

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 512

SPONSOR: Committees on Judiciary and Comprehensive Planning, Local & Military Affairs and Senator Saunders

SUBJECT: Civil Legal Assistance

DATE: January 29, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable/CS
2.	Johnson	Johnson	JU	Favorable/CS
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill creates the Florida Access to Civil Legal Assistance Act to create an administrative framework in the Department of Community Affairs to distribute public funds to pay for the delivery of civil legal assistance to poor or indigent persons through nonprofit legal aid organizations.

This bill substantially creates a new unspecified section of Florida Law.

**II. Present Situation:**

**Civil Legal Services to the Poor**

The provision of civil legal services to the poor in Florida is provided primarily through forty-one independent non-profit organizations. Twelve of these organizations provide services statewide, while the remaining 29 provide services to specific geographic regions. These organizations assist clients in family matters (such as child custody and support); juvenile law matters; obtaining federal government benefits; obtaining protection from domestic violence; elder and child abuse matters; and resolving immigration matters.

Florida Legal Services (FLS), Inc., serves as a state-wide support organization for the forty-one independent non-profit organizations. Documents from FLS declare that providing legal services does not necessarily involve litigation. Aid recipients often need legal aid services to avoid litigation and to make good decisions. FLS documents state that in 2001, approximately 65% of the legal aid services were handled through non-litigation methods, such as drafting letters and telephone calls on client's behalf.

FLS claims that only 23% of the needs for legal services to the poor are currently being met.

Funding for legal services through the non-profit organizations in Florida totaled \$50.1 million in 2000. Sources of funding include:

- The Interest on Trust Accounts (IOTA) program of the Florida Bar, \$11.1 million;
- The Federal Legal Services Corporation, \$13.3 million to the twelve organizations providing services state-wide;
- Court filing fees, \$6.5 million;
- Contributions from counties and municipalities, \$5.9 million;
- Federal grants for specific services, \$4.3 million;
- Private foundations, \$1.7 million;
- Attorney pro bono donations, \$1.3 million, and
- Miscellaneous, \$6 million.

### **The Interest on Trust Accounts (IOTA) Program of the Florida Bar**

Florida was the first state to develop an IOTA program in 1981. All fifty states now have similar programs, which were created by state supreme courts or state legislation. Lawyers pool client funds - small sums and large sums held for short periods of time - into a designated interest-bearing checking account. The interest that is generated on those pooled funds is then funneled through a judicially created legal foundation to various "public interest" legal firms to provide civil legal services to the poor.

Currently, the Florida Bar Rules requires lawyers and law firms to place nominal or short-term funds into IOTA accounts, the interest proceeds of which are remitted by the financial institution directly to the Florida Bar Foundation. The Foundation then allots the funds to legal aid organizations, law student scholarships, and other charitable purposes. Only deposits which could otherwise not earn interest net of expenses (because they were nominal in amount or were to be held for a short period of time) can be used to generate interest under Florida's IOTA program. (The Florida IOTA Rule, Chapter 5, Rules Regulating the Florida Bar.)

IOTA programs have been criticized as being unconstitutional because, when the state asserts control over the equitable interest of client property without consent or just compensation, it allegedly violates the Fifth Amendment's Takings Clause. In 1984, the U.S. District Court for the Middle District of Florida upheld Florida's IOTA program and determined that the client was not entitled to interest on escrow funds deposited in an IOTA account. The client appealed, and the 11<sup>th</sup> Circuit Court of Appeals affirmed the lower court's decision. *Cone v. State Bar of Florida*, 819 F.2d 1002, C.A.11 (Fla., 1987).

In 1998, the U.S. Supreme Court ruled that, under Texas law, interest earned on client funds held in a Texas IOTA account was the private property of the client. *Phillips. v. Washington Legal Foundation*, 524 US 156 (1998). However, it remanded back to the District Court the question whether such funds were "taken" by the State, as well as the amount of "just compensation," if any, due respondents. The District Court subsequently ruled there was no taking, but a three-judge panel of the 5<sup>th</sup> Circuit Court of Appeals reversed the decision. *Washington Legal*

*Foundation v. Texas Equal Access to Justice Foundation*, No. 00-50139 (5<sup>th</sup> Cir. 2001). The case is on appeal to the full court and is likely to be ruled on later this year.

In a similar case in Washington State, the Circuit Court ruled the IOTA program to be constitutional. *Washington Legal Foundation v. Legal Foundation of Washington*, No. 98-35154 (9<sup>th</sup> Cir. en banc 2001). Should there be a conflict between the Washington and Texas cases, it is likely the US Supreme Court will be asked to resolve the issue. If the Supreme Court rules that state's IOTA programs are unconstitutional, IOTA funding for legal services to the poor in Florida may be in jeopardy.

### **State Funding of Legal Services to the Poor**

All but eleven states provide state funding of civil legal services for the poor. Florida is one of the 11 states that do not provide such state funding.

### **Temporary Assistance for Needy Families (TANF)**

The Federal Government provides funds to states in a program designed to provide temporary services for needy families.

The purposes of this program are:

- To provide assistance to needy families so that children can be cared for in their own homes or homes of relatives;
- To end the dependency of needy parents on government assistance by promoting job preparation, work and marriage;
- To prevent and reduce the incidence of out-of-wedlock pregnancies; and
- To encourage the formation and maintenance of two-parent families.

States have broad flexibility to determine eligibility, method of assistance, and benefit levels. Thus, income and participation requirements are established for each TANF funded program and will vary.

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

**Section 1** names the title of the act as the "Florida Access to Civil Legal Assistance Act."

**Section 2** establishes legislative intent. The bill is intended to create an administrative framework to use public funds to enhance the availability of civil legal assistance to the poor in Florida. The bill states that there is a lack of adequate and equitable legal services available to the state's indigent population, which unnecessarily burdens existing social and human services programs.

**Section 3** provides the following definitions:

- "Department" means the Department of Community Affairs (DCA);
- "Eligible client" means a person whose income is equal to or below 150 percent of the then-current federal poverty guidelines prescribed for the size of the household of the person seeking assistance by the United States Department of Health and Human

- Services, a disabled veteran receiving disability benefits from the VA, or a person receiving supplemental security income;
- "Legal assistance" means the provision of civil legal services consistent with the rules regulating The Florida Bar, subject to the limitations in section 5 of the bill; and
  - "Not-for-profit legal aid organization" means a not-for-profit organization that provides as its primary purpose civil legal services without charge to eligible clients.

**Section 4** authorizes DCA to contract with a statewide not-for-profit organization that provides funding for civil legal assistance to the poor in this state to allocate funds to not-for-profit legal aid organizations.

**Section 5** imposes limitations on the funds allocated to fund this program. Specifically, funds may not be used to:

- Lobby or influence the passage or defeat of any legislation before any municipal, county, or state legislative or administrative body;
- Provide legal assistance or advice with respect to any criminal proceeding or any federal or state post-conviction proceedings;
- Sue the state, any of its agencies, or political subdivisions of the state;
- Initiate or participate in a class action suit; or
- Sue any colleges or universities.

**Section 6** requires DCA to contract with a not-for-profit organization that provides funding statewide for civil legal assistance to the poor. The recipient organization must also distribute the funds received in a manner consistent with the TANF objectives of maintaining stable home environments for families with children. The contract must provide that distribution of at least 80 percent of such funds be based annually by county on a per capita basis upon the number of persons in the county whose income is 125 percent or less of the then-current federal poverty guidelines of the U.S. Department of Health and Human Services. The source of data identifying the number of persons per county must be the latest available figures of persons per county from the Bureau of the Census of the United States Department of Commerce. The contract must provide that up to 15 percent of such funds be distributed annually to statewide and regional not-for-profit legal aid organizations and that up to 5 percent of such funds be provided for administrative costs.

**Section 7** requires DCA to ensure that funds received or allocated pursuant to this act are expended in a manner consistent with the terms and intent of this act and the TANF objectives of maintaining stable home environments for families with children. The Department of Community Affairs must require the recipient organization to provide an accountability report at the end of the first year. The accountability report must provide information that 95 percent of the funds distributed went to TANF eligible recipients and that not more than 5% of the funds were used for administrative costs. Additionally, the report must account for TANF dollars saved by providing legal services to TANF eligible recipients.

If this bill is funded with TANF funds, the state will need to establish income and participation requirements within the Federal guidelines.

If funds other than TANF funds are used to pay for the services in the bill the language of the bill requires the funds be expended on those persons otherwise eligible for a TANF funded program. It is unclear how the legal aid offices will then determine eligibility for clients in order to meet the requirement that 95 percent of the funds expended go to TANF eligible recipients.

**Section 8** states that program funds may be used to secure the legal rights of eligible clients relating to family law, juvenile law, entitlements to federal government benefits, protection from domestic violence, elder and child abuse, and immigration by providing legal assistance and education regarding legal rights and duties under the law.

**Section 9** states that programs funded pursuant to this act are eligible for state support, including, but not limited to, access to the SUNCOM Network services.

**Section 10** states that this act will take effect upon becoming a law.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Should the Legislature fund the program created by this act, DCA will be required to distribute the funds through a contract with a not-for-profit organization that provides funding statewide for civil legal assistance to the poor. The Department of Community Affairs estimates it will take at least a half-time position to provide contract management. No specific cost associated with that position were provided.

The bill provides that “Programs funded pursuant to this act shall be eligible for state support, including, but not limited to, access to the SUNCOM Network services.” It is unclear what the term “state support” means and what services would be claimed under this provision other than SUNCOM Network services. The cost to provide SUNCOM Network services is not available at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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