

STORAGE NAME: h0017.sg.doc
DATE: February 8, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS

BILL #: CS/HB 17
RELATING TO: Retired Judges/Temporary Duty
SPONSOR(S): Committee on Judicial Oversight and Representative Heyman

TIED BILL(S):

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

- (1) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 6 NAYS 4
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The chief justice of the Supreme Court of Florida can appoint retired justices or judges to serve in judicial positions on a temporary basis. Retired justices or judges are paid not less than \$200 per day for their service. Currently, in order to be compensated for service as a retired justice or judge, the justice or judge must not have been defeated or have not failed to have been retained in the justice or judge's last judicial office and must not be engaged in the practice of law. CS/HB 17 changes that requirement and permits any justice or judge who has served in a judicial office for a minimum of ten years, whether or not the justice or judge was defeated in the last judicial race, and meets other requirements as set forth by the Supreme Court of Florida to be compensated for service as a retired justice or judge. Persons who had been approved to serve as retired justices or judges prior to July 1, 2002, need not have served in a judicial office for ten years in order to be compensated for service. The committee substitute eliminates that requirement that a retired justice or judge not be engaged in the practice of law and instead permits the Supreme Court of Florida to limit the law practice of retired justices or judges.

The committee substitute takes effect on July 1, 2002.

The Council for Smarter Government adopted an amendment to the committee substitute. The amendment is discussed in "Amendments or Committee Substitute Changes".

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 5, s. (2)(b), Fla. Const., and Florida Rule of Judicial Administration 2.030(a)(3)(A) allow the chief justice of the Supreme Court to temporarily assign retired justices or judges to any court which they are qualified to serve. Florida Rule of Judicial Administration 2.030(a)(3)(B) defines a retired judge as a judge who is not engaged in the practice of law and who has been a judicial officer of this state. Retired judges must comply with continuing judicial education requirements, including completion of 30 hours of approved judicial education programs every three years. See Fla.R.Jud.Admin. 2.150.

Section 25.073(1), Florida Statutes, defines retired justice or judge as a former justice or judge who is not engaged in the practice of law and who has not been defeated in seeking reelection to, or has not failed to be retained in seeking retention in his or her last judicial office. No person may serve more than 60 days on temporary duty during a year without the approval of the chief justice. See s. 25.073(2)(a), F.S.

Retired judges may receive compensation as set by law. See Fla.R.Jud.Admin. 2.030(a)(3)(A). Only persons who meet the qualifications set forth in section 25.073(1), Florida Statutes, may be compensated for service as retired justices or judges. Currently, compensation for retired justices or judges is set at not less than \$200 per day. See s. 25.073(2)(a), F.S. According to the Office of the State Courts Administrator, retired justices or judges are paid \$300 per day for service. In addition, retired justices or judges are entitled to necessary travel expenses pursuant to section 25.073(2)(b), Florida Statutes.

Currently, the Code of Judicial Conduct prohibits retired justices or judges from practicing law or accepting any assignment in which the judge's present financial business dealings or other extra-judicial activities might be affected. A retired justice or judge is permitted to serve as a mediator and may be associated with mediation or alternative dispute resolution firms. A retired justice or judge is required to disclose any negotiations or agreements for the provision of mediation services between the judge and any parties or counsel on cases that the judge is assigned to adjudicate.

According to the Office of the State Courts Administrator, a person wishing appointment as a retired justice or judge must submit an application to the Judicial Qualifications Commission. The Commission reviews the application and forwards it to the Supreme Court. The justices review the application and the clerk's office notifies the applicant if the application is accepted. If the

application is accepted, the person becomes eligible for service and can be appointed to serve by the chief judge of the district or circuit as needed.

The Supreme Court of Florida has appointed a committee to investigate and report on the use of senior judges. The 11 member committee is required to submit a report to the court no later than February 1, 2002. See In re: Committee on Appointment and Assignment of Senior Judges, Administrative Order No. AOSC01-25 (Fla. June 6, 2001). According to the Florida Bar News, October 1, 2001 issue, the committee will make recommendations regarding whether there is a need for a system of certifying senior judges. If the committee finds that such a need exists, the court has asked for recommendations on how to create such a system. In addition, the court is seeking information on how to best use senior judges.

The Supreme Court heard oral argument on February 5, 2002, in a case challenging the use of senior judges to hear certain medical malpractice cases in Broward County. The Petitioners in Physicians Healthcare Plans, Inc. v. Raymond Pfeifler, Cases Nos. SC01-2062, SC01-2079, claim that Broward County's practice of assigning senior judges to hear cases that are anticipated to take more than two-and-one half weeks for trial violates their right to access to courts. There is no timetable set for disposition of the case.

C. EFFECT OF PROPOSED CHANGES:

The committee substitute would amend section 25.073, Florida Statutes, and alter the requirements for compensating retired justices or judges for their service. Under the committee substitute, in order to be compensated for service as a retired justice or judge, all persons eligible and approved for temporary duty must have served in a judicial office for a minimum of ten years. This change would permit judges with more than ten years of experience to be compensated for serving as a retired justice or judge even if that justice or judge was defeated or failed to be retained in his or her last election campaign. The committee substitute also permits persons approved for service as a senior justice or judge prior to July 1, 2002, to continue to be compensated for service even if they have served in a judicial office for fewer than ten years.

The committee substitute eliminates the requirement that a retired justice or judge not be engaged in the practice of law and instead permits the retired justice or judge to practice law as limited by the Supreme Court of Florida. Under current court rules, a person cannot serve as a retired justice or judge if the person is engaged in the practice of law. See Fla.R.Jud.Admin. 2.030(3)(B). While the Supreme Court of Florida could amend the court rules to permit a person to engage in the practice of law and serve as a retired justice or judge, the person could not be compensated for such service under current law. The committee substitute would remove the requirement that a person not be engaged in the practice of law in order to be compensated for service as a retired judge.

The Office of the State Court Administrator (OSCA) states that CS/HB 17 will have no fiscal impact since it does not change the compensation rate for retired justices or judges. According to information collected by OSCA, the average justice or judge serves 18 years. However, there are currently 23 persons serving as retired justices or judges who have not served for ten years in a judicial office. Under the committee substitute, these 23 persons would be permitted to be compensated for future service even though they have not served in a judicial office for ten years.

The committee substitute would be effective July 1, 2002.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The Office of the State Court Administrator (OSCA) states that the committee substitute will have no fiscal impact since it does not change the compensation rate for retired justices or judges.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

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

The committee substitute does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

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B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On October 23, 2001, the Committee on Judicial Oversight considered HB 17. The sponsor offered an amendment to make clear that persons who were approved to serve as senior justices or judges prior to July 1, 2002, could continue to be compensated for service even if they had served fewer than ten years in a judicial office. The committee adopted the amendment and reported HB 17 favorably as a committee substitute.

On February 7, 2002, the Council for Smarter Government considered this bill. The sponsor offered an amendment to add an additional qualification in order to be compensated for service as a senior judge. In addition to the requirements contained in the committed substitute, a person "approved for temporary duty as a judge or justice by the Chief Justice and if defeated must also be approved by the appropriate Judicial Nominating Commission". The amendment was adopted and the bill was reported favorably.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

L. Michael Billmeier

Staff Director:

Lynne Overton

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

L. Michael Billmeier, Jr.

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