

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 853 Translation Services
SPONSOR(S): López, J. and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1302

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mawn	Jones
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The State Constitution mandates that there be an elected clerk of the circuit court in each of Florida's 67 counties to serve as ex officio clerk of the board of county commissioners, auditor, official records recorder, and custodian of all county funds. As an officer of the court, the clerk serves in a ministerial capacity, and his or her duties and authority are conferred entirely by law. One such duty includes the provision of ministerial assistance to *pro se* litigants, which assistance may not include the provision of legal advice.

The State Constitution also mandates that all funding for the offices of the clerks of the circuit court performing court-related functions come from judicial proceeding filing fees and services charges and costs for performing such functions as required by general law. Because revenue generated from such fees, charges, and costs varies from year to year, the annual operating budget of the clerks of the circuit court similarly varies.

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 an LEP individual has meaningful language access to state court proceedings and operations through an interpreter or other appropriate methods. To promote such access, 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 an LEP individual access to points of public contact for the court system, which may include the offices of the clerks of the circuit court.

HB 853 authorizes, but does not require, a clerk of the circuit court to contract with a third-party translation service provider for translation services for civil cases and adds translation services to the list of court-related functions the clerks may fund from filing fees, service charges, court costs, and fines. Under the bill, translation services are ministerial and may be made available to any party requesting such services, regardless of whether the party is represented by counsel.

The bill also:

- Requires the clerks to provide ministerial assistance in making translation services available.
- Specifies that the ministerial assistance the clerks must provide to *pro se* litigants may include translation services.
- Provides that a party to a civil case is not prohibited from providing for his or her own translation service or third-party translation service provider.

The bill does not appear to have a fiscal impact on state government but may have an indeterminate fiscal impact on local governments. The bill provides an effective date of October 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Clerks of the Circuit Court

The State Constitution mandates that there be an elected clerk of the circuit court in each of Florida's 67 counties to serve as ex officio clerk of the board of county commissioners, auditor, official records recorder, and custodian of all county funds.¹ As an officer of the court, the clerk serves in a ministerial capacity, and his or her duties and authority are conferred entirely by law.² One such duty includes the provision of ministerial assistance to *pro se* litigants,³ which assistance may not include the provision of legal advice.⁴

The State Constitution also mandates that all funding for the offices of the clerks of the circuit court performing court-related functions come from judicial proceeding filing fees⁵ and services charges⁶ and costs for performing such functions as required by general law.⁷ Court-related functions include:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing case assignment, reopening, reassignment, and appeals;
- Processing of bond forfeiture payments;
- Data collection and reporting;
- Determination of indigent status;⁸ and
- Paying reasonable administrative costs to enable the clerks to carry out these functions.⁹

Because revenue generated from such fees, charges, and costs varies year to year, the annual operating budget of the clerks of the circuit court similarly varies.¹⁰

¹ The clerk of the circuit court is elected by the county's electors to serve a four-year term. Art. V, s. 16 and Art. VIII, s. 1, Fla. Const.; Florida Department of State, *County Governments*, <https://dos.myflorida.com/library-archives/research/florida-information/government/local-resources/fl-counties/> (last visited March 24, 2023).

² "Ministerial" means acting "in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgment or discretion as the propriety of the action taken." The clerk may appoint deputies, for whose acts the clerk is liable, which deputies have the same power as the clerk, excepting the power to appoint deputies. Ss. 28.06 and 112.312(17), F.S.

³ A "*pro se* litigant" is a litigant who represents himself or herself – that is, a litigant unrepresented by an attorney. Legal Information Institute, *Pro Se*, https://www.law.cornell.edu/wex/pro_se (last visited March 24, 2023).

⁴ Florida law considers the provision of legal advice to be the practice of law. However, Florida law prohibits the clerks of the circuit court from practicing law in this state. Ss. 28.215 and 454.18, F.S.

⁵ Filing fees which the clerks must charge are generally set out in s. 28.241, F.S. Certain filings for which the clerks may not charge a filing fee, set out elsewhere in Florida law, include a petition for a protective injunction against domestic, repeat, dating, or sexual violence. See, e.g., ss. 741.30 and 784.046, F.S.

⁶ Service charges which the clerks must charge are generally set out in s. 28.24, F.S.

⁷ Selected salaries, costs, and expenses of the state courts system may also be funded from such fees, charges, and costs as provided by general law. Art. V, s. 14, Fla. Const.

⁸ Florida law exempts an indigent person from paying specified fees, charges, and costs in any judicial proceeding. A person seeking to be designated indigent must apply to the clerk for a determination of his or her status, which application must meet specified statutory requirements. A person is considered "indigent" if he or she has an annual income equal to or below 200 percent of the federal poverty guidelines or is receiving Temporary Assistance for Needy Families -Cash Assistance, poverty-related veterans' benefits, or supplemental Social Security income. Ss. 57.081 and 57.082, F.S.

⁹ S. 28.35(3)(a), F.S.

¹⁰ Florida Clerks of Court Operations Corporation, *CFY-2022-23 Budget Development Spreadsheet*, <https://flccoc.org/clerks-budget/#opb> (last visited Feb. 28, 2023); Florida Clerks of Court Operations Corporation, *CFY2021-22 Approved Budget*, <https://flccoc.org/wp-content/uploads/2021/08/CFY2122-Approved-Budget-081121.pdf> (last visited March 24, 2023).

Translation Services

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.¹¹ Of these, over 25,000,000 speak English “less than very well.”¹² In Florida alone, nearly 30 percent of the state’s population over the age of five speaks a language other than English at home.¹³

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 an LEP individual has meaningful language access to state court proceedings and operations through an interpreter or other appropriate methods.¹⁴

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, at no cost to the witness.¹⁵ 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 an 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 an 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;
 - A fundamental interest is at stake;¹⁶ and
 - No alternative to an interpreter’s appointment exists.¹⁷

The Office of the State Courts Administrator manages and administers the Court Interpreter Certification and Regulation Program and maintains a registry of certified,¹⁸ language-skilled,¹⁹ provisionally approved,²⁰ and registered²¹ court interpreters.²² Generally, the court must appoint an interpreter to provide interpretation services in the following order of preference:²³

- A certified or language-skilled interpreter.
- A provisionally-approved interpreter.
- A registered interpreter.

¹¹ 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 March 24, 2023).

¹² *Id.*

¹³ U.S. Census Bureau, *Quick Facts: Florida*, <https://www.census.gov/quickfacts/fact/table/FL/POP815221> (last visited March 24, 2023).

¹⁴ 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 March 24, 2023).

¹⁵ S. 90.606, F.S.

¹⁶ A fundamental interest may include civil commitment, termination of parental rights, paternity, or dependency proceedings.

¹⁷ R. 2.560, F.R.J.A.

¹⁸ 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 March 24, 2023).

¹⁹ The “language-skilled” designation is the highest-qualified state-level interpreter designation for languages for which there is no state-level certification examination. *Id.*

²⁰ 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.*

²¹ 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.*

²² *Id.*; Office of the State Courts Administrator, *Court Services*, <https://www.flcourts.gov/Resources-Services/Court-Services> (last visited March 24, 2023).

²³ R. 2.560, F.R.J.A.

- 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.²⁴ 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 an 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.²⁵

Effect of Proposed Changes

HB 853 authorizes, but does not require, each clerk of the circuit court to contract with a third-party translation service provider for translation services for civil cases and adds translation services to the list of court-related functions the clerks may fund from filing fees, service charges, court costs, and fines. Under the bill, translation services are ministerial and may be made available to any party requesting such services, regardless of whether the party is represented by counsel.

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- Provides that a party to a civil case is not prohibited from providing for his or her own translation service or third-party translation service provider.
- Provides an effective date of October 1, 2023.

Practically speaking, where a clerk of the circuit court contracts with a third-party translation service provider as contemplated by the bill, this could make translations services available free of charge to a person requiring such services in civil proceedings for which an interpreter need not already be appointed by the court.

B. SECTION DIRECTORY:

Section 1: Amends s. 28.35, F.S., relating to Florida Clerks of Court Operations Corporation.

Section 2: Amends s. 28.215, F.S., relating to *pro se* assistance.

Section 3: Creates s. 28.217, F.S., relating to translation services.

Section 4: Provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

²⁴ R. 2.565, F.R.J.A.

²⁵ Letter from the U.S. Dept. of Justice, Civil Rights Division, to Chief Justices/State Court Administrators (August 2010), <https://www.justice.gov/file/1250731/download> (last visited March 21, 2023).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may increase local government expenditures to the extent that the clerk of the circuit court for a particular county elects to contract for translation services as provided in the bill and was not already funding similar services.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES