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DATE: April 3, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 1865 (PCB JO 01-06)
RELATING TO: Judiciary
SPONSOR(S): Committee on Judicial Oversight
TIED BILL(S): none

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

- (1) JUDICIAL OVERSIGHT YEAS 8 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill authorizes 44 new judges in the trial courts: 30 circuit judges and 14 county judges. The judges filling the new offices created by the bill shall be appointed by the Governor and shall take office for a term beginning on January 2, 2002.

Implementation of the bill would require an appropriation from general revenue in the amount of \$5,935,427 for FY 2001-02. The bill would have an indeterminate fiscal impact on local governments.

The bill shall take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Article V, section 9 of the Florida Constitution vests the Supreme Court of Florida with the responsibility for determining the need for increasing or decreasing the number of judges in state courts other than the supreme court. The Constitution also 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 493 circuit court judges and 269 county court judges.

The Supreme Court entered a Certification Order on February 23, 2001. The order certified the need for a total of 44 new judges in the trial courts: 30 circuit judges and 14 county judges. *In re Certification of the Need for Additional Judges*, No. SC01-331 (Fla. Feb. 23, 2001).

In 2000, the Supreme Court certified the need for 43 new judges in the trial courts: 30 circuit judges and 13 county judges. *In re: Certification of the Need for Additional Judges*, 755 So. 2d 79 (Fla. 2000). This certification was not funded by the Legislature. However, effective October 1, 2000, the Legislature provided salary increases for members of the judiciary¹. Ch. 2000-166, Part 6, Laws of Florida.

In 1999 and prior years, the Supreme Court used unweighted case filings per circuit judge as a guide in determining the need for additional judges. See Fla. R. Jud. Admin. 2.035; *In re Certification of the Need for Additional Judges*, No. 94,890 at 6 (Fla. Feb. 18, 1999). In 1997, the Legislature directed Office of Program Policy Analysis and Government Accountability (OPPAGA)

¹ The salary of a Supreme Court Justice was increased from \$145,083 to \$150,000. The salary of District Court of Appeals Judge was increased from \$130,576 to \$138,500. The salary of a Circuit Court Judge was increased from \$117,020 to \$130,000. The salary of a County Court Judge was increased from \$104,018 to \$117,000.

to review the efficiency of the method used by the Supreme Court to certify the need for additional judges. In March 1998, OPPAGA issued its report noting that the process used by the Supreme Court to establish the need for additional judges might not accurately identify where and when judges are needed. The report recommended that the Supreme Court adopt a weighted caseload system for assessing judicial workload and certifying the need for additional judges. OPPAGA Report No. 97-67, Information Brief on Weighted Caseload Methods of Assessing Judicial Workload and Certifying the Need for Additional Judges.

Chapter 98-422, L.O.F., appropriated \$75,000 to the judicial branch to contract for the development of a Delphi-based² caseload weighting system to determine optimal caseloads for circuit and county judges, and in conjunction with other factors, to determine the need for additional circuit and county court judges. The judicial branch was instructed to consult with OPPAGA on defining the scope of the work, selection of a consultant, and choosing a methodology for developing case weights and determining available judge time.

The Supreme Court established the Delphi Policy Committee (DPC) to direct the study. The Committee consisted of 41 circuit and county judges. The Office of State Courts Administrator contracted with the National Center for State Courts to develop and validate a Delphi-based weighted caseload system.³ The DPC worked with chief judges, trial court judges, and OPPAGA⁴.

The Delphi system assigns weights in minutes to different case types based on an assessment of the average amount of judicial time required for each type of case. Judicial time that must be spent on each case differs depending on case type and often increases as the law becomes more complex. An accurate measure of judicial workload must include an assessment of judge time required in individual cases and must differentiate between types of cases. The DPC estimated case times, recoded a sample of actual case times, and reconciled the differences between estimated and recorded times to establish reasonable case weights. Reasonable case weights were adopted and used to determine optimum caseload.

The Supreme Court generally agreed with the findings of the DPC and in 2000 used the recommended reasonable caseload standards as the primary basis for the certification of need for additional judges, with the exception of the weight for the circuit case categories of drugs and dissolution, and the county case categories of evictions and civil traffic⁵. *In re: Certification of the Need for Additional Judges*, 755 So. 2d 79, 81 (Fla. 2000) OPPAGA reviewed the new certification system used by the Supreme Court and concluded that it provides an improvement over previous certification practices and will generate more accurate estimates of the number of judge needed. OPPAGA Report No. 99-38, Courts Improve Caseload System; Need to Address Supplemental Resources. This year the Supreme Court has again used the Delphi method in certifying the need for additional judges. *In re Certification of the Need for Additional Judges*, No. SC01-331 (Fla. Feb. 23, 2001).

² The Delphi process is defined as weighing caseloads by “[identifying] a selected group representative of all judges and possibly administrators that will estimate the time required for different case types through an interactive process than moves the estimates toward a ‘norm’ or ‘consensus’ time that should closely track measured time.” Designing a Judgeship Needs Process for Florida, Gryphon Consulting Services, LLC, February 1998.

³ The study, entitled Florida Delphi-based Weighted Caseload Project Final Report, was completed in January 2000.

⁴ Over 200 judges participated in the process.

⁵ The court’s modifications of the weights resulted in the certification of the need for fewer judges.

C. EFFECT OF PROPOSED CHANGES:

The bill amends section 26.031, F.S., to authorize 30 new circuit judges as follows:

<u>Judicial Circuit</u>	<u>Number</u>
First	1
Second	1
Fourth	2
Fifth	2
Sixth	2
Seventh	1
Ninth	3
Tenth	2
Eleventh	3
Thirteenth	2
Fifteenth	2
Seventeenth	5
Eighteenth	2
Twentieth	2

The bill amends section 34.022, to authorize 14 new county court judges as follows:

<u>County</u>	<u>Number</u>
Brevard	1
Broward	2
Duval	2
Hillsborough	2
Lee	1
Oskaloosa	1
Orange	1
Pasco	1
Pinellas	1
Polk	1
Sarasota	1

The judges filling the new offices created by the bill shall be appointed by the Governor and shall take office for a term beginning on January 2, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Non-recurring:		<u>FY 2001-02</u>	<u>FY 2002-03</u>
General Revenue	Expenses	\$306,100	
	OCO	<u>\$332,000</u>	
	Total	\$638,100	
Recurring:			
General Revenue	100 FTEs	\$4,451,327	\$8,902,653
	FL Cases	72,600	72,600
	Expenses	<u>773,400</u>	<u>773,400</u>
	Total	\$5,935,427	\$9,748,653

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. Although the salaries and benefits of the 100 positions created by the bill are paid by the state, counties may incur expenses for the impact of these new positions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Some individuals and business may experience an economic benefit from having their civil cases move more rapidly through the court system.

D. FISCAL COMMENTS:

The Office of the State Courts Administrator provided the fiscal analysis for this bill. The analysis provides for a total of 100 FTEs consisting of 30 circuit judges, 30 circuit judicial assistants, 14 county judges, 14 county judicial assistants, and 12 trial court law clerks.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Although the salaries and benefits of the 100 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 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 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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

By the Supreme Court

[T]his certification is the result of a conservative application of our data findings, which have been based on weighted caseload methodology developed at the urging of the Legislature. It would be beneficial to the certification process for the Legislature to communicate with the Court regarding its continued commitment to the Delphi methodology. We have concluded that case weighting, as we have implemented it, does provide an improved method for determining judicial need and an objective criterion for evaluation of the need for additional judges. We recognize that the Legislature is the ultimate user of this methodology by its decision in respect to the needs certified. In view of the absence of funding for the 2000-01 certification, it would be beneficial for us to know if there is a continued legislative commitment to this methodology or if we need to address any concerns about the implementation of the methodology. *In re Certification of the Need for Additional Judges*, No. SC01-331 (Fla. Feb. 23, 2001).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

Lynne Overton

Lynne Overton