

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1800

SPONSOR: Judiciary Committee and Senator Diaz de la Portilla

SUBJECT: District Courts of Appeal

DATE: March 5, 2002 REVISED: _____

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

I. Summary:

Committee Substitute for Senate Bill 1800 requires each district court of appeal to consist of at least one judge from each judicial circuit within the district where there is a qualified applicant from any unrepresented circuit. The Judicial Nominating Commissions making appointments to district courts of appeal are requested to adopt rules of procedure to effectuate the provisions of this act.

The current term of any sitting judge or any vacancy pending appointment by the Governor on the effective date of the act is not affected by the requirements of this bill.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes:

II. Present Situation:

Section 1, of Article V of the Florida Constitution, provides that the Legislature must divide the state into appellate districts and judicial circuits following county lines. Section 4, of Article V, establishes a district court of appeal in each appellate district.

The constitution sets out geographic requirements for justices of the Supreme Court and judges appointed to the district courts of appeal, the circuit and county courts. Section 3 of Article V provides that a justice must be appointed from each appellate district who is a resident of the district at the time of appointment to the Supreme Court. Section 8 of Article V, provides that no person may serve as a justice or judge unless they reside in the territorial jurisdiction of the court on which they serve.

Chapter 26, entitled “Circuit Courts: contains specific provisions for the location and jurisdiction of circuit courts. Section 26.021, F.S., provides for the counties contained in each circuit. For the fifth, seventh, and sixteenth circuits the section provides residency requirements for some of the judges. The authority of the Legislature to provide for geographic distribution of circuit court judges, while not the issue under litigation, was accepted as within the power of the Legislature in *E.L. Eastmoore v. Stone*, 265 So. 2d 517(Fla. 1st DCA, 1972). However, *Eastmoore*, was issued prior to the adoption of s. 8 of Article V, establishing a residency requirement for justices and judges. The Court has held that where the constitution sets forth requirements for an office the statutes cannot impose additional requirements. *State ex rel. Askew v. Thomas*, 293 So. 2d 40 (1974). In fact, the Court interpreted the residency requirement for judges in the constitution to require that the judge reside in the jurisdiction of the court to which he or she is elected or appointed on the day the judge takes office. *Miller v. Mendez*, 2001 26 Fla. L. Weekly S829 (2001). See the Discussion in *Other Constitutional Issues*.

There is no requirement that judges on the district court of appeal reside in a certain judicial circuit within each appellate district. Currently, the 8th and 14th circuits in the first district court of appeals do not have judges on the DCA, the 16th circuit in the third DCA, and the 19th circuit in the fourth DCA do not have judges sitting on the bench of their respective district courts of appeal.

III. Effect of Proposed Changes:

This bill requires that each district court of appeal consist of at least one judge from each judicial circuit within the district. The appointed judge must be a resident of the circuit at the time of his or her appointment as the judge representing the circuit to the district court of appeal. The Judicial Nominating Commission is relieved of this requirement where the vacancy is advertised in any unrepresented circuit and no applications are received from qualified applicants. When a district court of appeal judge retires, is removed from office, or is not reelected, that judge shall be replaced by a judge from a circuit that is not currently represented on the court if a district court of appeal does not have a judge from each circuit within the district. This requirement also applies if the Legislature creates additional judgeships on any of the district courts of appeal. If more than one circuit is not represented on the court, the replacement judge must be selected from the circuit with the lowest number. However, these requirements apply only to the extent that there are qualified applicants from the unrepresented circuit.

For example, the First District currently has no judges from the 8th Circuit and no judges from the 14th Circuit. When a judge from the First District leaves office, that judge must be replaced by a judge from the 8th Circuit. However, since the Fifth District has more than one judge from each judicial circuit in its appellate district, when a judge leaves that court, the replacement can be from any circuit within the district.

The bill does not affect the current members of the court so personnel changes are not necessary in district courts where all circuits are not currently represented, e.g. the First District, the Third District, and the Fourth District.

This bill requests that the Supreme Court and the judicial nominating commissions adopt uniform rules of procedure to implement the changes.

This bill will become effective upon becoming law.

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:

It can be argued that this bill imposes an additional eligibility requirement on appellate court judges that is not found in the Florida Constitution. This bill requires that each district court of appeal have at least one judge from each judicial circuit within an appellate district. The Florida Constitution requires that an appellate judge be an elector of the state, reside in the territorial jurisdiction of the court, and have been a member of the Florida Bar for the preceding ten years. If a court were to hold that placing a judge from each judicial circuit imposes an additional requirement for being an appellate judge, it may find the statute violates the Florida Constitution. In *State ex rel. Askew v. Thomas*, 293 So. 2d 40, 42 (Fla. 1974), the Florida Supreme Court explained:

We have consistently held that statutes imposing additional qualifications for office are unconstitutional where the basic document of the constitution itself has already undertaken to set forth those requirements.

In *State v. Grassi*, 532 So. 2d 1055 (Fla. 1988), the Florida Supreme Court held that a statute that required candidates for the county commission to be a resident of the district from which he qualifies was unconstitutional. The court explained that the constitution only required that the candidate be a resident of the district at the time of election and not at the time of qualification. *Grassi*, 532 So. 2d at 1056. Accordingly, the court held the statute, which required residency at the time the candidate qualified, imposed an additional requirement and thus violated the state constitution.

Most recently, in *Miller v. Mendez*, 26 Fla. L. Weekly S829 (2001), the court held that a statutory requirement that a candidate for judicial office taking an oath swearing or affirming that the candidate is a resident of the judicial circuit when the candidate qualifies for office imposed an additional requirement not found in the constitution and that judicial candidates need only meet the residency requirement before assuming office. In a concurring opinion, four of the justices indicated that the Legislature could “define”

the residency requirement. It could be argued that this bill simply “defines” the residency requirement and does not impose an additional requirement.

While the bill directs that the district courts of appeal shall have representation by all circuits making up each district, Article V, Section 11(a) of the State Constitution provides that the authority to select candidates for appellate courts rests with the Governor who must select from recommendations of the nominating JNC. Under the constitution, the JNC’s independently select a panel of candidates for presentation to the Governor. The Governor then has constitutional authority to select any member of the panel presented by the JNC. This bill attempts to control the appointments by the Governor and the recommendations of the JNC, which could be found to violate Article V, Section 11(a) of the State Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill could be read to require that once appointed to the district court of appeal the judge must continue to reside in the circuit from which they were appointed. This could prove difficult for district such as the 1st district court of appeal that covers from Pensacola to Jacksonville.

The bill also does not address what is to happen if the JNC does not receive applications from a circuit within a district court of appeal that is not currently represented on the court.

VIII. Amendments:

None.