

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB JDC 12-02 Clerks of Court  
**SPONSOR(S):** Judiciary Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1166

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	14 Y, 0 N	De La Paz	Havlicak

### SUMMARY ANALYSIS

This bill makes several changes to current law relating to certain responsibilities of the clerks of the court to enhance the collection of court fees and fines and to improve the efficiency of their operations. The bill also requires broader use of the Comprehensive Case Information System (CCIS) among state agencies to reduce operational costs and duties of the clerks of the court. The most significant changes made by the bill are:

- Requires the Department of the Lottery to use the CCIS, rather than rely solely on notification from the judiciary and other state agencies, to enforce the current prohibition on paying a prize of \$600 or more before collecting outstanding fines and support obligations from persons still owing such amounts.
- Makes the clerk's mandatory review of property and motor vehicle records of persons seeking an indigency determination for purposes of obtaining a public defender discretionary.
- Requires all clerks of the circuit court to participate in the CCIS.
- Clarifies that filing fees are due when a party files a pleading to initiate a proceeding.
- Provides that reopen fees are due upon filing a pleading to reopen a case that has been closed for at least 90 days.
- Requires clerks to collect a \$10 service charge for issuing a certified copy or an electronic certified copy of a summons rather than only for an original summons.
- Provides a \$70 penalty for rescheduling a judicial sale.
- Allows an action for the collection of court costs and fines to be brought at any time.
- Requires the state attorney to notify the clerk of the court when a defendant is a public officer charged with a specified offense before the clerk must send notice of the proceedings to the Commission on Ethics.
- Ranks claims for the collection of unpaid fees, court costs and fines at level three within the eight level ranking order for payment of claims against a decedent's estate by a personal representative.
- Removes the requirement for clerks of the court to send certified copies of felony drug convictions to agencies issuing convicted defendants a business or professional license, and replaces it with a requirement for the license issuing agency to obtain such information from the CCIS.
- Provides that with respect to criminal financial obligations, a previously imposed criminal or civil judgment constitutes a civil lien against the judgment debtor's real or personal property when recorded as required by s. 55.10, F.S. Exempts such liens from the current 10 year rerecording requirement of the statute.
- Adds the payment of fines, fees and other court related costs as a condition of parole in addition to the current condition of paying restitution. Preserves restitution as the first priority for payment.

The bill appears to have an indeterminate fiscal impact.

This bill is effective July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Lottery Prize Collections**

Section 24.115(4), F.S., requires the judicial branch and state agencies to identify to the Department of the Lottery persons owing an outstanding debt to any state agency or owing child support, spousal support or alimony collected through a court if the child support obligation is being enforced by the Department of Revenue. Before any prize of \$600 or more is awarded to a person owing such a debt, the Department of the Lottery must first transmit the amount of the debt owed to the agency claiming the debt and may then authorize payment of the balance, if any, to the winner after deduction of the prize. If a winner owes multiple debts, obligations of child support take priority over all other debts owed, with any remaining amounts to be distributed among the other agencies based upon the ratio of the individual debt to the remaining debt owed to the state.

This bill requires the Department of the Lottery to use the Comprehensive Case Information System of the Florida Association of Court Clerks and Comptroller, Inc., (CCIS) to determine whether a prize winner owes outstanding fines, fees, or court costs to the state as an additional means of complying with the requirement to check outstanding debts prior to paying wards of \$600 or more.<sup>1</sup>

##### **Determinations of Indigency**

Section 27.52, F.S., requires the clerk of the court to determine whether an applicant seeking appointment of a public defender is indigent pursuant to the following criteria: The applicant

- is at or below 200% of the federal poverty guidelines;
- is receiving Temporary Assistance for Needy Families-Cash Assistance;
- is receiving poverty-related veteran's benefits; or
- is receiving Supplemental Security Income (SSI)

There is, however, a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value under \$5,000.

Current law mandates the clerk to conduct a review of property records for the county in which an applicant resides and motor vehicle title records of the state to identify any property interests of the applicant.<sup>2</sup> The clerk must evaluate and consider the results of its review in making a determination of indigency. The clerk is also required to maintain the results of the review in a file with the application and provide the file to the court if the applicant seeks a court review of a clerk's determination that the applicant is not indigent.

This bill removes the requirement that the clerk review and evaluate property and motor vehicle records by providing that the clerk "may" conduct a review and evaluation of such records. If, however, the clerk conducts a review, a file of the review will be maintained for a court's review of a denial of an application for indigency.

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<sup>1</sup> The Florida Association of Court Clerks and FACC Services Group describes the Comprehensive Case Information System (CCIS), as "a secured internet portal providing a single point of search for statewide court case information. CCIS users are comprised of the judicial community, state and local law enforcement, state agencies, and the Florida Legislature."

<sup>2</sup> Section 27.52(2)(a)2.b., F.S.

## **Participation in the Comprehensive Case Information System (CCIS)**

This bill deletes a provision in s. 28.24, FS, which is a provision concerning service charges for clerks of the circuit court, that requires all circuit court clerks to participate in the CCIS by January 1, 2006, and creates s. 28.2405, F.S., which requires their participation in the system and further requires them to submit their electronic cases to the system according to types designated by the Supreme Court.

### **Filing Fees**

Chapter 28 of Florida Statutes pertains to clerks of the circuit court while chapter 34 relates to county courts. Current law requires a party "instituting any civil action" to pay the statutorily prescribed filing fee to the clerk of the court. This bill amends ss. 28.241, F.S., and 34.041, F.S., to clarify that filing fees are to be paid at the time a party files a case with the clerk.

Under current law a party reopening a civil action or proceeding in circuit court must pay a filing fee not exceeding \$50.<sup>3</sup> In county court, reopening fees are up to \$25 for all claims not more than \$500, and up to \$50 for claims over \$500.<sup>4</sup> A case is "reopened" when it has previously been reported as disposed of and is resubmitted to the court. Under the bill, a case is reopened after all appeals have been exhausted, or the time to file an appeal from a final order or final judgment has expired.

The bill provides that reopening fees are to be assessed by the clerk when pleadings to reopen a case have been filed at least 90 days from the filing of a final order or final judgment with the clerk. For pleadings to reopen cases closed at least 90 days, the reopening fee is due upon filing of the pleading with the clerk. The bill specifies that reservation of jurisdiction by a court does not cause a case to remain open for purposes of assessing a reopening fee.

Section 28.241(1)(b), F.S., and s. 34.041, F.S., lists several exceptions to the payment of a reopening fee. This bill adds "motions to enforce stipulations" and "motions for contempt" to the list of exceptions from this fee.

The bill requires the clerk to pursue collection of fees under s. 28.246, F.S., if a party fails to pay a required fee.

### **Service Charges for Issuance of a Summons**

Current law requires the clerks of the court to collect a \$10 service charge for issuing a summons from a party seeking to have a summons issued. This bill amends s. 28.241(1)(d), F.S., and s. 34.041, F.S., to require the collection of the fee for the issuance of an original, certified copy or an electronic certified copy of a summons.

### **Service Charges for Services Related to Judicial Sales**

Currently, s. 45.035, F.S., mandates clerks of the court to receive service charges related to the judicial sales procedure set forth in ss. 45.031-.034 for real and personal property. The statute imposes a \$70 service charge for clerk's services of making, recording, and certifying the sale and title from such proceedings. Also, if there is any surplus resulting from a sale, the clerk may receive the following service charges, which must be deducted from the surplus:

- \$28 which may only be used for purposes of educating the public as to the rights of homeowners regarding foreclosure proceedings.
- A \$15 service charge for notifying a surplus trustee of his or her appointment.
- A \$15 service charge for each disbursement of surplus proceeds.

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<sup>3</sup> Section 28.241(1)(b), F.S.

<sup>4</sup> Section 34.041(2), F.S.

- A \$15 service charge for appointing a surplus trustee, furnishing the surplus trustee with a copy of the final judgment and the certificate of disbursements, and disbursing to the surplus trustee the trustee's cost advance.

For sales conducted by electronic means, under s. 45.031(10), the clerk receives an additional service charge of up to \$70 for services in conducting or contracting for the electronic sale.

This bill adds an additional \$70 charge against the plaintiff for each rescheduling of a judicial sale. This must be paid prior to the rescheduled sale.

### **Statute of Limitations**

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. Section 95.11, F.S., is the statute of limitations provision governing actions other than for the recovery of real property. Under this section, an action on a judgment or decree of court must be commenced within twenty years. This bill provides that, with respect to court costs and fines owed to the state, a collection action may be commenced at any time.

### **Notice of Breach of Public Trust Offense by Public Official**

Section 112.3173, F.S., requires the clerk of the court to provide notice to the Commission on Ethics when a proceeding against a public official for a "specified offense" is being conducted in its court.<sup>5</sup> This bill requires the clerk to submit the required notice after the state attorney advises the clerk that a defendant is a public officer or employee and that the defendant is alleged to have committed a specified offense.

### **Community Service in Lieu of Civil Penalty**

Section 318.18, F.S., sets forth the civil penalties for traffic violations. Currently, if a person has been ordered to pay a civil penalty for a noncriminal traffic infraction and is unable to do so due to a financial hardship, the court must allow the person to satisfy the civil penalty by participating in community service until the civil penalty is paid. Such persons either receive credit for community service hours against the civil penalty at a specified hourly rate based on the wage rate specified under the federal Fair Labor Standards Act of 1938 or, if the person has a trade or profession, at the average prevailing wage rate for that trade or profession.<sup>6</sup> The supervision of the performance of community service hours is conducted by "a community service agency" that agrees to accept community service from persons unable to pay their civil penalties.<sup>7</sup>

<sup>5</sup> Under s. 112.3173(4)(a), F.S., a copy of an information, indictment, or other document containing the charges is sufficient for notice. Section 112.3173(2)(e), F.S., defines a "specified offense" as:

1. The committing, aiding, or abetting of an embezzlement of public funds;
2. The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;
3. Bribery in connection with the employment of a public officer or employee;
4. Any felony specified in chapter 838, except ss. 838.15 and 838.16;
5. The committing of an impeachable offense;
6. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position; or
7. The committing on or after October 1, 2008, of any felony defined in s. 800.04 against a victim younger than 16 years of age, or any felony defined in chapter 794 against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

<sup>6</sup> Section 318.18(8), F.S.

<sup>7</sup> Section 318.18(8)(b), F.S., defines "Community service agency" as a "not-for-profit corporation, community organization, charitable organization, public officer, the state or any political subdivision of the state, or any other body the purpose of which is to improve the quality of life or social welfare of the community and which agrees to accept community service from persons unable to pay civil penalties for noncriminal traffic infractions."

Currently, the community service agency must record the number of community service hours completed along with the date of completion to clerk of the court on letterhead of the community service agency and signed by the designated representative of the community service agency. This bill requires the signature of the representative of the community service agency to be notarized on the record submitted to the clerk.

### **Uniform Electronic Transaction Act**

Section 668.50, F.S., is known as the Uniform Electronic Transaction Act. The act applies to electronic records and electronic signatures relating to a transaction.<sup>8</sup> The act does not apply to the transactions to the extent they are governed by:

1. A provision of law governing the creation and execution of wills, codicils, or testamentary trusts;
2. The Uniform Commercial Code other than s. 671.107 and chapters 672 and 680;
3. The Uniform Computer Information Transactions Act; or
4. Rules relating to judicial procedure.

This bill removes the complete exclusion of rules relating to judicial procedure from the provisions of the act and makes subsections (2), (9) and (11) of the act applicable to documents filed with the court. Subsection (2) is the definitions section of the act. Subsection (9) is the provision of the act relating to attributing an electronic signature to the person making the electronic signature in a manner showing the "efficacy of any security procedure." Subsection (11) relates to electronic notarization of signatures.

### **Priority of Payment of Expenses and Obligations**

Section 733.707, F.S., sets forth the order in which the personal representative of a decedent's estate must pay the expenses of the estate's administration and obligations against creditors. It provides the following order of payment:

- Class 1.—Costs, expenses of administration, and compensation of personal representatives and their attorneys fees and attorneys fees awarded under s. 733.106(3).
- Class 2.—Reasonable funeral, interment, and grave marker expenses, whether paid by a guardian, the personal representative, or any other person, not to exceed the aggregate of \$6,000.
- Class 3.—Debts and taxes with preference under federal law, and claims pursuant to ss. 409.9101 and 414.28.
- Class 4.—Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of persons attending the decedent.
- Class 5.—Family allowance.
- Class 6.—Arrearage from court-ordered child support.
- Class 7.—Debts acquired after death by the continuation of the decedent's business, in accordance with s. 733.612(22), but only to the extent of the assets of that business.
- Class 8.—All other claims, including those founded on judgments or decrees rendered against the decedent during the decedent's lifetime, and any excess over the sums allowed in paragraphs (b) and (d).

This bill inserts claims in favor of the state for unpaid court costs, fees or fines at the class three level of this section.

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<sup>8</sup> Section 668.50(2), F.S., defines an "Electronic record" as "a record created, generated, sent, communicated, received, or stored by electronic means." An "Electronic signature" is defined as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." A "Transaction" is defined as "an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, insurance, or governmental affairs."

## **Suspension of License to Practice Upon Conviction of Certain Felonies**

Currently, under s. 893.11, F.S., the clerk of the court must send a certified copy of a judgment of conviction of any person holding a license, permit, or certificate issued by a state agency, to the head of the agency when such conviction is for a felony offense of selling, trafficking, or conspiracy to sell or traffic in a controlled substance. The certified copy of the judgment must show the person's license number, permit number, or certificate number on the face of the document. The agency head must suspend or revoke the license, permit, or certificate of the convicted defendant to practice his or her profession or to carry on his or her business.

This bill removes the above requirements as they relate to the clerks of the court, and replaces them with a requirement that state agencies use the CCIS to obtain the information relating to such convictions of license, permit or certificate holders. The bill requires the clerks to provide certified copies of such convictions when requested by an agency. The bill substitutes the reference to "permit or certificate" holders with persons issued a "business or professional" license.

## **Costs of Prosecution and Investigation**

Section 938.27(2)(a), F.S., requires a court to impose costs of prosecution and investigation notwithstanding a defendant's present inability to pay. Currently, these costs are to be paid within a "specified period or in specified installments." This bill requires such payments to be made in accordance the payment plan provided in s. 28.246, F.S., which requires the clerk to enter into a payment plan for individuals found by a court to be indigent for costs. Section 28.246, F.S., provides for a monthly payment plan. The monthly payment amount, which is calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income divided by 12. The court may review the reasonableness of the payment plan.

## **Financial Obligations in Criminal Cases**

A judgment lien generally refers to a lien against property that is based on an underlying money judgment. A judgment lien on real property is created and perfected upon the recording of a certified copy of a judgment in the official county records. Under s. 55.10, F.S., the judgment shall be a lien for an initial period of 10 years from the date of the recording. A lien may be extended for an additional 10 years by rerecording a certified copy of the judgment prior to the expiration of the lien and by simultaneously recording an affidavit with the current address of the person who has a lien as a result of the judgment. Section 55.081, F.S., provides that a judgment lien on real property can be effective for up to 20 years from the date the judgment was entered.

This bill amends s. 938.30, F.S., relating to financial obligations in criminal cases to provide that in cases where a criminal or civil judgment has been previously entered on a court-imposed financial obligation, the judgment constitutes a lien against the judgment debtor's presently owned or after-acquired real or personal property when recorded pursuant to s. 55.10, F.S. The bill exempts such liens from the 10 year rerecording requirement of s. 55.10, F.S. The judgment must secure all unpaid court-imposed financial obligations that are due and accrue subsequent to the recording of the judgment, including interest and reasonable costs for the issuing a satisfaction and recording the satisfaction in the records. The bill further authorizes the clerks to enforce, satisfy, settle, release or dispose of any debts or liens imposed and collected.

## **Parole and Fines, Costs and Restitution**

Currently, s. 947.181, F.S., provides that the Parole Commission (commission) shall require restitution to the victim as a condition of parole unless the commission states reasons on the record for not ordering it. The amount of restitution is determined by the commission unless restitution has previously been ordered by the court under s. 775.089, F.S. Court ordered restitution must be made a condition of parole. If a parolee fails to make restitution as ordered it is considered a violation of parole and may be cause for revocation of parole.

This bill adds the payment of fines, fees and other related court costs to be included as a required condition of parole. Under the bill, the commission must order these amounts along with restitution unless the commission states reasons on the record for not ordering them. In the payment of these amounts, restitution to the victim is given first priority over the payment of fines, fees and other related court costs. The failure to pay any of these amounts is considered a violation of parole and may cause a revocation of parole.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 24.115, F.S., relating to payment of prizes.

Section 2. Amends s. 27.52, F.S., relating to determination of indigent status.

Section 3. Amends s. 28.24, F.S., relating to service charges by the clerk of the circuit court.

Section 4. Creating s. 28.2405, F.S., relating to Comprehensive Case Information System.

Section 5. Amends s. 28.241, F.S., relating to filing fees for trial and appellate proceedings.

Section 6. Amends s. 34.041, F.S., relating to filing fees.

Section 7. Amends s. 45.035, F.S., relating to clerk's fees.

Section 8. Amends s. 57.081, F.S., costs; right to proceed where prepayment of costs and payment of filing fees waived.

Section 9. Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 10. Amends s. 112.3173, F.S., felonies involving breach of public trust and other specified by public officers.

Section 11. Amends s. 318.18, F.S., amount of penalties.

Section 12. Amends s. 668.50, F.S., Uniform Electronic Transaction Act.

Section 13. Amends s. 733.707, F.S., order of payment of expenses and obligations.

Section 14. Amends s. 893.11, F.S., suspension, revocation, and reinstatement business and professional license.

Section 15. Amends s. 938.27, F.S., judgment for costs conviction.

Section 16. Amends s. 938.30, F.S., financial obligations in criminal cases; supplementary proceedings.

Section 17. Amends s. 947.181, F.S., Victim restitution as condition of parole.

Section 18. Provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact of this bill is indeterminate due to the unquantifiable nature of the savings and potential costs associated with the bill. Some aspects of the bill can be expected to generate costs savings and increased collections. For example, the provision of the bill adding an additional \$70 charge for rescheduling of judicial sales will increase revenues for the clerks. Similarly, the removal of the obligation from the clerks to send certified copies of felony convictions to the agency head of licensing agencies in order to suspend the business or professional license of persons convicted of selling or trafficking in controlled substances, and replacing it with an obligation on state agencies to obtain the information directly from the CCIS, will likely result in an overall savings. On the other hand, there are components of the bill which remove some responsibilities of clerks of the court which will reduce some of their workload, however, it is unclear whether the change will result in a fiscal positive or negative to the state overall. For example, the removal of mandatory review of property and motor vehicle records to identify property interests of persons claiming indigency to secure the services of the public defender may result in more persons receiving their services who would have otherwise been found not to be indigent. While the clerks still have discretion to conduct these reviews under the bill, it is not clear how often these reviews will take place or how a determination to conduct a review will be made.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.



#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.