

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1441 Jurors
SPONSOR(S): Smith
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Judiciary</u>	_____	<u>Jaroslav</u>	<u>Havlicak</u>
2) <u>Appropriations</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill creates the "Florida Jury Patriotism Act," under which full participation on petit juries is mandatory of all eligible citizens when called, unless excused. It clarifies the procedures in which a citizen may be excused from a petit jury and eliminates numerous automatic exemptions from jury service extended to law enforcement, the Governor and other officials, as well as physicians, attorneys and expectant mothers. The bill makes avoiding jury service more difficult by tightening the standards for obtaining an excuse. It also increases the penalties for those who unlawfully avoiding jury duty.

This bill establishes a lengthy trial fund in order to sustain a jury during long, complex cases, with the revenues of this fund to come from court fees. Finally, this bill provides for protection of employee benefits by prohibiting employers from requiring an employee to use accumulated vacation and sick leave in order to serve on a jury.

This bill does not appear to have a fiscal impact on state or local governments. This bill does appear to have an uncertain negative fiscal impact on the private sector.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1441.ju.doc
DATE: April 1, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

This bill requires persons who are currently exempt to serve as jurors, while also increasing penalties for avoidance.

B. EFFECT OF PROPOSED CHANGES:

Section 1: Popular Name

This section provides that the bill be known by the popular name, "Florida Jury Patriotism Act".

Section 2: State Jury Policy

This section creates a new s. 40.010, F.S., providing that it is state policy for all qualified citizens to serve on petit juries when summoned, unless excused.

Section 3: Postponement of Jury Service

This section creates a new s. 40.012, F.S. Under this new section, an individual who is scheduled to appear for jury service is authorized to postpone that service once as a matter of right. First postponements, when requested, may be granted only if the prospective juror:

- has not previously been granted a postponement;
- contacts the clerk of court by either telephone, electronic mail, in writing or in person to request a postponement; and
- prior to the grant of the postponement, in concurrence with the clerk of court, specifies a date no more than six months after the original date, on which the obligation to serve will be fulfilled.

Any subsequent requests to postpone jury service must be caused by an extreme emergency such as:

- a death in the family;
- a sudden grave illness;
- a natural disaster; or
- a national emergency in which the prospective juror is directly involved.

Prior to the granting of a second postponement, the juror must again specify a date no more than six months after the original date, on which the obligation to serve is to be fulfilled.

Section 4: Automatic Exemptions from Jury Service

Under s. 40.013, F.S., certain individuals are automatically exempt from being required to serve on a jury. These individuals include:

- the Governor;
- the Lieutenant Governor;
- clerks of court;
- judges;
- full time federal, state and local law enforcement officials and their investigative entities;
- expectant mothers;
- parents in the custody of a child under 6 years of age;
- practicing attorneys and physicians (at the discretion of the judge);
- the physically infirm;
- persons showing hardship, inconvenience or public necessity; and
- persons responsible for the care of individuals who experience mental illness, mental retardation, or senility, or who are physically unable to care for themselves;

This bill amends s. 40.013, F.S., to eliminate these exemptions.

Section 5: Condition or Hardship Excuse from Jury Service

This section creates a new s. 40.014, F.S. Under this new section, an individual may be excused from serving on a jury for up to 24 months instead of seeking a postponement. The prospective juror may be excused if 1) they have a mental or physical condition which prohibits them from performing the duties required; or 2) jury service would cause undue physical or financial hardship to themselves or someone under their direct care.

This section provides that the determination of whether a condition or hardship prevents an individual from being capable of jury service is to be made by a judge of the court for which the individual was called to serve. This authority is delegable only to court officials or such persons as are authorized by law "to function as members of the judiciary."

Under this section, a prospective juror seeking to be excused on the basis of a physical or mental condition, or his or her personal representative, must provide documentation from a licensed physician verifying the condition.

The section further clarifies that "[u]ndue or extreme physical or financial hardship" is limited to circumstances in which an individual is:

- required to abandon a person under their direct care because they were unable to find an appropriate substitute;
- incurring financial losses that would substantially affect the payment of daily living expenses for the individual or those under their direct care; or
- suffering physical hardship that would result in illness or disease.

Conversely, the section provides that undue or extreme physical or financial hardship cannot be based on potential absence from employment. A person requesting an excuse based on hardship must provide the judge with appropriate documentation such as: income tax returns, proof of dependency, etc. Failure to provide this documentation shall result in a denial of the individual's request.

After 24 months an excused juror will again become eligible for service unless they were permanently excused. A permanent excuse may only be granted by a judicial determination that the grounds underlying the excuse are of a permanent nature.

Section 6: Penalties for Avoiding Jury Service

This amends section 40.23, F.S., to remove language requiring that the postponement of jury service is not to exceed 6 months. It adds language stating that if an individual does miss jury service without having an exemption or postponement, that individual will have committed a second degree misdemeanor;¹ this is in place of current law providing that the punishment for a juror's failure to appear is a fine not to exceed \$100 and contempt of court.

Section 7: Lengthy Trial Fund

This section creates s. 40.255, F.S., establishing the "Lengthy Trial Fund" ("fund"). The fund is to provide for full or partial wage replacement to an individual serving on a petit jury for more than 10 days. The section directs the Florida Supreme Court to promulgate rules that provide for the following:

- the selection and appointment of a fund administrator;
- the procedures used by the fund including the salary payments of the administrator and other required personnel;
- procedures for the accounting, investing and auditing of monies in the fund; and
- a report on the administration of the Lengthy Trial Fund by the Florida Supreme Court in its annual report on the judicial branch, allowing for the money collected and dispersed from the fund.

The section provides for each trial court in the state to collect a fee of \$20, notwithstanding any other fees collected, from each attorney who files a civil case, to be directed into the fund. The money collected by the fund is then to be distributed by its administrator, as full or partial wage replacement or supplementation, to jurors whose employers pay less than full regular wages when the trial exceeds 10 days.

The following attorneys and causes of action are exempt from the Lengthy Trial Fund fees:

- government attorneys fulfilling the obligations of their duty;
- pro se litigants;
- small claims or the equivalent; and
- claims seeking social security disability determinations, recoupment actions for government based loans, child custody cases, actions brought in forma pauperis, and any other filings that require minimal use of court resources.

The court may pay each juror up to \$300 per day, starting on the eleventh day of service. Also, if a court finds that service in a jury for more than 10 days has caused a significant financial hardship to the juror, it may provide payment of \$100 per day in supplemental pay from the fourth to the tenth day of service.

This section requires that jurors who qualify for payment from the fund request payment on a form provided by the administrator. The form is to disclose the juror's regular wages, the amount to be paid by the employer starting on the eleventh day, and the amount of supplemental wages requested. The juror will be required to submit verification of wage information such as a recent earnings statement. If self-employed, an individual must provide a sworn affidavit attesting to their weekly gross income.

¹ Persons convicted of second-degree misdemeanors may be sentenced to a maximum of 60 days' imprisonment, see s. 775.082(4)(b), F.S. They may also be fined up to \$500, see s. 775.083(1)(e), F.S., or "[a]ny higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim." Section 775.083(1)(f).

Payment from the fund is limited to the difference between the jury fee and the juror's actual wages, up to the maximum level, minus the amount received from the juror's employer during the same time period. This payment is in addition to any other compensation allowed for by the state.

Section 8: Juror Employment Protections

Under s. 40.271, F.S., a juror may not be dismissed from employment, or threatened with dismissal, for performing his or her jury service. Threats may be treated as contempt of court; actual dismissal provides jurors with a civil cause of action entitling them, upon a favorable adjudication, not only to compensatory damages but to punitive damages and reasonable attorney's fees. This section adds that, in addition to this prohibition on dismissal, a juror may also not be subjected to any other adverse actions by an employer.

This section further provides that an employee not be required to use annual, vacation or sick leave for time spent on jury service.

Finally, this section directs courts to immediately postpone the service of a juror, if that juror works for a company with 5 or fewer employees, where another employee has been summoned during the same period.

Section 9: Severability

This section provides that the bill is severable, i.e., that if any section is deemed unconstitutional or if the application of any part is considered invalid, the remaining portions will remain valid and enforceable.

Section 10: Effective Date

This section provides an effective date of October 1, 2003.

C. SECTION DIRECTORY:

Section 1. Provides the popular name, "Florida Jury Patriotism Act."

Section 2. Creates s. 40.010, F.S., providing for state policy with respect to jury service.

Section 3. Creates s. 40.012, F.S., relating to postponement of jury service.

Section 4. Amends s. 40.013, F.S., eliminating exemptions from jury service.

Section 5. Creates s. 40.014, F.S., relating to excuse from jury service.

Section 6. Amends s. 40.23, F.S., relating to penalties for avoiding jury service.

Section 7. Creates s. 40.255, F.S., providing for creation and administration of a Lengthy Trial Fund.

Section 8. Amends s. 40.271, F.S., relating to juror employment protection.

Section 9. Provides for severability.

Section 10. Provides an effective date of October 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill imposes an additional \$20 fee in all private civil filings, to fund the Lengthy Trial Fund. This bill also requires employers to refrain from deducting their employees' time spent on jury service from leave time. The extent of these impacts is uncertain.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Separation of Powers

Article II, s. 3, of the Florida Constitution provides: "No person belonging to one branch [of state government] shall exercise any powers appertaining to either of the other branches unless expressly provided herein." Article V, s. 2(a), Fla. Const., further provides that the "Supreme Court shall adopt rules for the practice and procedure in all courts." Because Section 7 of this bill directs the Florida Supreme Court to promulgate rules, it may raise constitutional concerns under these provisions.

The Legislature is responsible for enacting substantive law, while the Supreme Court is responsible for promulgating rules of practice and procedure. The Legislature has the constitutional authority to repeal a procedural rule by a two-thirds vote;² however, it has no authority to enact a law relating to practice and procedure. The question of whether a law is substantive or procedural is one that occurs frequently, but is nevertheless difficult to determine.

² See Art. V, s. 2(a), Fla. Const.

In *Benyard v. Wainwright*,³ the Supreme Court stated that substantive law prescribes rights and duties, whereas procedural law concerns the means and method to apply and enforce those rights. Florida courts protect their procedural rulemaking power by striking down laws that conflict with their rules. For example, in 1976, the Supreme Court ruled unconstitutional a statute regarding the state mental hospital because it was in conflict with a previously passed criminal rule of procedure regarding persons found not guilty by reason of insanity.⁴ In 1991, the Court ruled that a statute requiring mandatory severance of a mortgage foreclosure trial from a trial on any other counterclaims was unconstitutional because it conflicted with an existing rule of civil procedure.⁵

The First District Court of Appeal, in *Johnson v. State*,⁶ held that a statute requiring presentence reports to be conducted in certain cases was unconstitutional because it conflicted with a rule of procedure; therefore, it infringed upon the rulemaking power of the Supreme Court. The dispositive issue in determining whether the law was substantive or procedural seemed to be that the Court had already preempted the Legislature from acting in this area by the Court's prior adoption of a rule governing presentence reports.⁷

In analyzing whether this section encroaches upon the Supreme Court's rulemaking authority, a court may look at whether the Supreme Court has preempted the Legislature from acting in a particular area, as the *Johnson* court did. A court could find that the Legislature has, rather, exercised substantive lawmaking authority throughout the statutes concerning jury service.

However, even if a court finds that this bill's instruction to promulgate rules relating to the Lengthy Trial Fund is procedural, it could decide to uphold the bill anyway by deferring, as it sometimes does, to the Legislature's expertise in implementing procedural rules in which it has a policy interest.⁸

Trust Funds

Pursuant to Article III, s. 19(f), of the Florida Constitution, "[n]o trust fund of the State of Florida or other public body may be created by law without a three-fifths (3/5) vote of the membership of each house of the legislature in a separate bill for that purpose only." The Lengthy Trial Fund established under Section 7 of this bill may raise concerns with respect to this provision. Unless enacted as a trust fund in a separate bill, it appears that it might be possible for a future Legislature to treat monies deposited in the Lengthy Trial Fund as general revenues, and thus to use them for purposes other than those specified in this bill. Although doing this would directly contradict this bill's provisions, under standard canons of construction, when two laws of equal force irreconcilably conflict, the later in time governs; as a matter of longstanding principle, one Legislature may not bind its successor.⁹

Severability

Severability clauses in Florida legislation are often considered unnecessary because courts are required to sever unconstitutional portions of a statute if doing so could save the rest and still preserve the intent of the Legislature.¹⁰ Therefore, Section 9 of this bill, expressly providing for severability, may be redundant.

³ 322 So.2d 473 (Fla. 1975).

⁴ See *In re Connors*, 332 So.2d 336 (Fla. 1976).

⁵ See *Haven Federal Savings & Loan Ass'n v. Kirian*, 579 So.2d 730 (Fla. 1991).

⁶ 308 So.2d 127 (Fla. 1st DCA 1975).

⁷ See *id.* at 128.

⁸ See, e.g., *Kalway v. Singletary*, 708 So.2d 267 (Fla. 1998) (upholding a 30-day statute of limitations for the filing of an action challenging a prisoner disciplinary proceeding as a policy matter in which the Legislature had expertise).

⁹ See *Nue v. Miami Herald Publishing Co.*, 462 So.2d 821 (Fla. 1985); *Askew v. Schuster*, 331 So.2d 297 (Fla. 1976); *Sharer v. Hotel Corp. of America*, 144 So.2d 813 (Fla. 1962); *Gonzales v. Sullivan*, 16 Fla. 791 (Fla. 1878).

¹⁰ See *Smith v. Department of Insurance*, 507 So.2d 1080 (Fla. 1987). Cf. *Watson v. Buck*, 313 U.S. 387 (1941); *Williams v. Standard Oil, Inc.*, 278 U.S. 235 (1929) (applying an analogous rule with respect to severability of federal statutes).

B. RULE-MAKING AUTHORITY:

This bill directs the Florida Supreme Court to promulgate rules for the administration of the Lengthy Trial Fund. See Section 7 in "Effect of Proposed Changes," above.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A