

STORAGE NAME: h0163.jud

DATE: October 29, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 163

RELATING TO: Thirteenth Judicial Circuit/Elder Justice Center

SPONSOR(S): Reps. Peaden and Byrd

TIED BILL(S): None

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

- (1) JUDICIARY
 - (2) ELDER AFFAIRS & LONG TERM CARE
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

HB 163 requires the Thirteenth Judicial Circuit to establish an elder justice center. According to the bill, such a center would "assist elder persons in achieving full access to the judicial system, process and handle cases in which an elder is a party, and enhance judicial responsiveness to the needs of elder persons."

The bill defines "elder" as a person, age 60 or over, who suffers from age-related infirmities which impair the person's ability to adequately obtain "care, protection, rights, or access to the courts." The bill does not specify a procedure for determining whether a person qualifies as an "elder."

The bill provides that the elder justice center has jurisdiction over all matters involving elders.

The bill appropriates \$350,000 from the State Courts System Grants and Donations Trust Fund to the Thirteenth Circuit.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

This bill creates a new judicial structure to meet the needs of the elder population of the Thirteenth Circuit.

2. Lower Taxes Yes No N/A

This bill would require a \$350,000 appropriation.

3. Individual Freedom Yes No N/A

Proponents of this bill urge that it enhances the freedom enjoyed by elder Floridians by providing more responsive legal services.

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Currently, no state, including Florida, provides separate court services for elderly citizens. Florida has a high elderly population. Those over 65 years of age comprise more than 18 percent of the state's total population.

The Constitution of the State of Florida - Article V, Section 1 of the Florida Constitution provides: "The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality." However, Article V, Section 1 also permits the legislature to establish a traffic hearing officer system and authorize military court martial within the Florida National Guard. Sections 3, 4, 5, and 6 of Article V, set forth the jurisdiction of the Supreme Court, the District Courts of Appeal, the Circuit Courts, and the County Courts. (See also "Creation of Court Divisions" under Constitutional Issues)

Study on Jury Service Accessibility for Older Persons and Persons With Disabilities in Florida - The Study on Jury Service Accessibility for Older Persons and Persons With Disabilities in Florida, issued June 4, 1999, was a collaborative project by the Southeast Florida Center on Aging of Florida International University and the Supreme Court Commission on Fairness. The executive summary, in the findings and conclusions section, states:

Overall, the Florida courts generally appear aware of and sensitive to disability issues. A vast majority of the courts have assigned a staff member to function in some capacity as an ADA coordinator; however, this is not necessarily a full-time position. Within the courthouse, this person coordinates efforts to comply with Title II of the act and disseminates information about disability issues.

It seems that many courts have provided training on ADA compliance and other disability issues to staff at a variety of levels. All of the courts note that policies and procedures are in place for identifying cases requiring reasonable accommodations under the ADA. Most courts also feel that these policies and procedures are effective in identifying these cases. Based on their reports, Florida courts appear aware of and informed about their obligations under the ADA.

The executive summary noted, however, that some courts were inexperienced at providing for complex and infrequently requested accommodations. In addition, only 43.8 percent of courts reported having available a hearing-aid compatible telephone and one telecommunications device for the deaf. Only 59.4 percent of courts reported having a wheelchair-accessible jury box. Only 56.3 percent of courts reported having assistive listening devices available in the jury deliberation room, while 71.9 percent of courts reported having assistive listening devices available in the jury box.

Elder Courts Task Force of the Thirteenth Judicial Circuit - The Elder Courts Task Force of the Thirteenth Judicial Circuit was formed "to establish a court system that is user friendly to elders of the Thirteenth Judicial Circuit." The task force, scheduled to meet quarterly over a two year period, has focused upon "criminal cases involving elders, civil cases involving abuse and neglect, guardianship and incapacity proceedings."

Supreme Court Denial of Request to Establish an Elder Court - On September 7, 1999, the Supreme Court declined to establish an Elder Court within the Thirteenth Judicial Circuit. Chief Justice Harding, explaining the decision, stated "in light of the small number of cases that would be assigned to such a court, and this Court's policies regarding the establishment of new subdivisions within a court, we are not able to approve your request."

C. EFFECT OF PROPOSED CHANGES:

This bill would create an elder justice center in the Thirteenth Circuit. This center would help meet the needs of those who, because of age-related infirmity, are unable to adequately obtain "care, protection, rights, or access to the courts."

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Defines persons eligible to obtain legal services from an elder justice center; requires the Thirteenth Circuit to establish an elder justice center; provides guidelines concerning jurisdiction; requires the Thirteenth Circuit to revise procedures and direct resources toward establishing an elder justice center; requires judicial and court personnel training.

Section 2. Appropriates \$350,000 from the State Courts System Grants and Donations Trust Fund to the Thirteenth Judicial Circuit.

Section 3. Provides that the bill shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill would require a \$350,000 appropriation from the State Courts System Grants and Donations Trust Fund.

The Office of the State Court Administrator, allowing for 3 percent annual growth, estimates the following recurring effects:

Year 1 (FY 2000-01)	\$350,000
Year 2 (FY 01-02)	\$360,500
Year 3 (FY 02-03)	\$371,315

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Office of the State Courts Administrator, in its fiscal impact statement, reports:

This is a local-oriented bill. Usually, specific appropriations for local budgetary items are requested through the Legislative Budget Request process at the Office of the State Courts Administrator, based on requests received from individual circuit courts.

Further, the grants and donations trust fund is not an appropriate funding source for this bill, because all funds in the State Courts System's grants and donations trust fund are dedicated for specific contracted programs with federal, state and local governments.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Separation of Powers - Florida's Separation of Powers Doctrine aims to avoid an excessive concentration of power. Florida Courts have opted for a formal interpretation and, as a result, have found that the Legislature lacks authority to limit the constitutionally assigned jurisdiction of the courts. State v. Harris, 136 So. 2d 633 (Fla. 1962); see also Simmons v. State, 160 Fla. 626 (Fla. 1948)(noting that legislation which interferes with the exercise of judicial authority is unconstitutional.

Equal Protection - HB 163 sets up a separate judicial mechanism for elder persons who suffer from age-related infirmities. Age is not a suspect classification under the Equal Protection Clause. Therefore, any rational basis would permit the Legislature to single out those cases which involve elders from those which do not.

Creation of Court Divisions - Section 7 of Article V of the Florida Constitution provides in part: "All courts except the supreme court may sit in divisions as may be established by general law." However, section 20(c) provides: "After this article becomes effective, and until changed by general law consistent with sections 1 through 19 of this article: . . . (10) "All courts except the supreme court may sit in divisions as may be established by local rule established by the supreme court." The judicial mechanism created by HB 163 is not referred to as a division, is not specifically empowered to hear cases.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Definition of Elder - HB 163 defines "elder" as "a person who is 60 years of age or older and who suffers from infirmities of aging as manifested by physical, mental, or emotional dysfunction to the extent that the ability of the person to adequately provide for or secure his or her own care, protection, rights, or access to the courts is impaired." The bill, however, does not establish a method for determining whether a person qualifies as an "elder," and does not specify who would make such a decision. For example, it is uncertain what procedures

would apply if a 60 year old, who suffers no apparent signs of infirmity, asserts that his or her case falls within the jurisdiction of the elder justice center. Similarly, it is uncertain what procedures would apply if a 95 year old, who suffers from an apparent disability, refuses to acknowledge that disability or resists the jurisdiction of the elder justice center. While the bill, through its definition of "elder," acknowledges that not all persons over 60 years old need special legal services, the means of ascertaining such a need remain elusive.

Jurisdictional Reach - HB 163 states that all matters "which involve or relate to elder persons" fall within the "jurisdiction" of the elder justice center. Thus, arguably, commercial disputes, criminal cases not involving abuse or neglect, and other issues only peripherally related to a party's status as an elder would fall within the jurisdiction of the elder justice center. The bill's language may also suggest that, even where an elder person is not party to the proceeding, a proceeding touching upon an issue related to an elder person should be administered by the elder justice center. The bill states that the elder justice center shall "process and handle cases in which an elder is a party." It is not altogether certain, whether this phrase indicates that the elder justice center would actually hear cases or simply oversee administrative matters.

Category of Legislation - HB 163 applies to a distinct locality -- the Thirteenth Judicial Circuit (Hillsborough County). Therefore, it is important to determine whether HB 163 constitutes a general law, a general law of local application, or a special (local) law. A general law operates uniformly throughout the state. Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So. 2d 879 (Fla. 1983). It applies equally to a category of person or entities which have a reasonable relationship to the subject matter of the law. Catogas v. Southern Federal Savings and Loan Assoc., 369 So. 2d 922 (Fla. 1979). A general law of local application applies to a distinct region within the state and uses a classification scheme based on population or some other reasonable characteristic that distinguishes one region from another. Miami Beach v. Frankel, 363 So. 2d 555 (Fla. 1978). Perhaps, HB 163 would be viewed as a general law of local application because it distinguishes the Thirteenth Circuit from other circuits based upon a high elderly population and the special needs of that population. However, even laws which distinguish on the basis of population may be classified as special laws if their objectives bear no reasonable relationship to population differences. State ex rel Utilities Operating Co. v. Mason, 172 So. 2d 225 (Fla. 1964). A special law operates only upon designated persons or discrete regions and bears no reasonable relationship to differences in population or other legitimate criteria. See Housing Authority v. City of St. Petersburg, 287 So. 2d 307, 310 (Fla. 1973)(defining a special law). Article III, Section 10 of the Florida Constitution states that special laws require published notice or a referendum. Article III, Section 11 of the Florida Constitution prohibits 21 categories of special laws and general laws of local application. HB 163 does not appear to fall within any of these prohibited categories.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

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