

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 344

INTRODUCER: Senator Steube

SUBJECT: Regional Counsels

DATE: February 6, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	<b>Pre-meeting</b>
2.	_____	_____	EE	_____
3.	_____	_____	RC	_____

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**I. Summary:**

SB 344 revises the authority of the Supreme Court Judicial Nominating Commission to submit nominees to the Governor to head each Office of Criminal Conflict and Civil Regional Counsel.

As described in current law, the person who heads each of the offices is the regional counsel. Each regional counsel serves a 4-year term. And as the term draws to an end, the Supreme Court Judicial Nominating Commission must present the Governor with, “in addition to the current regional counsel,” between two and five “additional qualified candidates for appointment to each of the five regional counsel positions.”<sup>1</sup>

Accordingly, current law requires the Commission to nominate three to six candidates for regional counsel to the Governor, including the incumbent regional counsel. However, an incumbent regional counsel might choose not to reapply. In this situation, the Governor is only presented with two to five true candidates<sup>2</sup> for the incumbent’s position.

The bill expressly requires the Commission to present the Governor with three to six nominees for each regional counsel position, regardless of whether the incumbent reapplies. However, as under current law, the incumbent regional counsel must be one of the nominees if he or she reapplies.

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<sup>1</sup> Section 27.511(3)(a), F.S. The Governor may reject the initial set, in which case the Commission must present him or her with three new nominees. *Id.*

<sup>2</sup> “True candidate” is used throughout this analysis to describe someone who has not, by action or inaction, expressed that he or she is unwilling to serve as a regional counsel for the upcoming term.

## II. Present Situation:

### The Office of Criminal Conflict and Civil Regional Counsel

The Office of Criminal Conflict and Civil Regional Counsel (regional counsel's office) serves indigent clients who are entitled by law to taxpayer-funded legal representation.<sup>3</sup> These clients may be involved in criminal or civil cases.

The Office of the Public Defender represents indigent criminal defendants initially. However, if the public defender's office determines that it cannot represent a defendant because of a conflict of interests, it must move the court to withdraw as counsel.<sup>4</sup> If the court grants the motion, then the court will appoint the regional counsel's office to represent the client.<sup>5</sup>

The regional counsel also is responsible for representation in certain civil matters set forth in statute, including capacity and dependency proceedings. Also, the regional counsel might represent a client in any other matter in which the client is constitutionally entitled to representation.<sup>6</sup>

There are five regional counsel offices, one in each district of the district courts of appeal. Much like each public defender's office has one public defender and several assistant public defenders, each regional counsel's office is headed by a regional counsel and staffed by several assistant regional counsels.<sup>7</sup> Each regional counsel is appointed by the Governor to a 4-year term.<sup>8</sup> However, the appointments are subject to Senate confirmation. Also, the Governor must make the appointments from among the nominees given to him or her by the Supreme Court Judicial Nominating Commission, a body described later in this section.<sup>9</sup>

Section 27.511(3)(a), F.S., sets forth how many nominees must be (in the initial group) presented to the Governor for each regional counsel position:

The Supreme Court Judicial Nominating Commission, in addition to the current regional counsel, shall recommend to the Governor not fewer than two or more than five additional qualified candidates for appointment to each of the five regional counsel positions. The Governor shall appoint the regional counsel for the five regions from among the recommendations . . . .

A plain reading of this provision requires the Commission to recommend the current regional counsel to the Governor, regardless of whether the current regional counsel has re-applied. As

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<sup>3</sup> Section 27.511, F.S.

<sup>4</sup> As a general matter, the public defender's representation of two or more clients whose interests are in conflict is unethical. As an example of a conflict of interest within the public defender's office, assume two of its clients are the only suspects in a case where there is no real dispute that the victim was murdered, and the only question is which suspect murdered the victim. Here, the defendants each have an interest in convincing the fact-finder that the other committed the murder. As such, their respective assistant public defenders would have conflicting interests.

<sup>5</sup> Section 27.511(5), F.S.

<sup>6</sup> Section 27.511(6)(a), F.S.

<sup>7</sup> Section 27.511(4), F.S.

<sup>8</sup> Section 27.511(3)(a), F.S.

<sup>9</sup> *Id.*

such, if the current regional counsel does not reapply, the Governor will receive only two to five true candidates, instead of three to six true candidates. Regardless of how many true candidates are in the initial group, the Governor may reject the group if “it is in the best interest of the fair administration of justice . . . .” And if the Governor rejects the initial group, the Commission must present him or her with three new candidates.<sup>10</sup>

Upon appointment, a regional counsel serves a 4-year term. The most recent term began on October 1, 2015.<sup>11</sup> If a regional counsel is unable to complete his or her term, the Governor may immediately appoint an interim regional counsel to fill the vacancy temporarily. The interim regional counsel serves until a replacement is appointed. The replacement must be appointed by the Governor from among nominees presented by the Commission, just as when each regional counsel is appointed at the beginning of a regular 4-year term.

### **Judicial Nominating Commissions**

The Supreme Court Judicial Nominating Commission is one of 26 judicial nominating commissions in Florida. In addition to nominating individuals to serve as regional counsel, the Commission nominates individuals to fill vacancies on the Florida Supreme Court. The other judicial nominating commissions are those of each of the five district courts of appeal and each of the twenty circuit courts.<sup>12</sup>

Each judicial nominating commission has nine members appointed by the Governor. All of the members must be residents of the territorial jurisdiction served by their commission. At least seven must be members of The Florida Bar engaged in the practice of law. Four of the members must be chosen from nominees—three for each position—provided to the Governor by the Board of Governors of The Florida Bar. The other five members of a judicial nominating commission are appointed by the Governor, and need not be nominated by anyone.<sup>13</sup>

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

Section 27.511(3)(a), F.S., sets forth how many nominees must be (in the initial group) presented to the Governor for each regional counsel position:

The Supreme Court Judicial Nominating Commission, in addition to the current regional counsel, shall recommend to the Governor not fewer than two or more than five additional qualified candidates for appointment to each of the five regional counsel positions. The Governor shall appoint the regional counsel for the five regions from among the recommendations . . . .

Thus, the current law appears to assume that each incumbent regional counsel will reapply for his or her position. However, an incumbent might choose not to re-apply. In this case, a plain reading of the current law requires the Commission still to present the incumbent as one of the three to six initial candidates that the Governor may consider for the upcoming term. As such,

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See, FLA. CONST. art V, s. 11.

<sup>13</sup> Section 43.291(1), F.S.

when an incumbent does not reapply, the Governor is only presented with two to five true candidates for the incumbent's position.

The bill requires the Commission to provide the Governor with an initial group of three to six true candidates for each regional counsel position, regardless of whether an incumbent reapplies. And the incumbent may still be one of the candidates. However, the bill clarifies that an incumbent regional counsel must be presented as one of the candidates only if he or she reapplies.

The bill takes effect on July 1, 2017.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

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:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 27.511, Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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