

**STORAGE NAME:** h1661.cjcl

**DATE:** April 4, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CIVIL JUSTICE AND CLAIMS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 1661

**RELATING TO:** Indigent persons/ waiver of court costs

**SPONSOR(S):** Peaden

**STATUTE(S) AFFECTED:** s. 57.081, F.S.

**COMPANION BILL(S):** SB 1906

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) COMMITTEE ON CIVIL JUSTICE AND CLAIMS YEAS 7 NAYS 0
- (2) FINANCE AND TAXATION
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

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I. SUMMARY:

HB 1661 would amend the present certification of indigency affidavit to contain a statement certifying that an indigent person would not pay or promise to pay any person for services rendered in connection with judicial or administrative agency actions or proceedings.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Indigent persons directly involved in judicial or administrative agency proceedings are entitled to the services of the courts, sheriffs, and clerks of court free of charge. Section 57.081, F.S., defines indigent persons as those persons initiating actions or proceedings or named as a party or intervenor in actions or proceedings and who are unable to incur the expenses of litigation. The courts, sheriffs, or clerks of court provide indigent persons with the following services: filing fees, service of process, certified copies of orders or final judgments, one photocopy of any court pleading, record, or instrument filed with the clerk, examining fees, mediation services and fees, 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.

In appeals of administrative agency decisions, the Clerks of Appellate Court must waive the cost of preparing transcripts and the cost for copies of any recorded exhibits. No prepayment for judges, clerks or sheriff's costs are required of a person filing a certification of indigency. The certification is based on an affidavit "claiming that the applicant is indigent and unable to pay the charges otherwise payable by law to any of such officers and providing the details of the applicant's financial condition." Section 57.081, F. S.

The statutes exempt indigent persons represented by counsel from filing an affidavit. However, an attorney representing an indigent person must file a written certificate of indigency on behalf of a client. The attorney must also testify in the certificate that no payment will be rendered for the services provided.

B. EFFECT OF PROPOSED CHANGES:

The bill would amend two provisions of s. 57.081, F.S.

- Persons obtaining a certificate of indigency would not bear prepayment costs of any court, clerk or sheriff. Presently, indigent persons are required to make prepayment costs to judges, clerks or sheriffs. The bill replaces the word "judges" with the word "court."
- Persons filing a certificate of indigency would be required to include a statement certifying that no person shall be paid for services rendered to the applicant with respect to such actions or proceedings. A person filing a certificate of indigency on his own behalf and an attorney filing a certificate of indigency on behalf of a client would be treated equally.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Indigent persons would include an additional statement in the affidavit certifying that no person providing services with respect to such proceedings or actions would receive payment.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA.

(2) what is the cost of such responsibility at the new level/agency?

NA.

(3) how is the new agency accountable to the people governed?

NA.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

NA.

b. Does the bill require or authorize an increase in any fees?

NA.

- c. Does the bill reduce total taxes, both rates and revenues?

NA.

- d. Does the bill reduce total fees, both rates and revenues?

NA.

- e. Does the bill authorize any fee or tax increase by any local government?

NA.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

NA.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No. Presently, indigent persons represented by counsel may enter any contractual agreement with their counsel. Under HB 1661, no attorney representing an indigent person may receive payment for services rendered.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The Legislature would narrow the types of agreements which could be entered into by indigent persons and their counsel.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

NA.

(2) Who makes the decisions?

NA.

(3) Are private alternatives permitted?

NA.

(4) Are families required to participate in a program?

NA.

(5) Are families penalized for not participating in a program?

NA.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

NA.

(2) service providers?

NA.

(3) government employees/agencies?

NA.

**D. SECTION-BY-SECTION RESEARCH:**

This section need be completed only in the discretion of the Committee.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See fiscal comments.

D. FISCAL COMMENTS:

Attorneys providing services to indigent persons could not contract for services rendered in such actions or proceedings.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18 of the state constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill would not reduce the percentage of state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18, of the state constitution.

V. COMMENTS:

This section uses a question format to stimulate debate about HB 1661, amending s. 57.081, F.S.

- Would the change to the certification of indigency process negatively impact those already unable, due to financial constraints, to access the Judicial system?
- Would the client/lawyer relationship be adversely affected by this proposed legislation?
- Are there any merits to treating a person filing for indigency on his own behalf the same as a person whose counsel files for indigency on his behalf?

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE AND CLAIMS:

Prepared by:

Legislative Research Director:

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Bridget Edmond