

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 1393 Court Interpreter Services

SPONSOR(S): Tuck and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1660; SB 468

FINAL HOUSE FLOOR ACTION: 116 Y's

0 N's

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

HB 1393 passed the House and the Senate on February 28, 2024.

Pursuant to article V, section 14, of the Florida Constitution, all funding for the offices of the clerks of the circuit court and county courts performing court-related functions must be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for court-related functions. However, where the requirements of the United States Constitution or the Florida Constitution preclude the imposition of filing fees and charges, the state must provide those funds as determined by the Legislature.

The Florida Evidence Code and the Florida Rules of Judicial Administration require an interpreter's appointment for judicial proceedings in specified situations. An interpreter may also be necessary for depositions, mediations, and other case-related proceedings and to give a person with limited or no English proficiency access to points of public contact for the court system, which may include the offices of the clerks of the circuit court.

Under current law, "due process services" may only be provided with state funds for a person who is eligible for court-appointed counsel based on a determination of indigency. Due process services include providing and paying for court reporters, interpreters, expert witnesses, and, in certain instances, private court-appointed counsel for indigent defendants.

The bill amends s. 29.0185, F.S., to authorize the state court system to use state funds to provide court-appointed interpreting services to non-indigent individuals if such funds are available in the fiscal year appropriation for due process services, and if such interpreting services are provided as prescribed by the Supreme Court.

The bill also amends s. 29.0195, F.S., to remove the requirement for a trial court administrator to recover funds utilized for court interpreter services from those individuals who have the present ability to pay.

The bill may have an indeterminate fiscal impact on state and local governments. See Fiscal Analysis & Economic Impact Statement.

Subject to the Governor's veto powers, this bill is effective upon becoming law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

State Court Funding

Pursuant to article V, section 14, of the Florida Constitution, all funding for the offices of the clerks of the circuit court and county courts performing court-related functions shall be provided by adequate and appropriate filing fees for judicial proceedings and services charges and costs for court-related functions. However, where the requirements of the United States Constitution or the Florida Constitution preclude the imposition of filing fees and charges, the state shall provide those funds as determined by the legislature.¹

Further, pursuant to s. 29.001, F.S., for the purpose of interpreting art. V, s. 14 of the Florida Constitution, the state courts system includes the Supreme Court, district courts of appeal, circuit courts, county courts, and certain supports thereto.² Funding for the state courts system is provided from state revenues.³ Additionally, section 29.004(5), F.S., provides that funding for court foreign language services and translators essential to comply with constitutional requirements be provided from state revenues.⁴

Provision of State-Funded Due Process Services

Under current law, due process services may only be provided with state revenues for a person who is eligible for court-appointed counsel based on a determination of indigency.⁵ Due process services include providing and paying for court reporters, interpreters, expert witnesses, and, in certain instances, private court-appointed counsel for indigent defendants.⁶ As such, state funds may only be used to provide due process services to a person who has been found to be indigent⁷ and is a party to a criminal or civil proceeding entitled to court-appointed counsel under the federal or state Constitution or as authorized by general law.⁸ In Florida, a defendant in the following criminal matters may be eligible for court-appointed counsel:

- A defendant in a criminal matter facing incarceration;
- Post-conviction capital collateral cases; or
- Death penalty proceedings.⁹

The following types of civil cases may utilize court-appointed counsel:

- Dependent children with special needs;
- Civil conflict matters;
- Child dependency;
- Guardianships;
- Termination of parental rights matters; or
- Involuntary commitments.¹⁰

¹ Art. V, s. 14(b), Fla. Const.

² S. 29.001(1), F.S.

³ *Id.*

⁴ S. 29.004(5), F.S.

⁵ S. 29.0185, F.S.

⁶ Florida Office of Program Policy Analysis and Government Accountability (OPPAGA), Due Process Services: Report No. 19-18 (December 2019), <https://oppaga.fl.gov/Documents/Reports/19-18.pdf> (last visited Feb. 9, 2024).

⁷ Indigency is determined pursuant to the provisions of s. 27.52, F.S. Generally, a person may be declared indigent if his or her income is equal to or below 200% of the federal poverty guidelines.

⁸ S. 27.40(1), F.S.

⁹ OPPAGA, Due Process Services (Dec. 2019) at 1.

¹⁰ *Id.*

Pursuant to s. 29.0195, F.S., the trial court administrator in each circuit must seek recovery of costs for state-funded services¹¹ from a person who has a present ability to pay such costs. As such, if interpreter services are provided using state funds to a litigant who is not indigent, the state court administrator for that circuit is required to seek reimbursement of those costs from the litigant. Any such funds recovered are to be deposited into the Administrative Trust Fund within the state courts system.

Interpretation and Translation Services

Although the terms “interpreter” and “translator” are often used interchangeably, there are significant differences between the two roles. An interpreter works with spoken language, by listening to a speaker speak in one language and repeating what the speaker said in another language.¹² Interpreters use one of two modes interpreting, consecutive¹³ or simultaneous,¹⁴ depending on the context.¹⁵ Translators work with written documents and take text written in the source language and translate it into text in the target language (such as taking a document written in Spanish and translating the document into English).¹⁶

According to data from the United States Census Bureau, over 60,000,000 people living in the United States who are over the age of five speak a language other than English at home.¹⁷ Of these, over 25,000,000 speak English “less than very well.”¹⁸ In Florida alone, nearly 30 percent of the state’s population over the age of five speaks a language other than English at home.¹⁹

Title VI of the Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subject to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. In certain circumstances, failing to ensure that a person with limited or no English proficiency (LEP individual) can effectively participate in or benefit from federally-assisted programs or activities may violate Title VI’s prohibition against national origin discrimination; this is often true of failing to ensure that a LEP individual has meaningful language access to state court proceedings and operations through an interpreter or other appropriate methods.²⁰

The Florida Evidence Code provides that, when a judge determines that a witness cannot hear or understand the English language, or cannot express himself or herself in English sufficiently to be understood, a duly-qualified interpreter must be sworn in to interpret for the witness.²¹ Similarly, the Florida Rules of Judicial Administration require an interpreter’s appointment free of charge to the person needing the interpreter’s services:

- In any criminal or juvenile delinquency proceeding in which a LEP individual is the:
 - Accused; or
 - Victim, unless the court finds that he or she does not require an interpreter; and
- In all other proceedings in which a LEP individual is a litigant, if the court determines that:
 - The litigant’s inability to comprehend English deprives him or her of an understanding of the court proceedings;

¹¹ The trial court administrator shall recover the costs of court reporter services and transcription; court interpreter services, including translation; and any other service for which state funds were used to provide a product or service within the circuit. S. 29.0195, F.S.

¹² American Translators Association, *What’s the Difference Between a Translator and an Interpreter?*, (Feb. 1, 2023), <https://www.atanet.org/client-assistance/whats-the-difference-between-a-translator-and-an-interpreter/> (last visited Jan. 30, 2024).

¹³ Consecutive interpreting involves listening to a speaker and repeating what has been said after the speaker stops talking. *Supra* note 11.

¹⁴ Simultaneous interpreting involves listening to a speaker and simultaneously repeating their speech in the target language on a slight delay. *Supra* note 11.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ U.S. Census Bureau, *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for United States: 2009-2013*, <https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html> (last visited Jan. 30, 2024).

¹⁸ *Id.*

¹⁹ U.S. Census Bureau, *Quick Facts: Florida*, <https://www.census.gov/quickfacts/fact/table/FL/POP815221> (last visited Jan. 30, 2024).

²⁰ U.S. Dept. of Justice, *Working with State Courts to Remove Language Barriers to Justice*, <https://www.justice.gov/archives/opa/blog/working-state-courts-remove-language-barriers-justice> (last visited Jan. 30, 2024).

²¹ S. 90.606, F.S.

- A fundamental interest is at stake;²² and
- No alternative to an interpreter's appointment exists.²³

The Office of the State Courts Administrator manages and administers the Court Interpreter Certification and Regulation Program and maintains a registry of certified,²⁴ language-skilled,²⁵ provisionally approved,²⁶ and registered²⁷ court interpreters.²⁸ Generally, the court must appoint an interpreter to provide interpretation services in the following order of preference:²⁹

- A certified or language-skilled interpreter.
- A provisionally-approved interpreter.
- A registered interpreter.
- An interpreter who is not certified, language-skilled, provisionally-approved, or registered, if the court finds good cause (such as preventing burdensome delay or the LEP individual's consent).

Parties to litigation may, for proceedings for which no interpreter is appointed, contract for the services of an interpreter at their own expense, but must observe the same preferences when retaining an interpreter as do the courts when appointing them.³⁰ However, the United States Department of Justice has noted that interpreters are not just necessary for court appearances; an interpreter may also be necessary to give a LEP individual access to points of public contact for the court system, which may include information desks and filing offices, including the offices of the clerks of the circuit court.³¹

United States Department of Justice

In 2010, in accordance with the provisions of Title VI of the Civil Rights Act of 1964, the U.S. Department of Justice (DOJ) issued a letter of guidance to state courts within the United States regarding the obligation to provide language access services to individuals with limited proficiency in the English language.³² The DOJ's letter specifically emphasized the following concerns about state courts' policies and practices which:

- Limit the types of proceedings for which qualified interpreter services were being provided by the court;
- Charge interpreter costs to one or more parties;
- Restrict language services to courtrooms; and
- Fail to ensure effective communication with court-appointed or supervised personnel.³³

²² A fundamental interest may include civil commitment, termination of parental rights, paternity, or dependency proceedings.

²³ R. 2.560, F.R.J.A.

²⁴ A "certified" designation is the highest-qualified state-level interpreter designation for languages for which there is a state-level certification examination. Currently, these languages are Amharic, Arabic, Bosnian/Serbian/Croatian, Cantonese, Filipino (Tagalog), French, Haitian Creole, Hmong, Khmer, Korean, Mandarin, Polish, Portuguese, Russian, Spanish, Turkish, and Vietnamese. Office of the State Courts Administrator, *Find an Interpreter*, <https://www.flcourts.gov/Resources-Services/Court-Services/Court-Interpreting/Find-an-Interpreter> (last visited Jan. 30, 2024).

²⁵ The "language-skilled" designation is the highest-qualified state-level interpreter designation for languages for which there is no state-level certification examination. *Id.*

²⁶ The "provisionally approved" designation is the next highest qualified state-level interpreter designation below the certified and language-skilled designations. Such an interpreter may be utilized when no certified or language-skilled interpreter is available. *Id.*

²⁷ Registration is the initial step towards obtaining an official state-level designation, and "registered" refers to interpreters who have satisfied general prerequisites but who have yet to qualify for an official designation. Such an interpreter may be utilized when there is no certified, language-skilled, or provisionally approved interpreter available. *Id.*

²⁸ *Id.*; Office of the State Courts Administrator, *Court Services*, <https://www.flcourts.gov/Resources-Services/Court-Services> (last visited Jan. 30, 2024).

²⁹ R. 2.560, F.R.J.A.

³⁰ R. 2.565, F.R.J.A.

³¹ U.S. Dept. of Justice, *Department of Justice Guidance Letter Regarding the Obligation to Provide Language Access* (Aug. 17, 2010), <https://www.justice.gov/file/1250731/download> (last visited Jan. 30, 2024).

³² *Id.*

³³ *Id.* at 2.

The DOJ continues to monitor state courts' efforts nationwide related to the provision of interpreting services as part of the department's responsibilities under Title VI of the Civil Rights Act of 1964.³⁴

Florida's Commission on Trial Court Performance and Accountability

To gain greater compliance with the DOJ's priorities, Florida's Commission on Trial Court Performance and Accountability, in coordination with the Trial Court Budget Commission, has been tasked with evaluating the ability of trial courts to expand the provision of court interpreting services to more people in more matters without cost to court participants and without regard to an individual's financial status.³⁵ The Commission recommended a phased approach to the expansion of state-funded court interpreter services.³⁶

In March 2023, the Commission submitted a revised report to the Florida Supreme Court which recommended an initial expansion of interpreter services, without cost and regardless of indigency status to the following types of proceedings, for which such services are not currently required to be provided:

- Child support;
- Uniform Interstate Family Support Act;
- Simplified Dissolution of Marriage;
- Evictions; and
- Small Claims.³⁷

The Florida Supreme Court approved the Commission's revised report, including the expansion of state-funded court interpreter services for the recommended proceedings.³⁸

Effect of the Bill

HB 1393 amends s. 29.0185, F.S., to authorize the state court system to use state funds to provide court-appointed interpreting services to non-indigent individuals. Such funds may be used if they are available in the fiscal year appropriation for due process services and if such interpreting services are provided as prescribed by the Supreme Court.

Additionally, the bill amends s. 29.0195, F.S., to repeal the requirement that a trial court administrator recover funds utilized for court interpreter services from those individuals who have the present ability to pay. The bill retains in current law the requirement that a trial court administrator must attempt to recover expenditures for translation services from non-indigent individuals, but exempts the recovery for interpretation services. Under the bill, any such provision of state-funded court interpreting services to non-indigent participants would be subject to the availability of funds. Further, the bill clarifies that it does not authorize the recovery of costs for interpreter services from the state attorney, indigent defendants, or court-appointed defense counsel for indigent defendants.

Subject to the Governor's veto powers, this bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

³⁴ Office of the State Courts Administrator, *2024 Judicial Impact Statement on SB 468* (Jan. 17, 2024), on file with the House of Representatives' Civil Justice Subcommittee.

³⁵ *Id.* at 3, *citing to* Fla. Admin. Order No. AOSC20-56 (June 24, 2020).

³⁶ *Id.*

³⁷ *Id.* at 4.

³⁸ *Id.*

The bill may have an insignificant negative fiscal impact on state revenues by eliminating the cost-recovery provision for court interpreting services. The annual amount collected from such services is minimal. For the current fiscal year, the State Court System has collected \$3,820 from court interpreting related costs.³⁹

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on state expenditures. However, expenditures are contingent upon the expansion and provision of court interpreting services as defined by court rule and will be subject to annual appropriation. The Office of the State Courts Administrator indicates that filling currently authorized vacant positions will help facilitate the trial courts' ability to absorb any additional workload impact.⁴⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The potential expansion of court interpretation services to non-indigent individuals may have a positive economic impact on court participants who are not proficient in the English language.

D. FISCAL COMMENTS:

None.

³⁹ Office of the State Courts Administrator, Agency Bill Analysis of 2024 House Bill 1393, p. 5 (Jan. 27, 2024) on file with the House Civil Justice Subcommittee.

⁴⁰ *Id.* at 6.