

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 914

INTRODUCER: Judiciary Committee, Senator Crist and others

SUBJECT: Court Fees and Penalties

DATE: April 17, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Merlin	Maclure	JU	Fav/CS
2.			JA	
3.				
4.				
5.				
6.				

I. Summary:

This bill waives civil court costs and fees for a person whose income is equal to or below 150 percent of then-current federal poverty guidelines. In addition, the bill waives civil court costs and fees for a person who receives Temporary Assistance for Needy Family (TANF) Assistance, poverty-related veteran's benefits, or Supplemental Security Income (SSI). Under the bill, if an indigent person does not meet these tests for poverty, the person will be enrolled in a payment plan to repay costs and fees.

Currently, a judge must determine that an indigent inmate who intervenes in, or who initiates, a judicial proceeding has a legally sufficient cause of action before the prisoner's case is allowed to proceed, but this prescreening process does not apply to pretrial detainees. The bill requires a judge to determine whether an indigent pre-trial detainee has a legally sufficient cause of action before his or her case can proceed.

In addition, existing law authorizes counties meeting certain conditions to impose a surcharge for traffic infractions in order to service bonds issued prior to 2003 for the funding of state-court facilities. This bill authorizes those counties to use surcharge revenue exceeding the debt service on those bonds for certain purposes related to court facilities. Based on a certification of need by the chief judge, those counties are also authorized to levy this surcharge concurrently with another traffic-infraction surcharge that other counties may levy to fund state-court facilities.

This bill substantially amends the following sections of the Florida Statutes: 57.082, 57.085, and 318.18.

II. Present Situation:

Civil Court Fees and Costs for Indigents

Under Florida law, 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.

The law requires that a person who claims an inability to pay for such services must apply to the clerk of the court for a determination of indigent status.² A person who the clerk or the court determines meets such criteria is enrolled in a prepayment plan based on the person’s income and ability to pay.³ However, a person is not required to pre-pay costs and fees if he or she is determined to be indigent by the clerk or the court.

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 2007.⁴ As noted in the OPPAGA report, in 1998, Florida voters approved Revision 7 to Article V of the state constitution, 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.⁵ “Except under certain conditions, one-third of [those] funds are transmitted to the state to help fund the operation of the state courts system.”⁶ 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.”⁷

¹ Section 57.081, F.S.

² Section 57.082(1), F.S.

³ Section 57.082(5), F.S.

⁴ 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) [hereinafter “OPPAGA Report”].

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Collection Rates

To ensure accountability for revenues, the Legislature created the Clerks of Court Operations Corporation (the Corporation), through s. 28.35, F.S. The Corporation adopted performance standards to measure the collection of funds from court fines, fees, service charges, and costs. Statewide, clerks have generally met these standards but have faced difficulties in collecting fees from certain groups.⁸ For example, juvenile defendants have limited means to pay assessments themselves because of child labor restrictions or incarceration. Similarly, civil traffic fines are difficult to collect because many citations are given to drivers from other counties and other states who do not pay the fines.⁹

Collection Methods and Performance Results

Currently, clerks use a variety of different methods to maximize collections. These methods include:

- Payment plans;
- Private collection agencies;
- Driver's license sanctions;
- Liens;
- Defendant notifications;
- Web Pay Point;
- Clerks as agents;
- Collection courts;
- Electronic funds transfers;
- Wage garnishment; and
- Bank garnishment.¹⁰

Despite the various methods of collections available to clerks, the overall collections rates among clerks range “from a low of 36% to a high of 90%.”¹¹ According to the OPPAGA report, “[t]hese differences are the result of a variety of factors including collection techniques and population demographics of their counties such as the median per capita income, degree of urbanization, population size, and other factors outside clerks' control.”¹²

Civil Actions by Indigent Inmates

Section 57.085, F.S., requires any inmate who is involved in a judicial proceeding and who alleges indigency to file an affidavit of indigence with the clerk of the court. In addition, a prescreening judge must determine that such a case is legally sufficient to support a cause of action before it is allowed to proceed. Currently, however, the prescreening statute does not

⁸ *Id.* at 2.

⁹ *Id.* at 3.

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² *Id.*

apply to pretrial detainees, some of whom may be responsible for filing frivolous claims.¹³

Surcharges for Traffic Infractions and Violations, and Criminal Offenses

Section 318.18(13)(a), F.S., authorizes counties to impose a surcharge of up to \$15 for civil traffic infractions and criminal traffic violations as provided by law to fund state court facilities. Alternatively, under s. 318.18(13)(b), F.S., certain counties that previously used increased court fees and service charges to secure payment for bonds issued before July 1, 2003, to finance court facilities may impose a similar traffic surcharge to pay off those existing bonds. However, a county may not impose both surcharges concurrently.

III. Effect of Proposed Changes:

Civil Court Fees and Costs for Indigents

Under existing law, a person who is indigent and cannot afford civil court costs and fees is still entitled to the services of the court system. However, the person must repay the amount for such services. In contrast to the current law, this bill waives civil court costs and fees for a person whose income is equal to or below 150 percent of then-current federal poverty guidelines. The bill also waives civil court costs and fees for a person who receives Temporary Assistance for Needy Family (TANF) Assistance, poverty-related veteran's benefits,¹⁴ or Supplemental Security Income (SSI). Under the bill, if an indigent person does not meet these tests for poverty, the person will be enrolled in a payment plan to repay costs and fees.

There are two versions of the federal poverty measure – poverty thresholds and poverty guidelines.¹⁵ “The poverty thresholds are the original version of the federal poverty measure.”¹⁶ 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).”¹⁷ 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 – for instance, 125 percent or 185 percent of the guidelines” to determine eligibility.¹⁸ In the 48 contiguous states and the District of Columbia, the federal poverty guideline for a family of two people is \$13,690.¹⁹

Currently, under the Florida Statutes, 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

¹³ According to the Florida Sheriffs Association, a number of inmates in Florida prisons have filed “frivolous cases against jailers, medical and food service providers, and others.” To that end, prisoner petitions have alleged such things as “insufficient amounts of drink mix, unacceptable footwear, or that the lights are too bright and the jail too noisy.”

¹⁴ “Poverty-related veteran’s benefits” is not defined in the bill.

¹⁵ 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 April 7, 2007).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

household of the applicant by the United States Department of Health and Human Services.”²⁰ Thus, for a family of two people, the threshold of 200 percent is \$27,380, and the indigent party seeking court services may proceed without prepayment but is required to repay court costs and fees.

Under the bill, a threshold equal to or below 150 percent would be \$20,535, and the indigent party seeking court services would not be required to repay the court costs and fees.

Civil Actions by Indigent Inmates

Under current law, a judge must determine that an indigent inmate’s case is legally sufficient to support a cause of action before the prisoner’s case is allowed to proceed, but this prescreening process does not apply to pretrial detainees. The bill requires a judge to determine whether an indigent pretrial detainee has a legally sufficient cause of action before a pretrial detainee’s case can proceed.

Surcharges for Traffic Infractions and Violations, and Criminal Offenses

Existing law authorizes counties meeting certain conditions²¹ to impose a surcharge for traffic infractions in order to service bonds issued prior to 2003 for the funding of state-court facilities.²² This bill provides that if the surcharge generates surplus revenues exceeding the debt service on the bonds, these counties may use the surplus to:

1. Pay down the debt service;
2. Fund additional court-facility projects that the chief judge certifies as necessary for specified purposes; or
3. Support local law libraries located in or near the county courthouse or annexes.

Based on the certification of need by the chief judge, those counties are also authorized to levy this surcharge concurrently with another traffic-infraction surcharge that other counties may levy to fund additional state-court facilities.²³

Under the bill, a chief judge may certify the need for additional state-court facilities for the following reasons:

1. Unexpected caseload growth;
2. Emergency requirements to accommodate public access;
3. Threats to courthouse safety; and
4. Other exigent circumstances.

The bill provides an effective date of July 1, 2007.

²⁰ Section 57.082(2)(a)1., F.S.

²¹ Counties meeting those conditions include: Miami-Dade, Hillsborough, and Bay.

²² Section 318.18(13)(b), F.S.

²³ Section 318.18(13)(a), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, a person may not have to repay civil court costs and fees if his or her income falls below a minimum threshold or if he or she receives specified income assistance. As a result, a person who is unable to afford court costs and fees may find it easier to participate in legal proceedings. In addition, a prescreening judge may be required to determine whether a case that is filed by a pretrial detainee is legally sufficient to support a cause of action before it is allowed to proceed. Thus, pretrial detainees may be less inclined to file frivolous claims.

C. Government Sector Impact:

The clerk of court may collect less revenue for civil court services because some people would not be required to repay 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 proceedings.²⁴ “Except under certain conditions, one-third of [those] funds are transmitted to the state to help fund the operation of the state courts system.”²⁵ However, the impact of this bill is indeterminate because it is not known how many people would make use of the services or would qualify for a fee waiver.

This bill also authorizes certain counties that are currently authorized to levy a surcharge for the service of bonds issued prior to 2003 for the funding of state-court facilities under s. 318.18(13)(b), F.S., to concurrently impose another traffic-infraction surcharge that other counties may levy to fund state-court facilities under s. 318.18(13)(a), F.S.

²⁴ OPPAGA Report, *supra* note 4, at 1.

²⁵ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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