

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 934

SPONSOR: Judiciary Committee

SUBJECT: Complex Civil Litigation

DATE: February 18, 2000

REVISED: 2/23/00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute creates s. 26.58, F.S., to provide for Complex Litigation Divisions in each of Florida's judicial circuits that have a population greater than 1,250,000. The Florida Supreme Court is directed to adopt rules and procedures for the establishment and operation of each Complex Litigation Division. This division will hear civil actions which are governed by the Florida Rules of Civil Procedure. This division will not hear family law matters as defined in the Florida Family Law Rules of Procedure, probate matters governed by the Florida Probate Rules, or civil actions governed by the Florida Small Claims Rules.

The bill defines complex litigation in two manners. First, the bill provides that a civil action shall be deemed complex when the trial is expected to last more than three weeks. Second, the bill provides that a civil action may be deemed complex when the trial is expected to last less than three weeks and involves antitrust claims, construction defect claims involving multiple parties, shareholder derivative claims, environmental or toxic tort claims involving multiple parties, mass tort claims, class actions, or insurance coverage claims arising out of any of the foregoing claims.

The bill requires the chief judge of the circuit to determine the amount of a service charge to be added to the filing fee for each case filed in the complex litigation division. The filing fee will be paid only by those parties whose action is filed or placed in the division. The bill amends s. 28.241, F.S., to provide that the service charge for complex litigation cases shall not be considered part of the filing fees subject to the limitations of s. 28.241, F.S.

The bill requires the Complex Litigation Divisions to be established and operational by January 1, 2001.

This bill creates s. 26.58 and amends s. 28.241 of the Florida Statutes.

II. Present Situation:

The Florida Constitution prohibits the establishment of any court other than the supreme court, district courts of appeal, circuit courts, and county courts. *See* Art. V, s. 1, Fla. Const. However, all courts with the exception of the supreme court may establish specialized court divisions as allowed by general law. *See* Art. V, s. 7, Fla. Const. General law currently provides for the establishment of a specialized court division through a local rule approved by the Florida Supreme Court. *See* s. 43.30, F.S. These constitutional and legislative grants of authority have been used by county and circuit courts to channel their judicial resources to create divisions responsive to the caseload demands, community needs, and judicial agenda of the county or circuit. For example, most caseload activities are categorized under five primary circuit court divisions: criminal, civil, domestic relations, juvenile and probate. County courts in more populous areas are also divided into civil and criminal divisions.

Some of these court divisions have become institutionalized as misnomered “courts” within the formal framework of Florida’s two-tier trial court system, oftentimes through court practice and adoption of formal rules. For example, in 1990, the Legislature established the “Commission on Family Courts” to develop specific guidelines for the implementation of a family law division within each judicial circuit. *See* ch. 90-273, L.O.F. Each judicial circuit, under Supreme Court directive, has been required to develop a local rule to establish a family law division in accordance with available local resources. *See In Re Report of Comm’n on Family Courts*, 633 So.2d 14 (Fla. 1994); *In re Report of the Comm’n on Family Courts*, 588 So.2d 586 (Fla. 1991). Most judicial circuits have formed some kind of a family law program or division. In 1995, the Supreme Court adopted the Family Law Rules of Procedure.

As an additional judicial and case management tool, the courts have also created sub-specialty court divisions or programs to differentiate, streamline and process specific categories of cases in response to specific caseload demands of the circuit. These divisions or programs are frequently misnomered as courts such as the “felony compliance courts” or “mental health courts.” At least 17 judicial circuits exercise this tool to create sub-specialty court divisions that may be as formal as a circuit-wide court division or as informal as a 2-hour monthly judicial assignment to hear specific categories of cases solely in one county. The two most popular types of sub-specialty court divisions are “drug courts” (14) and “domestic violence courts” (9). There are also “felony compliance courts,” “mental health courts,” “repeat offender courts,” and “collection courts.”

There is also constitutional and legislative support for the creation of sub-specialty court divisions or programs. For example, in 1989, the Legislature authorized counties, subject to local funding availability, to establish a civil traffic infraction hearing officer program in accordance with a recently adopted constitutional amendment. *See* ch. 89-337, and ch. 90-330, L.O.F.; *see also* Art. 5, s. 1, Fla. Const. The civil traffic hearing officer shares concurrent jurisdiction with the county court judges to hear specific civil traffic infraction cases. In 1990, the Florida Supreme Court adopted “traffic court” rules and procedures. *See* Fla. R. Traf. Ct. 6.010-6.630. To date, only 9 of the 20 judicial circuits employ civil traffic infraction hearing officers.

Whether specialized court divisions or sub-specialty “courts” actually improve efficiency in the courts, relieve court backlog and ensure adequate public access to the courts or not, their creation has been one of the trial courts’ responses to caseload pressures, judicial workload and case

management needs. *See e.g., An Overview of Florida Criminal Justice Specialized Courts*, Interim Project Report 97-P21, Committee on Criminal Justice, October 1997. Their creation may also reflect the trend toward specialization among legal practitioners based on the increasing complexity of the law. The Florida Bar currently offers board certification in 17 areas: Admiralty & Maritime Law, Appellate Practice, Aviation Law, Business Litigation, City, County & Local Government, Civil Trial, Criminal Appellate, Criminal Trial, Elder Law, Health Law, Immigration & Nationality, International Law, Marital & Family Law, Real Estate, Tax Law, Wills, Trusts & Estates, and Workers' Compensation.

According to the Judgeship Needs Application submitted by each circuit in their request for additional judges in 1999, each circuit was asked whether it had been impacted significantly by a particular class of complex or unique cases and, if so, to describe the negative impact. Eighteen of Florida's 20 circuits submitted applications requesting new judges and 13 of the 18 circuits (2d, 3rd, 4th, 5th, 6th, 7th, 8th, 10th, 11th, 13th, 15th, 17th, and 18th) identified problems with complex litigation. All of the 13 circuits which had problems with complex litigation reported those problems occurring in the civil division, with 5 of those circuits also experiencing problems in the criminal division. Those circuits which described the negative impact from the complex civil cases primarily reported a problem with lengthy trials, lasting anywhere from 3 weeks to 5 months. The cases involving lengthy trials were often referred to senior judges for handling during the pre-trial stage or trial phase. Many of these circuits reported backlogs on the trial docket due to the lengthy trials.

Currently, s. 28.241, F.S., provides limitations on filing fees for trial proceedings. Subsection (1) of s. 28.241, F.S., limits the sum of all service charges and fees to \$200, but the cap may be increased to \$210 in order to provide for the establishment, maintenance, or supplementation of a public guardian. Additionally, s. 28.241(5), F.S., provides that the fees prescribed in s. 28.241, F.S., do not include the service charges required by law for the clerk as provided in s. 28.24, F.S., or by other sections of the Florida Statutes.

III. Effect of Proposed Changes:

The bill creates a Complex Litigation Division in each judicial circuit with a population greater than 1,250,000. This division will be administered by the Supreme Court and the chief judge of each participating circuit. The bill directs the Supreme Court to adopt rules and procedures for the establishment and operation of each Complex Litigation Division.

According to the Legislature's Office of Economic and Demographic Research, there are currently two circuits which have populations greater than 1,250,000 as of April 1, 1999. Those circuits are the 11th (Dade County), and 17th (Broward County). Accordingly, the bill's provisions would require establishment of Complex Litigation Divisions in those circuits. The remaining circuits have the following populations:

1st 634,299	7th 659,457	14th 269,162
2d 343,107	8th 324,275	15th 1,042,196
3rd 165,183	9th 1,003,704	16th 87,030
4th 957,858	10th 578,441	18th 828,951
5th 746,409	12th 602,689	19th 453,508
6th 1,225,278	13th 967,511	20th 813,991

The division will hear complex civil cases that are governed by the Florida Rules of Civil Procedure. Florida Rule of Civil Procedure 1.010 provides that “[t]hese rules apply to all actions of a civil nature and all special statutory procedures in the circuit courts and county courts except those to which the Florida Probate Rules, the Florida Family Law Rules of Procedure, or the Small Claims Rules apply.” Accordingly, cases involving family law matters as defined in Rule 12.010 of the Florida Family Law Rules of Procedure, cases governed by the Florida Probate Rules as defined in Rule 5.010 of those rules, and all civil actions at law where the amount in controversy does not exceed \$5,000 as specified in Rule 7.010 of the Florida Small Claims Rules, will not be heard in the Complex Litigation Division.

Complex cases are those that are deemed to be complex pursuant to the bill’s provisions. The bill provides that a civil action that is expected to last more than three weeks shall be deemed to be complex. A civil action that is expected to take less than three weeks to try may be deemed complex when the action involves antitrust claims, construction defect claims involving multiple parties, shareholder derivative claims, environmental or toxic tort claims involving multiple parties, mass tort claims, claims involving class actions, or insurance coverage claims arising out of any of the foregoing claims.

The bill requires the chief judge of the circuit to determine the amount of a service charge for the establishment, maintenance, or supplementation of the complex litigation division. The service charge shall be added to the filing fee of those cases assigned to the complex litigation division and shall only be paid by those parties whose actions are filed or placed in the division.

The bill amends s. 28.241, F.S., to provide that the service charge required for complex litigation cases shall not be considered part of the filing fees and service charges subject to the limitations prescribed in s. 28.241, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article III, section 11 of the Florida Constitution generally prohibits local laws on certain subjects. Additionally, Art. III, s. 10, Fla. Const., requires that a notice to seek enactment of a local law be published in the manner provided by general law or that the local law be conditioned to take effect only upon approval by vote of the electors of the area affected. A general act of local application uses a classification scheme, such as population or some other criterion, so that its application is restricted to particular localities.

When a classification scheme based upon population is made by the Legislature, if any state of facts can reasonably be conceived that will sustain the classification attempted, the existence of that state of facts at the time the law was enacted will be presumed by the courts. *Lewis v. Mathis*, 345 So.2d 1066, 1068, (Fla. 1977). The Legislature has wide discretion in choosing a classification and therefore the presumption is in favor of the validity of the statute. *Id.* A legislative classification based upon population must have a reasonable basis for the classification to be held constitutional. *Id.* The classification based upon population must also be potentially applicable to other political subdivisions of the state with the same population. *Id.*

The bill is a general act that uses a population classification which currently only affects two circuits, the 11th (Dade County) and the 17th (Broward County.) However, the bill does not limit its application to only those two circuits as it uniformly applies to all circuits which have a population greater than 1,250,000. Similar population schemes have been held constitutional. *See Lewis*, (statute providing for greater compensation for judges in counties having a population of more than 40,000); *City of Coral Gables v. Crandon*, 25 So.2d 1, (Fla. 1946) (statute relating to creation of water conservation districts in each county having a population greater than 260,000 even though only one county had such population.)

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could help alleviate a backlog of civil cases that are ready to be tried by the parties but cannot be tried due to the unavailability of judges and/or courtrooms. By expediting the resolution of complex cases, the bill also could, in turn, ease the burden on the trial court system for resolving non-complex cases, thereby leading to speedier, less costly resolutions for litigants. The precise impact is indeterminate.

The bill would also subject those parties whose cases are filed or placed in the complex litigation division to an additional service charge to be added to the filing fee. The bill requires the chief judge of the circuit to determine the amount of the fee. The precise impact cannot be determined at this time.

Although the numbers fluctuate and each circuit has its own unique problems with complex litigation cases, it has been reported that as of September 1999, the 17th judicial circuit (Broward County) had a minimum of 20 civil actions with expected trials of three weeks or more. However, although the cases were reportedly ready to be tried, trial dates could not be obtained due to the limited regular availability of a senior judge.

C. Government Sector Impact:

The bill would require the Florida Supreme Court to establish complex litigation divisions in the statutorily prescribed circuits. The Supreme Court would also be required to establish rules and guidelines for the implementation of each division. Additionally, each participating circuit would most likely be required to shift existing resources to the newly created division as there is no provision in the bill for new or additional funding to staff such a division. According to the Office of the State Courts Administrator (OSCA) a trial court staff attorney and a case manager would be required for each of the two circuits (11th and 17th) currently impacted by the bill. OSCA indicates that non-recurring, first year start-up expenses and operating capital outlay amount to \$40,244, which is based upon State standards authorized per new position. Also, OSCA estimates that \$20,000 would be necessary to purchase or convert existing software in the two circuits to support the information system needs of these divisions. OSCA further estimates that recurring expenditures (salaries, benefits, and expenses) related to the 4.0 FTEs would amount to \$213,350 per year.

The bill would require the chief judge of the circuit to determine the amount of an additional service charge to cover the cost of establishing, maintaining, or supplementing the complex litigation division. The amount of the service charge would be unique to each circuit and would depend on how the chief judge implements the provisions of the bill in that chief judge's circuit. Accordingly, the impact is indeterminate at this time.

According to OSCA, the bill's establishment of complex civil litigation divisions will have minimal impact on judicial workload and the number of judgeships required, provided the current caseload remains constant and trial court support staff is provided. OSCA notes that the two circuits currently affected by the bill use senior judges to try complex cases. If the use of senior judges in this capacity was discontinued, and if additional judge and non-judge FTEs were not provided to staff the new divisions, OSCA anticipates that court operations would be adversely affected due to the high volume of non-complex general civil cases in both circuits.

The bill could potentially lead to speedier dispositions of complex and non-complex cases. In 1995, a commercial division was created in the New York County Supreme Court, which is the trial court for New York City. This commercial division, which handles only complex commercial cases, has routinely disposed of 12% more cases than the rest of the civil division. Additionally, since the institution of the division, the commercial division has seen a decrease of almost 100 days in the amount of time a commercial case takes to be disposed. OSCA indicates that reliable statistics as to the number of cases that would qualify for diversion to the complex litigation division do not exist. Accordingly, the precise impact on the Florida state court system is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
