

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 557 Payments to Clerks of the Circuit Courts

SPONSOR(S): LaMarca and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 356, SB 386

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	16 Y, 0 N	Brascomb	Jones
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Each of Florida's 67 counties has a clerk of court, an elected constitutional officer who oversees judiciary functions in the county and circuit courts. The clerks are authorized to charge fees for performing various functions. Moreover, clerks collect court costs and fines related to a court disposition.

An indigent person may ask the clerk of court to allow him or her to enter into a payment plan for outstanding financial obligations owed to the clerk. If a fee, service charge, fine, or court cost remains unpaid for 90 days, and the clerk has attempted to collect the unpaid amount through an internal process, the clerk may forward the unpaid accounts to an attorney or collection agent.

Under current law, a person's driver license can be suspended for various reasons, including:

- Failure to pay a court fee or fine.
- Failure to comply with or appear at a traffic summons.
- Having unpaid citations in another state.

HB 557 requires clerks of court to establish uniform payment plans for court-related fees, service charges, costs, and fines for persons who apply for a payment plan. When a person seeks to be enrolled in a payment plan, the clerk must require the person to set up automatic withdrawals, if the person has such capability. If the person is unable to comply with the payment plan terms, a court may modify the plan or convert the outstanding amount to community service. The bill provides a 30-day grace period for certain payments prior to the Department of Highway Safety and Motor Vehicles being notified to suspend a person's driver license.

The bill also removes the clerk's authority to suspend a driver license based on a failure to pay fines or fees if the underlying offense is not driving-related. The bill allows a person whose driver license is suspended for nonpayment of such fines and fees to reinstate his or her license upon payment of a reinstatement fee.

The bill may have a significant negative fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Clerks of the Circuit Court

Each of the 67 Florida counties has a clerk of court, an elected constitutional officer who oversees judiciary functions as the clerk of the county and circuit courts.¹ The clerk may also serve as the ex-officio clerk of the board of county commissioners, as well as the auditor, recorder, and custodian of county funds.

The State Constitution requires the clerks of court to be funded from revenue generated from charges for service, court costs, filing fees, and fines from civil and criminal proceedings.² The revenue is used for court-related functions as well as select costs, expenses, and salaries as provided by law.³ Court-related functions include:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing for the assignment, reopening, reassignment, and appeal of cases;
- Reasonable administrative support costs;
- Data collection and reporting;
- Determinations of indigent status; and
- Collection and distribution of fines, fees, service charges, and court costs.⁴

The clerk of courts statewide operating budgets vary each year depending on the amount of revenues generated. For fiscal year 2013-2014, clerks had an operating budget of \$472.3 million for court-related functions. The 2017-2018 budget was \$409.04 million, the 2018-2019 budget was \$424.8 million, and the 2019-2020 budget was \$446.8 million.⁵

Between October 1, 2017, and September 30, 2018, the clerks, statewide:

- Assessed \$1,163,151,976 in fines and fees; and
- Collected \$863,594,314, for a collection rate of 74.25 percent statewide.⁶

Revenue collected from fines and fees are not solely budgeted to the clerks of court. For example, the Legislature has provided that a 5 percent surcharge for certain non-criminal traffic citations is deposited into the Crimes Compensation Trust Fund.⁷ Additionally, that same trust fund collects \$49 from every \$50 collected as a fine from every adjudication for a felony, misdemeanor, delinquent act, or criminal traffic offense.⁸ During fiscal year 2019-2020, the Crime Compensation Trust Fund received nearly \$12.7 million of revenue generated from fines and fees collected by clerks of court.⁹

¹ Art. V, s. 16, Fla. Const.

² Art. V, s. 14, Fla. Const.

³ *Id.*

⁴ S. 28.35(3)(a), F.S.

⁵ Gary Blankenship, *Court Clerks Get a Bit of the Budget Help they Need*, Fla. Bar News (May 13, 2019), <https://www.floridabar.org/the-florida-bar-news/court-clerks-get-a-bit-of-the-budget-help-they-need/> (last visited Mar. 10, 2021); Florida Clerks of Court Operations Corporation, *CFY 2019-20 Annual Report* (2021), <https://flccoc.org/wp-content/uploads/2021/01/2019-20-Annual-Report-Final.pdf> (last visited Mar. 10, 2021).

⁶ Florida Court Clerks and Comptrollers, *2018 Annual Assessments and Collections Report*, <https://flccoc.org/2018-annual-assessments-and-collections-report/> (last visited Mar. 10, 2021).

⁷ S. 938.04, F.S. The Crimes Compensation Trust Fund was created to compensate crime victims. S. 960.21, F.S.

⁸ S. 938.03, F.S.

⁹ Florida Clerks of Court Operations Corporation, *Agency Analysis of 2021 SB 386* (Feb. 2021).

If a fee, service charge, fine, or court cost remains unpaid for 90 days, and the clerk has attempted to collect the unpaid amount through an internal process, the clerk may forward the unpaid accounts to an attorney or collection agent.¹⁰ Some counties have unpaid fines and fees totaling hundreds of millions of dollars from decades ago.¹¹

Payment Plans

Court costs, fees, and other fines related to a court disposition are enforced by court order and collected by the clerks of court. A person may apply to the clerk of court to enter into a payment plan if that person is "indigent," which means he or she:

- Has an income equal to or below 200 percent of the federal poverty guidelines;¹² or
- Is receiving:
 - Temporary Assistance for Needy Families-Cash Assistance;
 - Poverty-related veterans' benefits; or
 - Supplemental Security Income.¹³

A monthly payment that does not exceed 2 percent of an indigent person's average monthly pay is presumed to correspond to the indigent person's ability to pay.¹⁴

The Clerk is required to charge a fee of up to \$5 per month for receipt or disbursement of all partial payments, with the exception of restitution, that are not subject to the administrative processing service charge pursuant to s. 28.246, F.S.¹⁵ A one-time administrative processing charge of an amount not exceeding \$25 is assessed for setting up a payment plan, in lieu of a per month charge.¹⁶ The collected monthly and payment plan fees are retained by the Clerk. Additionally, county tax collectors are required to charge a service fee of \$6.25 when providing services in ch. 322, F.S.

Fines and Fees for Traffic Infractions and Criminal Offenses

Florida law imposes a schedule of fees for various noncriminal traffic offenses, including the following monetary penalties:

- For infractions of pedestrian regulations, \$15.
- For nonmoving traffic violations, \$30.
- For moving violations involving an unlawful speed not within a school zone, up to \$250, depending on the egregiousness of the violation.¹⁷

Some traffic infractions are classified as criminal traffic infractions, including:

- Fleeing or attempting to elude a police officer.
- Leaving the scene of a crash.
- Driving under the influence.
- Reckless driving.
- Making a false crash report.¹⁸

¹⁰ S. 28.246(6), F.S.

¹¹ Broward County has \$735.6 million in outstanding fees and fines from felony, misdemeanor, and traffic dispositions. Similarly, Palm Beach County has \$277.5 million outstanding, and Miami-Dade County has \$278 million from felony adjudications alone. Dan Sweeney, *South Florida felons owe a billion dollars in fines - and that will affect their ability to vote*, South Florida Sun Sentinel (May 31, 2019), <https://www.sun-sentinel.com/news/politics/fl-ne-felony-fines-broward-palm-beach-20190531-5hxf7mveyree5cjhk4xr7b73v4-story.html> (last visited Mar. 10, 2021).

¹² Currently, the federal poverty level is \$12,760 for individuals, with an additional \$4,480 for each additional family member in the individual's household. See U.S. Department of Health and Human Services, *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*, <https://aspe.hhs.gov/2020-poverty-guidelines> (last visited Mar. 10, 2021).

¹³ S. 27.52(1), F.S.

¹⁴ S. 28.246(4), F.S.

¹⁵ S. 28.24(26)(b), F.S.

¹⁶ S. 28.24(26)(c), F.S.

¹⁷ See s. 318.18, F.S.

¹⁸ See s. 318.17, F.S.

Certain crimes in Florida have significant mandatory minimum fines. A person convicted of trafficking cocaine, for example, must pay a fine of:

- \$50,000 if the amount trafficked is at least 28 grams; or
- \$250,000 if the amount trafficked is more than 400 grams.¹⁹

Depending on the person's income and ability to pay, such a fine or fee may take years or even decades to pay. For example, one Miami-Dade County resident who was convicted of grand theft agreed to a payment plan for \$190,000. She pays \$100 per month and is scheduled to complete her payment plan in 190 years.²⁰

Driver's License Suspension in Florida

A license can be suspended for various reasons, including:

- Failure to pay a fine.
- Failure to comply with or appear at a traffic summons.
- Unpaid citations reported by another state.²¹

Under certain conditions, if a person fails to enter into a payment plan with a clerk of court for unpaid obligations, the clerk of court may notify the Department of Highway Safety and Motor Vehicles, which may in turn suspend the person's driver license.²² Nearly 2 million of the more than 14 million driver licenses issued in Florida are suspended for unpaid fines.²³

Effect of Proposed Changes

HB 557 requires clerks of courts to establish uniform payment plans for court-related fees, service charges, costs, and fines for individuals who apply for a payment plan. These payment plans must be available electronically, by mail, or in person. The clerk must enroll an individual seeking deferment of payment into a monthly payment plan within 30 calendar days of the court's entering the order. If the individual is incarcerated, he or she must apply to the clerk for enrollment in a payment plan within 30 calendar days after release. The clerk may not refer a case to collection or send notice to the department to suspend an individual's driver license for nonpayment or failure to comply with the terms of a payment plan if the individual is still incarcerated.

If the individual is determined by the court to be indigent, a monthly payment amount must be calculated based upon all current and anticipated fines, fees, costs and service charges owed within the county and must correspond to his or her ability to pay if it is not more than 2 percent of the person's average monthly income or \$10, whichever is greater. If the person is unable to comply with the payment plan terms, the court may modify the payment plan or convert the outstanding amount to community service. The bill removes the provision in s. 28.24(26)(b), F.S., that allows for a \$5 fee per month for partial payments. The clerk may charge a one-time administrative processing charge not to exceed \$25 to implement a payment plan. The fee may be paid in up to five equal monthly payments. The clerk may waive the fee for any person who enrolls in an automatic electronic debit payment plan.

The clerk may notify a person of upcoming or past due payments. If a person who is not incarcerated fails to comply with specified civil penalties, fails to enter into or comply with the terms of a penalty payment plan, fails to attend driver improvement school, or fails to attend a scheduled hearing, the clerk may notify DHSMV within 30 days to suspend the person's license, not within 10 days as current law requires.

¹⁹ S. 893.135(1)(b)1., F.S.

²⁰ Lawrence Mower, *Should a felon who owes \$59 million be allowed to vote? How about \$190,000?*, Miami Herald (Mar. 29, 2019), <https://www.miamiherald.com/news/politics-government/state-politics/article228399999.html> (last visited Mar. 10, 2021).

²¹ Florida Department of Highway Safety and Motor Vehicles, Traffic Citations or Court Suspensions, <https://www.flhsmv.gov/driver-licenses-id-cards/driver-license-suspensions-revocations/traffic-citations-court-suspensions/> (last visited Mar. 10, 2021).

²² See, e.g., ss. 318.15 and 322.245, F.S.

²³ Monivette Cordeiro, *Nearly 2 Million Florida Drivers Have License Suspended for Unpaid Fines, Study Finds*, Orlando Sentinel (Dec. 19, 2019), <http://www.orlandosentinel.com/news/crime/os-ne-drivers-license-suspensions-report-20191219-xazyr2cdkff7xfljvqkcz6tum-story.html> (last visited Mar. 10, 2021).

The bill also requires a court and a clerk to develop a process for referring persons owing fines and fees to the clerk soon after the disposition of a case. If the person has a deposit or credit card account, or other means of setting up automatic withdrawals, the clerk must enroll the person on an automatic withdrawal plan.

The bill requires the clerks of courts, by October 1, 2021, to develop a uniform payment plan form, which must inform the user of:

- The minimum payment due each month;
- The term of the payment plan;
- Acceptable payment methods; and
- The circumstances under which a case may be referred to collections for nonpayment.

The bill requires a uniform traffic citation to include a notice informing the person to whom it is given that the person may contact the clerk to establish a payment plan.

The bill also removes the authority for the Department of Highway Safety and Motor Vehicles to suspend a person's driver license for failure to pay certain fines and fees based on a non-driving-related offense. The bill allows a person whose driver license was suspended pursuant to s. 322.245, F.S., before July 1, 2021, solely for nonpayment of such fines and fees, to reinstate his or her license upon payment of a reinstatement fee.²⁴ The bill does not require that the person must agree to a payment plan to be eligible for reinstatement.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 27.52, F.S., relating to determination of indigent status.

Section 2: Amends s. 28.24, F.S., relating to service charges.

Section 3: Amends s. 28.246, F.S., relating to payment of court-related fines or other monetary penalties, fees, charges, and costs; distribution of funds.

Section 4: Amends s. 28.42, F.S., relating to manual of filing fees, charges, costs, and fines.

Section 5: Amends s. 57.082, F.S., relating to determination of civil indigent status.

Section 6: Amends s. 318.15, F.S., relating to failure to comply with civil penalty or to appear; penalty.

Section 7: Amends s. 318.20, F.S., relating to notification; duties of department.

Section 8: Amends s. 322.245, F.S., relating to suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.

Section 9: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill eliminates the authority of a clerk of court to use the possibility of a driver license suspension to compel the payment of fines or fees owed in certain cases, which may indirectly have a negative fiscal impact on the collection of revenues that go to the State Courts Revenue Trust Fund. The bill may also have an indeterminate negative fiscal impact on other government entities that receive revenues from funds generated by the clerks of court. However, the bill could incentivize more persons to enter into payment plan agreements, which could increase revenues and have a positive fiscal impact on the State.

2. Expenditures:

²⁴ The bill does not specify the amount of the reinstatement fee. However, it appears such fee would be \$60 under current law. See s. 322.29(2), F.S.

The bill requires greater levels of court involvement with respect to a payment plan, which may have an indeterminate negative fiscal impact on the court system. However, the bill could reduce court workloads by reducing the number of driving with suspended license cases, which would have an indeterminate positive fiscal impact on the court system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may reduce the revenues received by the clerks of court, which could have a significant negative fiscal impact on the clerk's budgets. However, the bill could incentivize more persons to enter into payment plans, which could increase revenues and have a positive fiscal impact on the clerks.

2. Expenditures:

The bill requires the clerks of court to develop a uniform payment plan form, which may have an insignificant negative fiscal impact on the clerks of court.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill limits the authority of the clerks of court to suspend driver licenses solely for failure to pay fines or fees in certain cases, which may benefit persons who would otherwise be unable to drive to work and earn money to pay debts.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires the clerks of court to create a new payment plan form, and because the bill may reduce the amount of revenues a clerk of court can generate by eliminating a monthly partial payment fee; however, an exemption may apply because the bill may have only an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES