

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	SB 2510	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Senate Appropriations Committee; Bradley	116 Y's	0 N's
COMPANION BILLS:	None	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

SB 2510 passed the House on May 2, 2014 and subsequently passed the Senate on May 2, 2014. The bill conforms to the Fiscal Year 2014-15 General Appropriations Act (GAA) by increasing the flat fees for court appointed attorneys representing indigent criminal defendants in certain types of cases, eliminating language that permits the chief judge in each circuit to establish a limited registry of court-appointed attorneys to represent indigent defendants, establishing a cross-circuit conflict representation pilot project in two public defender offices and one regional conflict counsel office, and changing the funding source for costs that exceed the flat fees.

The Fiscal Year 2014-15 General Appropriations Act increases the flat fees for eight case types and appropriates an additional \$1,000,000 in recurring general revenue to the criminal conflict case cost appropriation category within the Justice Administrative Commission (JAC) to cover the cost of the increased fees.

The bill was approved by the Governor on June 2, 2014, ch 2014-49, L.O.F., and became effective on July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Court Appointed Counsel

Pursuant to section 27.51, F.S., the Office of the Public Defender in each judicial circuit is primarily responsible for representing indigent defendants who have been charged or arrested for criminal offenses. If the Office of the Public Defender has a conflict of interest, then the judge appoints the Office of Criminal Conflict and Civil Regional Counsel to provide legal services.¹ If the Office of Criminal Conflict and Civil Regional Counsel has a conflict, then the judge appoints counsel from a registry of private attorneys willing to take these conflict cases.²

Private court-appointed attorneys are compensated according to a schedule of flat fees listed each year in the General Appropriations Act (GAA). Section 27.5304(1), F.S., requires that the GAA annually sets out the specific attorney fees. The specific attorney fees listed in the GAA annually may not exceed limits set out in section 27.5304(5), F.S. Currently, the GAA has set the flat fees for some cases lower than the maximum amount set in statute.

In addition, the Legislature has created a statutory system requiring an evidentiary hearing to allow conflict counsel on “rare occasions” to move that the court allow the payment of attorney fees which exceed the flat fees in cases that have required “extraordinary and unusual effort”.³ If the court finds that counsel has proved by “competent and substantial evidence” that the case required extraordinary and unusual effort, the court must order compensation at a percentage above the flat fee rate.⁴ The percentage may not exceed 200 percent of the applicable flat fee rate unless the court finds that the 200 percent rate would be confiscatory. If the court finds such a rate to be confiscatory, the court may order compensation to be paid using an hourly rate not to exceed \$75 per hour for a noncapital case and \$100 per hour for a capital case.⁵

Office of the State Courts Administrator (OSCA) Flat Fee Study

In response to escalating due process costs, the 2012 Legislature included proviso language in the FY 2012-2013 GAA directing the Office of State Courts Administrator (OSCA) to conduct a study of the adequacy and reasonableness of the current flat fee limits and the statutory hourly rates listed in section 27.5304(12), F.S.⁶ With the exception of fees for capital cases, OSCA noted that the flat fee rates have not been adjusted since 1981. As part of the study, OSCA conducted a comparative analysis of the flat fees using four different methodologies: 1) using actual historical data of payments made at and over the flat fee by case type; 2) adjusting rates based on the Consumer Price Index (CPI); (3) adjusting rates based on the Bureau of Labor Statistics (BLS) growth rate in attorney earnings from 1981 to 2010; and, (4) comparing to rates charged by private attorneys for non-court appointed cases (obtained from an OSCA survey). Using the calculations derived from the four methodologies, OSCA found that the current flat fee rates for capital/capital appeals, felony life, and Racketeer Influenced and Corrupt Organizations (RICO) cases were appreciably lower than the results derived from the four methods.

OSCA concluded that the current flat fee rates “call into question whether the current fees are adequate or reasonable. A meta-analysis of the four methodologies would indicate that rate

¹ Section 27.511(5), F.S.

² Section 27.40(2)(a), F.S.

³ Section 27.5304(12), F.S.

⁴ Section 27.5304(12)(d), F.S.

⁵ *Id.*

⁶ Ch. 2012-118, Laws of Florida, specific appropriation 828

adjustments [for the case types previously mentioned] are warranted.”⁷ As specified in the OSCA report, when the court awarded fees above the flat fee rates for capital, felony life, and RICO case types, the amounts were, on average, significantly higher than the flat fee rates. According to the report, the courts award amounts higher than the established flat fees for these types of cases because they involve more complex legal and factual issues.

Limited Registry

In 2012, SB 1960 became law and gave the chief judge in each circuit the authority to establish a limited registry of court-appointed attorneys to assign to conflict cases. The law created by this bill requires attorneys who want to be on the limited registry to certify that they are willing to accept, as full payment, the prescribed flat fees in all cases except RICO and capital cases. This provision was designed to give the court more authority to control due process costs over the flat fee and curb increases in due process expenditures. Attorneys on the limited registry are assigned to cases first and attorneys on the court’s general registry are appointed if no attorneys are available on the limited registry. The law aimed to award more cases to attorneys willing to accept the flat fees.

The law also specifies that if, during the fiscal year, all funds designated in the special category for payments of the amount ordered by the court in excess of the flat fee are spent, the amount of payments in excess of the flat fee shall be made from the due process contingency funds, or other funds as necessary, appropriated to the state courts system in the General Appropriations Act.⁸

Effect of the Bill

The bill amends subsection (3) section 27.40, F.S., removing language added by SB 1960 (2012) that permits the chief judge in each circuit to create a limited registry. As a result of this change in statute, Florida law would permit only one registry from which to select court-appointed attorneys to represent indigent defendants.

The bill creates section 27.401, F.S., establishing the Cross-Circuit Conflict Representation Pilot Program within the offices of the public defender in the Tenth and Thirteenth Judicial Circuits and the office of the criminal conflict and civil regional counsel (regional conflict counsel) in the Fifth Region. Currently, when a public defender and a regional conflict counsel both claim a conflict of interest, the judge will assign a private attorney to provide representation to an indigent defendant. This legislation creates a new process in two pilot circuits for indigent defendants charged with non-capital murder, pursuant to sections 782.04(2) - (4), Florida Statutes. In these circuits, when a public defender and a regional counsel both claim a conflict of interest, the judge may refer the case to the neighboring circuit instead of private counsel. If the public defender and regional counsel in the neighboring circuit both claim a conflict of interest, the judge may then appoint private counsel to represent the client.

Under the pilot, the Thirteenth Judicial Circuit (Hillsborough) and the Tenth Circuit (Hardee, Highlands, Polk) will cross refer cases when the regional conflict counsel in the Second Region has conflicted a case originating from the Thirteenth or Tenth Circuit.. When either of those have a conflict in a case that originated in the opposite circuit, the regional conflict counsel of the Fifth District will be appointed. If the regional conflict counsel of the Fifth District has a conflict in those cases, private counsel will be appointed.

The offices of the public defender in the Tenth and Thirteenth Judicial Circuits and the office of the criminal conflict and civil regional counsel in the Fifth Region will be required to provide a report on the implementation of the pilot program. The reports will include the number of cases transferred across

⁷ Office of the State Court Administrator, A Study of the Compensation of Private Court-Appointed Conflict Counsel in Criminal Cases in Florida, January 15, 2013.

⁸ Section 27.5304, F.S.

circuits, the advantages and disadvantages of cross-circuit representation, the estimated cost savings of the pilot program, and recommendations to improve the pilot program.

The bill amends section 27.5304, F.S., revising the statutory maximum compensation for court-appointed attorneys handling noncapital, nonlife felony cases from \$2,500 to \$6,000; life felony cases from \$3,000 to \$9,000; capital cases from \$15,000 to \$25,000; and appeals cases from \$2,000 to \$9,000. The specific attorney fees listed annually in the GAA may not exceed the maximums set out in statute. These changes permit the Legislature to increase the actual flat fee compensation for these types of cases which must be set annually in the GAA. The bill also removes language specifying that if, during the fiscal year, all funds designated in the special category for payments of the amount ordered by the court in excess of the flat fee are spent, the amount of payments in excess of the flat fee shall be made from the due process contingency funds, or other funds as necessary, appropriated to the state courts system in the General Appropriations Act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

The Fiscal Year 2014-15 General Appropriations Act increases the flat fees for eight case types and appropriates an additional \$1,000,000 in recurring general revenue to the criminal conflict case cost appropriation category within the Justice Administrative Commission to cover the cost of the increased fees. The increases are described as follows:

Case Type	FY 2013-14 GAA Flat Fee	FY 2014-15 GAA Flat Fee
Capital – 1 st Degree Murder (Lead/Co-counsel)	\$15,000	\$25,000
Capital – 1 st Degree – Death Penalty Waived (Lead Counsel)	\$2,500	\$9,000
Felony Life	\$2,500	\$5,000
Felony Life – RICO	\$2,500	\$9,000
Capital Appeals	\$2,000	\$9,000
Capital Sexual Battery	\$2,000	\$6,000
Felony Punishable by Life – RICO	\$2,000	\$6,000
Felony – 1 st Degree – RICO	\$1,500	\$5,000

The increase in flat fees will reduce the amount of waived flat fees, which will reduce the amount paid in the attorney payments over the flat fee category within JAC. Although JAC will have an increase in spending in the criminal conflict case cost appropriation category, there should be a decrease in the attorney payments over the flat fee appropriation category.

The bill removes language specifying that if, during the fiscal year, all funds designated in the special category for payments of the amount ordered by the court in excess of the flat fee are spent, the amount of payments in excess of the flat fee shall be made from the due process contingency funds, or other funds as necessary, appropriated to the state courts system in the General Appropriations Act. This will have a positive fiscal impact on the state courts system and a negative fiscal impact on JAC. The 2013 Legislature appropriated \$500,000 in recurring general revenue in

the FY 2013-14 GAA to the state courts system for the purposes of covering these costs. The FY 2014-15 GAA transfers these funds to the Justice Administrative Commission.

The bill creates the Cross-Circuit Conflict Representation Pilot Program within the offices of the public defender in the Tenth and Thirteenth Judicial Circuits and the office of the regional conflict counsel in the Fifth Region. By avoiding appointments of private counsel, the criminal conflict case cost appropriations category within the JAC should realize a savings. The FY 2014-15 GAA transfers \$308,039 in recurring general revenue from the criminal conflict case cost appropriations category to the offices of the public defender in the Tenth and Thirteenth Judicial Circuits and the office of the regional conflict counsel in the Fifth Region. The funds are equally distributed between each office to provide one full time attorney, other personal services funds, and operational funds to cover the cost of representing the indigent defendants.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private counsel appointed to indigent defendants charged with the crimes specified above will now be compensated based on the increased flat fees.

D. FISCAL COMMENTS:

None.