

# 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.)

Prepared By: Judiciary Committee

BILL: CS/SB 2048

SPONSOR: Judiciary Committee and Senator Crist

SUBJECT: Judges

DATE: March 24, 2005

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cibula	Maclure	JU	<b>Fav/CS</b>
2. _____	_____	JA	_____
3. _____	_____	WM	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

## I. Summary:

This committee substitute creates two new district court of appeal judgeships, 67 new circuit court judgeships, and 41 new county court judgeships. The committee substitute provides that approximately one-half of the new circuit court and county court judgeships will be appointed by the Governor, and the remainder will be elected.

This committee substitute substantially amends the following sections of the Florida Statutes: 26.031, 34.022, and 35.06.

## II. Present Situation:

### Certification of Need for Additional Judges

Section 9, Article V of the State Constitution requires the Florida Supreme Court to recommend to the Legislature the need for additional judges.<sup>1</sup> The Florida Supreme Court was directed in

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<sup>1</sup> SECTION 9, Art. V, STATE CONST., states:

**Determination of number of judges.**—The supreme court shall establish by rule uniform criteria for the determination of the need for additional judges except supreme court justices, the necessity for decreasing the number of judges and for increasing, decreasing or redefining appellate districts and judicial circuits. If the supreme court finds that a need exists for increasing or decreasing the number of judges or increasing, decreasing or redefining appellate districts and judicial circuits, it shall, prior to the next regular session of the legislature, certify to the legislature its findings and recommendations concerning such need. Upon receipt of such certificate, the legislature, at the next regular session, shall consider the findings and recommendations and may reject the recommendations or by law implement the recommendations in whole or in part; provided 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

budget proviso to the 1998 General Appropriations Act to develop “a Delphi-based case load weighting system to determine the optimum caseloads for circuit and county judges and, in conjunction with other factors, to determine the need for additional circuit and county court judges.”<sup>2</sup> The resulting system was used to develop the Court’s latest request for new trial court judgeships.<sup>3</sup> For the district court of appeal judgeships, the Court relied on average case filings per judge per district court of appeal to determine additional judges were needed.

As a result of the Court’s need analysis, the Court:

certif[ied] the need for sixty-seven new circuit court judges for fiscal year 2005-2006 as follows:

1. Seven additional circuit judges each for the Fifth, Tenth, and Eleventh Circuits;
2. Six additional circuit judges each for the Thirteenth and Seventeenth Circuits;
3. Five additional circuit judges each for the Sixth and Ninth Circuits;
4. Four additional circuit judges each for the Seventh and Nineteenth Circuits;
5. Three additional circuit judges each for the First and Twentieth Circuits;
6. Two additional circuit judges each for the Second, Fourth, and Eighteenth Circuits; and
7. One additional circuit judge each for the Third, Eighth, Fourteenth, and Fifteenth Circuits.

Further, after reviewing the requests of the trial courts and in light of the above considerations, we certify the need for forty-one new county court judges for fiscal year 2005-2006 as follows:

1. Six additional county judges for Broward County;
2. Four additional county judges each for Pinellas, Hillsborough, and Brevard Counties;
3. Three additional county judges for Orange County;
4. Two additional county judges each for Marion, Pasco, Miami-Dade, Palm Beach, and Collier Counties; and
5. One additional county judge each for Duval, Hernando, Lake, Volusia, Manatee, Bay, Seminole, Martin, Saint Lucie, and Lee Counties.<sup>4</sup>

The Court also certified the need of an additional judge in the Second and Fifth Districts.<sup>5</sup>

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only upon a finding of two-thirds of the membership of both houses of the legislature, that such a need exists. A decrease in the number of judges shall be effective only after the expiration of a term. If the supreme court fails to make findings as provided above when need exists, the legislature may by concurrent resolution request the court to certify its findings and recommendations and upon the failure of the court to certify its findings for nine consecutive months, the legislature may, upon a finding of two-thirds of the membership of both houses of the legislature that a need exists, increase or decrease the number of judges or increase, decrease or redefine appellate districts and judicial circuits.

<sup>2</sup> Budget proviso to Specific Appropriation 2217, ch. 98-422, L.O.F.

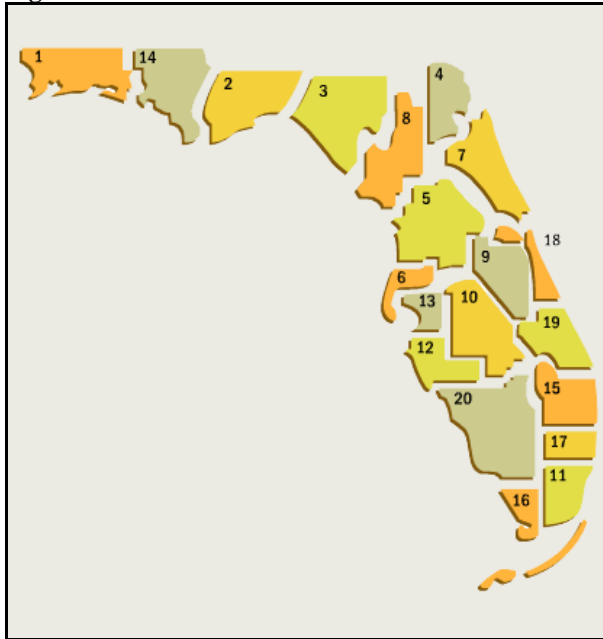
<sup>3</sup> *In Re: Certification of Need for Additional Judges*, 889 So. 2d 734, 737 (Fla. 2004).

<sup>4</sup> *Id.* at 740-741.

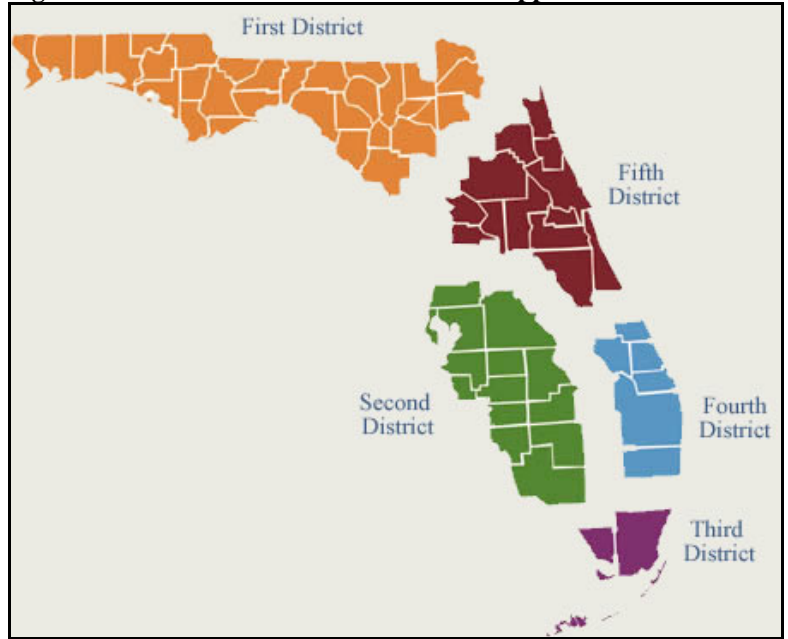
<sup>5</sup> *Id.* at 741.

Figures 1. and 2. below show the geographic boundaries of each judicial circuit and district.

**Figure 1 Distribution of Circuit Courts**



**Figure 2 Distribution of District Courts of Appeal**



Source: Florida State Courts at [http://www.flcourts.org/courts/circuit/cir\\_dist.shtml](http://www.flcourts.org/courts/circuit/cir_dist.shtml).

### **Judicial Nominating Commissions**

The Office of Program, Policy Analysis, and Government Accountability has described the process by which the Governor fills vacancies in judicial offices as follows:

Judicial vacancies are filled by the Governor from a list of three candidates nominated by the appropriate Judicial Nominating Commission (JNC). There are separate nominating commissions for the Supreme Court, district courts of appeal, and for each judicial circuit. The circuit court commissions make nominations for both circuit and county judges. Judicial Nominating Commissions are made up of nine members. The Governor has the sole authority to appoint JNC members. Four of the six Florida Bar members must be selected from nominees from the Board of Governors of The Florida Bar. The Board of Governors must submit a list of three recommended nominees for each of the positions, from which the Governor may select his appointment. The Governor may reject all nominees and request a new list of persons who have not been previously nominated. For the remaining five JNC positions, the Governor directly appoints the member, of whom at least two must be Florida Bar members. In making appointments, consideration should be given to ethnic, racial and gender composition, along with the geographic distribution of the population within the JNC and the adequacy of the representation of each county. The term of office for commission members is four years, appointed to staggered terms. JNC members are also

required to comply with financial reporting standards under the definition of “state officers” as specified in s. 112.3145, Florida Statutes.<sup>6</sup>

Under s. 11, Art. V, State Const., terms of judges appointed to circuit and county courts end “on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment.”

### **Judicial Elections**

Under ch. 105, F.S., judicial elections are non-partisan. Candidates for judicial office during the next general election must qualify with the Division of Elections of the Department of State between noon, May 8, and noon, May 12, 2006.<sup>7</sup> The next general election will be held on November 7, 2006.<sup>8</sup> Judges elected in the next general election will take office on January 2, 2007.<sup>9</sup>

### **III. Effect of Proposed Changes:**

This committee substitute creates two new district court of appeal judgeships, 67 new circuit court judgeships, and 41 new county court judgeships. This committee substitute is also consistent with the number, type, and location of the new judgeships requested by the Florida Supreme Court. The Court’s request was for the 2005-2006 fiscal year. However, under the committee substitute, approximately one-half of the circuit court and county court judgeships will not be filled until the 2006-2007 fiscal year.

The committee substitute also provides that approximately one-half of the new circuit court and county court judgeships will be appointed by the Governor, and the remainder will be elected. The judges appointed by the Governor will take office on January 2, 2006. The committee substitute also provides that the judicial offices filled by election will be filled by election in 2006. Under existing s. 100.041, F.S., the elected judges will take office on January 2, 2007.<sup>10</sup>

Section 6 and the provisions of the committee substitute reflecting the number of judicial vacancies for the district courts of appeal, circuit courts, and county courts that may be filled by the Governor take effect upon becoming a law. The provisions of the committee substitute reflecting the number of judicial vacancies filled by election take effect June 1, 2006.

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<sup>6</sup> THE OFFICE OF PROGRAM, POLICY ANALYSIS, AND GOVERNMENT ACCOUNTABILITY, JUDICIAL NOMINATING COMMISSION *at* <http://www.oppaga.state.fl.us/profiles/1072/02/>, last updated January 25, 2005.

<sup>7</sup> FLORIDA DEPARTMENT OF STATE, DIVISION OF ELECTIONS, ELECTION DATES *at* <http://election.dos.state.fl.us/online/elecdate.shtml> and s. 105.031(1), F.S.

<sup>8</sup> FLORIDA DEPARTMENT OF STATE, DIVISION OF ELECTIONS, ELECTION DATES *at* <http://election.dos.state.fl.us/online/elecdate.shtml>, s. 100.031, F.S., and s. 5, Art. VI, STATE CONST.

<sup>9</sup> Section 100.041, F.S.

<sup>10</sup> Section 100.041(1), F.S. states in part: “The terms of state officers other than the terms of members of the Legislature shall begin on the first Tuesday after the first Monday in January.”

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

Under s. 29.008, F.S., counties are responsible for facilities costs for county and circuit courts. This committee substitute will have an impact on counties to the extent that the additional judgeships created by the committee substitute increase in facilities costs. According to representatives of the Office of the State Courts Administrator, these costs are not likely to be significant.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

The State Constitution and case law interpreting it are unclear as to whether the Legislature may provide for the election of newly created judicial offices. Under s. 3, Art. 10, State Const., a vacancy occurs on the creation of an office.<sup>11</sup> As such, the committee substitute appears to create judicial offices that will be vacant from June 1, 2006, to January 2, 2007. Further, s. 11, Art. V, State Const., requires judicial vacancies to be filled by a gubernatorial appointment. However, in *Hoy v. Firestone*, 453 So. 2d 814, 816 (Fla. 1984), the Florida Supreme Court clearly held that the Legislature may create judicial offices to be filled by election. Subsequent to *Hoy v. Firestone*, s. 11, Art. V., State Const., was amended to strengthen the Governor's authority to fill judicial vacancies.<sup>12</sup>

This committee substitute creates judicial offices that will not exist until after the 2006 Regular Session. If the 2006 Legislature wishes to reduce the number of judges authorized by this committee substitute, s. 9, Art. XI, State Const., may require a vote of two-thirds of the membership of each house to reduce the number of judicial offices created by the committee substitute.

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<sup>11</sup> SECTION 3, ART. X, STATE CONST., states:

**Vacancy in office.**—Vacancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent's succession to another office, unexplained absence for sixty consecutive days, or failure to maintain the residence required when elected or appointed, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term.

<sup>12</sup> See *Pincket v. Harris*, 765 So. 2d 284, 288 (Fla. 1st DCA 2000).

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Litigants may have cases resolved faster.

**C. Government Sector Impact:**

The Justice Appropriations Committee staff has estimated the fiscal impact of the committee substitute as described below:

	FY 2005-06	FY 2006-07
Judges	110	0
Total FTE	248.00	0
General Revenue	\$9,236,153	\$18,278,232

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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