requesting party is entitled by law to view the record.<sup>4</sup>

Certain personal information of some agency personnel, including law enforcement personnel, firefighters, justices and judges, state attorneys, magistrates, and specified others, is exempt<sup>5</sup> from public records requirements.<sup>6</sup> If such exempt information is held by an agency other than the employer of a specified person, the person must submit a written request for maintenance of the exemption to that agency.<sup>7</sup>

This bill amends s. 119.071(4)(d)2., F.S., to require that a person who submits such written request to maintain the exemption must specify the document type, name, identification number, and page number of the record that contains the exempt or confidential information. This new requirement is applicable to all agency records, not just to records held by a clerk of court.

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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.

<sup>4</sup> See art. I, s. 24(a) of the Florida Const., ch. 119, F.S., and s. 28.24, F.S. The Florida Constitution provides a process by which the Legislature may make certain records or portions of records exempt from public disclosure (art. I, s. 24(c) of the Fla. Const.).

<sup>5</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems 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, 53 (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 1994); *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).

<sup>6</sup> Section 119.071(4)(d), F.S.

<sup>7</sup> Section 119.071(4)(d)2., F.S.

## ***Refunds***

If a clerk of court determines that an overpayment was made, the clerk is required to make a refund if the overpayment exceeds \$5.<sup>8</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>9</sup> This bill amends s. 24.244, F.S., to increase the minimum from \$5 to \$10.

## ***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 clerk of the circuit court, when acting in their official capacity.<sup>10</sup> State agencies are also exempt from all court-related fees and charges assessed by the clerk.<sup>11</sup> This bill amends ss. 28.24 and 28.345, F.S., limiting the state agency exemption to the agency and the party it is representing.

## ***Proof of Publication***

Numerous statutes require the publication of legal notice for various actions.<sup>12</sup> Generally, proof of such publication is made by printed affidavit.<sup>13</sup> This bill amends s. 50.041(2), F.S., to authorize an alternative, electronic affidavit, provided the notarization of the affidavit complies with the electronic notarization statute in s. 117.021, F.S.<sup>14</sup>

## ***Sale at Public Auction***

A tax certificate is issued by a local government relating to unpaid delinquent real property taxes, non-ad valorem assessments, special assessments, interest, and related costs and charges, issued in accordance with ch. 172, F.S., and against a specific parcel of real property.<sup>15</sup> An unpaid tax certificate is a lien against the real property that can lead to public sale of the property.

When a tax certificate is redeemed (paid by the property owner), the certificate holder receives 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 anytime 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.<sup>16</sup> The tax collector then pays the certificate owner the amount received by the tax collector, less the redemption fee.<sup>17</sup>

When property is sold by the clerk of court at a public auction, the certificate holder 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

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<sup>8</sup> Section 24.244, F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 28.345, F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *See, e.g.,* s. 50.011, F.S.

<sup>13</sup> Sections 50.031 and 50.041(1), F.S.

<sup>14</sup> Section 117.021, F.S., requires that when a document is notarized electronically, it contains an electronic signature that is unique to the notary public, capable of independent verification, retained under the notary public's sole control, and attached to or logically associated with the electronic document.

<sup>15</sup> Section 197.102(1)(f), F.S.

<sup>16</sup> Section 197.472, F.S.

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

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

made within 24 hours, the clerk cancels all bids, readvertises the sale, and pays all costs of the sale from the deposit.<sup>19</sup> Any remaining funds must be applied toward the opening bid.<sup>20</sup>

This bill amends s. 197.542(2), F.S., to provide that if the property is redeemed prior to the clerk receiving full payment from the sale at a public auction, the high bidder must submit a written request in order to receive a refund of the deposit. Upon receipt of a written request, the clerk must refund the cash deposit.

#### B. SECTION DIRECTORY:

Section 1 amends s. 28.13, F.S., relating to electronic filings.

Section 2 creates a new subsection (4) of s. 28.444, F.S., relating to removal of certain recorded court documents from the official records, and renumbers subsequent subsections.

Section 3 amends s. 28.24, F.S., relating to service charges.

Section 4 amends s. 28.244, F.S., relating to refunds by the clerk of the circuit court.

Section 5 amends s. 28.345, F.S., relating to exemption from court-related fees and charges.

Section 6 amends s. 50.041, F.S., relating to affidavits for proof of publication.

Section 7 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 8 amends s. 197.542, F.S., relating to sale at public auction.

Section 9 provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The clerks of court believe this bill may have an indeterminate positive impact on state revenues.<sup>21</sup>

##### 2. Expenditures:

The clerks of court believe this bill may have an indeterminate positive impact on state expenditures.<sup>22</sup>

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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<sup>19</sup> *Id.*

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

<sup>21</sup> Bill analysis by the Florida Association of Court Clerks (November 8, 2011). (On file with the Government Operations Subcommittee.)

<sup>22</sup> *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

The bill's amendment of a general public record exemption<sup>23</sup> may implicate the constitutional single subject rule. The Florida Constitution imposes a single subject restriction on laws enacted by the Legislature: "Every law shall embrace but one subject and matter properly connected therewith ..."<sup>24</sup> The Florida Supreme Court has described the purpose of the single subject rule as twofold. First, it attempts to avoid surprise and fraud by ensuring that both the public and the legislators involved receive fair and reasonable notice of the contents of a proposed act. Secondly, the limitation prevents hodgepodge, logrolling legislation. With regard to the test to be applied by the court in determining whether a particular provision violates the single subject rule, the fact that the scope of a legislative enactment is broad and comprehensive is not fatal so long as the matters included in the enactment have a natural or logical connection.<sup>25</sup>

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is an act relating to clerks of court; however, it amends a general public record exemption for agency personnel information to impose an additional requirement.<sup>26</sup> Although located within a general exemption, the proposed change appears to apply only to court records and official records. The sponsor may want to consider an amendment to clarify that the requirement applies only to court records and official records, if that is the intent.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 16, 2011, the Civil Justice Subcommittee adopted three amendments. The amendments:

- Move a provision relating to fee exemptions for state agencies from the statute relating to service charges to the statute relating to fee state agency relations with the clerks; and
- Remove a potentially confusing cross-reference.

The bill was then reported favorably. The analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

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<sup>23</sup> Lines 452-454 of the bill.

<sup>24</sup> Article III, s. 6 of the Florida Const.

<sup>25</sup> *Franklin v. State*, 887 So.2d 1063 (Fla. 2004), rehearing denied.

<sup>26</sup> Lines 452-454 of the bill.