

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: SB 1960

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Budget

115 Y's 0 N's

COMPANION None.
BILLS:

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

Senate Bill 1960:

- Amends statutes to refine the qualifications of the Regional Conflict Counsel (RCC) and provide for a more efficient Regional Counsel selection and appointment process.
- Makes real property record and motor vehicle record searches optional when clerks of court review applications of persons applying for indigency status.
- Permits a judicial circuit to create a limited registry of court-appointed attorneys willing to waive compensation above the flat fees to handle conflict cases.
- Requires the state court system to pay court-appointed attorney fees ordered by the court above the flat fees established in law, once the funds appropriated to the Justice Administrative Commission for that purpose have been spent.
- Allows Guardian ad Litem volunteers to transport clients.
- Allows for the supervision and oversight of county funded employees by the Guardian ad Litem program.
- Requires the Clerk of Court Operations Corporation to collect and submit to the Legislature a quarterly report from the clerks of court on a local surcharge on traffic infractions in an electronic format.

The effective date of this bill is July 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Regional Conflict Councils

The 2007 Legislature created five regional conflict councils to represent indigent criminal defendants when the public defender could not represent the defendant due to ethical conflicts and to provide representation in certain other civil cases. Civil cases include providing legal representation to indigent parents in dependency and termination of parental rights.

Regional conflict councils are required to be, for the preceding 5 years, members in good standing of the Florida Bar or a similar organization of another state. Each regional conflict council is appointed by the Governor and confirmed by the Senate. The Judicial Nominating Commission recommends three qualified candidates for appointment to each of the five regional council positions. The regional councils serve 4-year terms beginning on July 1. Vacancies are filled in the same manner as appointments.

Indigency Determination

Section 27.52, Florida Statutes, requires the clerk of courts to review real property records and motor vehicle records for persons applying for indigency status. Indigents involved in certain criminal and civil proceedings can receive legal services from the public defender or the regional conflict council. Such searches were authorized in 2008 and have been inefficient in determining indigency. Significant clerk of court time is used for these searches and the instances where this information results in a person being denied indigency status have been few.

Payment of Court Appointed Counsel

Prior to July 1, 2007, all criminal conflict cases and certain civil cases were handled exclusively by private, court appointed counsel. While the legislature created the regional conflict councils to take most of these cases, if the regional conflict councils have an ethical conflict, the case must be handled by private, court appointed attorneys. The chief judge in each circuit maintains a registry of qualified attorneys and these attorneys sign a contract with the Justice Administrative Commission (JAC) to receive payment based on a flat fee. If a court finds that the case warrants a fee in excess of the flat fee, the court may double the fee. If that is still not sufficient, the court may order the JAC to pay the attorney an hourly amount. As shown in the table below, the number of times the court orders payments above the cap has increased over time.

| Fiscal Year | Cases with Payments over Cap | Additional Costs for Payments over the Cap |
|----------------|------------------------------|--|
| 2007-08 | 54 | \$76,985 |
| 2008-09 | 192 | \$1,067,590 |
| 2009-10 | 312 | \$2,742,140 |
| 2010-11 | 354 | \$3,807,711 |
| 2011-12 (est.) | 622 | \$6,798,189 |

Source: Justice Administrative Commission

The costs of criminal conflict counsel, including court-ordered payments above the flat fee, have exceeded original appropriations in the last several years. For example, for Fiscal Year 2011-12, the Legislature appropriated \$3 million to cover payments above the flat fee; estimated expenditures are expected to be more than twice that figure. To resolve these projected deficits, the legislature has had to transfer funds from other due process categories in the Justice Administrative Commission and make supplemental appropriations from unallocated general revenue.

Guardian ad Litem

The Guardian ad Litem Program operates in all 20 circuits. County governments provide office space to support the offices. In some counties, county-funded staff are provided to the Guardian ad Litem Program. In those cases, the county staff are supervised by the Guardian ad Litem Program.

In 1997, the Florida Supreme Court issued an administrative order prohibiting guardian ad litem volunteers from transporting children in fulfillment of their duties. The court opined that the role of the guardians ad litem was not direct service delivery, including transportation, but rather to serve as an investigator, monitor, and protector for the child's best interests before the court. Violation of the administrative order constituted a violation of the Guardian ad Litem Code of Conduct and subjected that person to decertification and discharge from the program.

Effect of Proposed Changes

Regional Conflict Counsel

The bill requires that Regional Counsels must be Florida Bar members and they cannot be selected based on membership of an organization in other state. The bill also requires the names of current Regional Counsel are automatically submitted to the Governor for consideration along with not fewer than two or more than five other qualified candidates. The bill changes the timing of the Regional Counsel appointment to October 1, which provides more time for interviews and gives the Governor more time to make appointment. The bill also adds a provision for an interim Regional Counsel if an appointed Regional Counsel cannot complete their term.

Indigency Determination

Section 27.52, F.S., requires the clerk of courts to review real property records and motor vehicle records for persons applying for indigency status. Such searches were authorized in 2008 and have been inefficient in determining indigency. The bill makes these searches optional for the clerks.

Limited Attorney Registry

The bill gives the court more authority to control due process costs over the cap in cases in which private attorneys are appointed to provide representation. It requires attorneys who want to be on a registry to certify that they are willing to accept, as full payment, the prescribed flat fees in all cases except Racketeer Influenced and Corrupt Organizations (RICO) and capital cases. The bill specifies that the chief judge of the circuit may create a limited registry of those attorneys willing to waive compensation beyond the flat fees. Attorneys on the limited registry would be assigned to cases first, and attorneys on the court's general registry would be appointed if no attorneys are available on the limited registry.

Court Appointed Counsel Costs in Excess of Flat Fee

In Fiscal Year 2011-12, the Legislature appropriated \$3 million to cover payments above the flat fee; estimated expenditures are expected to be \$6.7 million. The bill amends s. 27.5304, F.S., to require the State Court System to pay court appointed counsel fees ordered by the court above the flat fees set in law once the funds appropriated to the Justice Administrative Commission for that purpose have been spent.

Guardian Ad Litem

This bill allows a Guardian ad Litem volunteers to transport a child.

The bill also allows for the supervision and oversight of county funded employees by the Guardian ad Litem program.

Clerk of Court Operations Corporation

The bill requires the Clerk of Court Operations Corporation to collect and submit a quarterly report from the clerks of court on a local surcharge on traffic infractions. The corporation will collect and submit the

reports in an electronic format to the chief judge, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: See “fiscal comments” section.
2. Expenditures: See “fiscal comments” section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

With the creation of the limited attorney registry, private attorneys may be more willing to accept the flat fees as full payment if they have the opportunity to provide representation in more cases.

D. FISCAL COMMENTS:

To the extent the court orders over the flat fees in excess of \$3 million for court appointed counsel; this will result in a negative fiscal impact to the State Court System. Currently, fees in excess are paid from due process categories within the Justice Administrative Commission.

Making the requirement of the clerks to investigate indigency status optional could have a slight decrease in workload for the clerks of court. Based on findings of the Office of Economic and Demographic Research (EDR), indigency checks of motor vehicle titles and property titles have not been successful. Few instances of denied indigency status were found by EDR and many of those that were found, were overturned by judiciary. This should have an insignificant fiscal impact.