

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Budget Committee

BILL: SPB 7064

INTRODUCER: For consideration by the Budget Committee

SUBJECT: State Judicial System

DATE: February 8, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkness	Rhodes	BC	<b>Pre-meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill makes conforming changes to the Florida Statutes necessary to implement the budget in the criminal and civil justice area. The bill refines the qualifications of the Regional Conflict Counsel. When the clerk is determining the indigency, the bill makes the review of property records optional. The bill also provides that the state court system will pay court appointed counsel attorney fees when the court orders payments above the rate set in law once a specific appropriation in the Justice Administrative Commission is spent. The bill permits guardian ad litem volunteers to transport clients and provides statutory language governing the county funding of guardian ad litem employees. The bill requires the Clerks of Court Operations Corporation to collect existing clerk of court reports on county use of fees to support court facilities and submit them to the chief judge, the Governor, the President of the Senate, and the Speaker of the House of Representatives. The bill has an effective date of July 1, 2011. The bill is expected to have a positive fiscal impact to the state.

This bill amends the following sections of the Florida Statutes: 27.511, 27.52, 27.5304, 39.8296, and 318.18. The bill and creates s. 39.8297 of the Florida Statutes.

**II. Present Situation:**

**Criminal and Civil Conflict Regional Councils (Regional Conflict Councils)**

The 2007 Legislature created five regional conflict councils to take criminal cases that the public defender could not take due to ethical conflicts and certain other civil cases for persons entitled to representation by law. Civil cases include providing legal representation to indigent parents in dependency and termination of parental rights.

Regional conflict counsels 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 counsel 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 counsel positions. The regional counsels 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 counsel. 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 counsels to take most of these cases, if the regional conflict counsels 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 amount. 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.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 27.511, F.S., to refine statutory provisions related to the criminal conflict and civil regional counsel (regional conflict counsel). The bill:

- Eliminates a current statutory provision permitting a nominee to be a member of a bar association from another state. This change recognizes that it is not practical to have a regional counsel who is not a Florida Bar member supervising attorneys and working with judges, state attorneys and public defenders all of whom must be Florida Bar members.
- Requires the Supreme Court's Judicial Nominating Commission to name not less than three nor more than six qualified candidates for consideration for a vacant regional counsel position, including the current regional conflict counsel, unless the current counsel has been removed from office or is no longer qualified. This change ensures that the current regional conflict counsel is among the names submitted to the Governor for consideration, which provides for a smoother transition between the time the commission submits its list and the time the Governor selects the regional counsel.
- Shifts the term of the regional conflict counsel from July to October. This change shifts the appointment later in the year, away from the end of the fiscal year, and provides more time for the Governor to make an appointment decision.
- Designates a chief assistant to fulfill the regional conflict counsel's duties in the event the counsel is unable to legally carry out those duties. This change provides for a process if the current regional counsel leaves office or is unable to carry out the duties of regional conflict counsel.

**Section 2** amends s. 27.52, F.S., to make the review of real property records and motor vehicle records optional in the clerk of court indigency determinations. As previously stated, clerks of the court report that significant time is used for these searches and the instances where this information results in a person being denied indigency status have been few.

**Section 3** 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 the Florida Statutes and the General Appropriations Act once the funds appropriated for that purpose have been spent. This change is aimed at encouraging the courts to take a stronger role in governing the ordering of fees. If the

court system is answerable for some of the costs associated with payments above the flat fee, judges may be less willing to order these fees.

**Section 4** amends s. 39.8296(2)(b), F.S., to permit guardian ad litem volunteers to transport children served by the program. According to the guardian ad litem, allowing volunteers to transport youth will enhance the bonding relationship between the two and will encourage improved communication. Also, allowing volunteers to transport youth to everyday events, such as a school dance, will promote a sense of normalcy for the youth.

**Section 5** creates s. 39.8297, F.S., to allow for the supervision and oversight of county funded employees by the guardian ad litem program. The changes provide a statutory framework for the employment of guardian ad litem employees at the county level.

**Section 6** amends s. 318.18, F.S., to require the clerks of court to submit a quarterly report to Clerk of Court Operations Corporation on a local surcharge on traffic infractions. This surcharge helps counties fund their responsibility to provide court facilities. 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.

**Section 7** provides an effective date of July 1, 2012.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may reduce the amount paid to court appointed counsel in certain circumstances.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

---

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

---