

STORAGE NAME: h1877a.cj

DATE: April 9, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: HB 1877

RELATING TO: Judicial Appointments

SPONSOR(S): Representative Warner

COMPANION BILL(S): SB 1334(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY YEAS 9 NAYS 0
 - (2) CRIMINAL JUSTICE APPROPRIATIONS YEAS 9 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 1877 authorizes 25 circuit judges, 6 county judges, and 1 district court of appeal judge certified by the Florida Supreme Court as well as support staff. Fifteen of the new judgeships are established on November 1, 1999, and seventeen judgeships are established on January 1, 2000. The bill additionally requires the judicial nominating commission to make nominations by October 1, 1999 for the November, 1999 authorized vacancies, unless extended by the Governor in accordance with section 11 (c), Article V of the State Constitution.

The bill has an effective date of September 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Constitution directs the Supreme Court to certify to the Legislature its findings and recommendations concerning the need for an increase or decrease in the number of judges, excluding supreme court justices, in Florida. s. 9, Art. V, Fla. Const. In addition, the Constitution provides that the Legislature "...may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses, that such a need exists." This language has been interpreted by the Supreme Court to mean that the judicial certification order established the outer limits of what the Legislature may approve in the absence of a two-thirds majority. *In re Advisory Opinion to the Governor, 374 So. 2nd 959 (Fla. 1979)*. In other words, the Legislature, by a simple majority vote, may approve fewer than the number of judges recommended by the court. The two-thirds requirement would only apply if the Legislature wished to create judgeships in addition to those recommended by the court.

Currently, there are 61 appellate judges, 468 circuit court judges, and 263 county court judges.

The Supreme Court entered a Certification Order on February 18, 1999, which the Bill implements. That order certified a total of 25 circuit judges, 6 county judges, and one district court of appeal judge. *In re Certification of the Need for Additional Judges, No. 94,890 (Fla. Feb. 18, 1999)*.

Threshold for Appellate Judges

The Supreme Court has directed the Judicial Management Council to evaluate appellate workload and propose a new workload standard. The Council's Committee on Appellate Court Workload and Jurisdiction has proposed a new workload standard of 225 dispositions after submission on the merits per judge and an additional appellate court workload of 385 case filings per judge. These standards are higher than the present 250 case filing standard. *In re Certification of the Need for Additional Judges, No. 94,890 at 3 (Fla. Feb. 18, 1999)*. The Court has determined that the Fifth District Court of Appeal exceeds both the current and proposed standards and has certified that court for an additional appellate judge.

Threshold for Circuit Court Judges

The Florida Supreme Court uses 1,865 unweighted case filings per circuit judge as the threshold at which it presumes there is a need for an additional judge in a circuit. *See Fla. R. Jud. Admin. 2.035*. To calculate the number of projected case filings per judge in a circuit in a future year, the total number of case filings projected for the year is divided by the number of circuit judges in the circuit.

The Supreme Court has certified the need for additional circuit judges in eighteen circuits. *In re Certification of the Need for Additional Judges, No. 94,890 at 6 (Fla. Feb. 18, 1999)*. Ten of the courts certified by the Supreme Court as needing additional judges are projected to exceed the 1,865 filings per judge threshold in 1998. *Id.* at 7. However, the First, Fourth, Seventh, Eighth, Eleventh, Thirteenth, Fifteenth, and Seventeenth judicial circuits have received certification for new judges even though they are expected to have 1999 workloads below the threshold. *Id.* at 8. Additional factors considered in certifying these judges were the significant workload impact of reopened cases, variations in the complexity of caseloads, the severity of criminal offenses in these jurisdictions, more numerous and lengthy jury trials, and dramatic increases in self-represented litigants. *Id.* at 7. The Court singled out Chapter 98-403 (juvenile justice) and Chapter 98-64 (Jimmy Ryce Act), Laws of Florida, as sources of increased judicial workload.

Threshold for County Court Judges

In December 1995, the Supreme Court formally adopted the 6,114 filings per county judge threshold. *Amendment to Fla. R. Jud. Admin. 2.035, No. 86,880 at 4 (Fla. Dec. 21, 1995)*. All of the counties for which a need was certified are projected to meet this threshold. *In re Certification of the Need for Additional Judges, No. 94,890 at 8 (Fla. Feb. 18, 1999)*.

B. EFFECT OF PROPOSED CHANGES:

Sections 1 and 3 of the Bill amend s. 26.031, F.S., by authorizing 25 additional circuit judges as follows:

<u>Judicial Circuit</u>	<u>Authorized 11/99</u>	<u>Authorized 1/00</u>
First		1
Second	1	
Third	1	
Fourth	1	
Fifth		2
Sixth		2
Seventh	1	
Eighth		1
Ninth	2	
Tenth		1
Eleventh		1
Twelfth	1	
Thirteenth	2	
Fourteenth		
Fifteenth		1
Sixteenth		
Seventeenth	2	1
Eighteenth	1	
Nineteenth		2
Twentieth	1	

Sections 3 and 4 of the Bill amend s. 34.022, F.S., to authorize 6 additional county judges as follows:

<u>County</u>	<u>Authorized 11/99</u>	<u>Authorized 1/00</u>
Duval		1
Hillsborough		1
Leon		1
Polk	2	
Putnam		1

Section 5 of the Bill amends s. 35.06, F.S., to authorize an additional district court of appeal judge as follows:

<u>District Court of Appeal</u>	<u>Authorized 1/00</u>
Fifth	1

Section 6 of the bill provides that the judicial nominating commission shall make nominations for the authorized vacancies identified in sections 1 and 3 (the 1999 authorizations) no later than October 1, 1999, unless the Governor extends that deadline pursuant to Article V, Section 11(c) of the Florida Constitution.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

By increasing the number of sitting judges in the state, the bill will increase the judiciary's ability to process and resolve civil and criminal cases.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

No agency program is eliminated or reduced.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

The bill does not purport to provide services to families or children.

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

The bill does not create or change a program providing services to families or children.

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

ss. 26.031, 34.022, and 35.06, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Authorizes an increase of 13 circuit judges on November 1, 1999.

Section 2. Authorizes an increase of 12 circuit judges on January 1, 2000.

Section 3. Authorizes an increase of 2 county judges on November 1, 1999.

Section 4. Authorizes an increase of 4 county judges on January 1, 2000.

Section 5. Authorizes an increase of 1 district court of appeal judge on January 1, 2000.

Section 6. Provides that the judicial nominating commission shall make nominations for the 1999 vacancies no later than October 1, 1999, unless that period is extended by the Governor.

Section 7. Provides an effective date of September 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. <u>Non-recurring Effects:</u>	Amount Year 1 (FY 99-2000)	Amount Year 2 (FY 00-01)	Amount Year 3 (FY 01-02)
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Expenditures:

General Revenue - Expenses	142,425
General Revenue - OCO	<u>349,000</u>

TOTAL	491,425
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2. Recurring Effects:

Expenditures:

General Revenue-Salaries/Benefits (75.0 FTE)	3,684,535	6,582,647	6,780,126
General Revenue-Expenses	389,536	389,536	389,536
Special Category-FL Cases	<u>49,600</u>	<u>49,600</u>	<u>49,600</u>

TOTAL	4,123,671	7,021,783	7,219,262
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3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Expenditures	<u>4,615,096</u>	<u>7,021,783</u>	<u>7,219,262</u>
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B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Section IV.

2. Recurring Effects:

See Section IV.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

In HB 1789, the FY99-00 General Appropriations bill, \$5,723,742 was provided for the establishment of new judgeships and related staff based on the fiscal analysis provided by the Office of the State Courts Administrator.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Although the salaries and benefits of the 75 positions created by the bill are paid by the state, counties may incur expenses for the impact of these new positions. Legislation requiring municipalities or counties to spend funds or to take action requiring expenditure of funds is not binding unless certain conditions are met. s. 18, Art. VII, Fla. Const.

This "mandates" provision of the Constitution does not apply if the Legislature determines that the law fulfills an important state interest and the bill passes by a two-thirds vote of each house. The Supreme Court of Florida, in its order certifying these judges, states "full funding of the requests certified in this opinion is absolutely essential if Florida's courts are to meet the workload challenges documented herein and fulfill their constitutional mandate to resolve cases in a fair, impartial, and timely manner."

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared by any city or county.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

HB1877 passed out of Criminal Justice Appropriations with one amendment on April 9, 1999. This amendment changes the effective dates in Section 1 and Section 3 from November 1, 1999 to August 1, 1999, and in Sections 2, 4 and 5 from January 1, 2000, to October 1, 1999. Section 6 of the amendment prohibits the Judicial Nominating Commission from seeking applications or advertising for a judicial office before the aforementioned effective dates, thereby eliminating a fiscal impact.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

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Staff Director:

Don Rubottom

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