

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 295 Senior Judges  
**SPONSOR(S):** Safety & Security Council; Planas  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 740

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Courts</u>	<u>6 Y, 0 N</u>	<u>Webb</u>	<u>Bond</u>
2) <u>Safety &amp; Security Council</u>	<u>10 Y, 5 N, As CS</u>	<u>Webb/Davis</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The Chief Justice of the Supreme Court of Florida can appoint retired justices or judges, who are usually referred to as senior judges, to serve in judicial positions on a temporary basis. 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 be retained in the justice or judge's last judicial office and must not be engaged in the practice of law.

This bill removes the restriction regarding a justice or judge who was previously defeated and allows any former justice or judge, who is not currently practicing law, to receive compensation for serving in judicial positions on a temporary basis subject to acceptance and appointment if he or she:

- Failed to win re-election or be retained after more than 12 years of service as a justice or judge, or
- Served at least one complete term as a justice or judge but chose not to stand for retention or re-election after his or her most recent term.

The bill does not appear to have a fiscal impact on state or local government revenues or expenditures.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

A “senior judge” is an honorary designation that refers to a retired judge serving on assignment to temporary judicial duty. The Florida Constitution and the Florida Rules of Judicial Administration allows the Chief Justice of the Supreme Court to temporarily assign retired justices or judges to any court in which they are qualified to serve.<sup>1</sup> The Florida Rules of Judicial Administration define 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.<sup>2</sup> Retired judges must comply with continuing judicial education requirements, including completion of 30 hours of approved judicial education programs every three years.<sup>3</sup>

Section 25.073, F.S., provides that a retired justice or judge is a former justice or judge who is not engaged in the practice of law and who has not been defeated in seeking re-election or has not failed to be retained in seeking retention in his or her last judicial office.<sup>4</sup> No person may serve more than 60 days on temporary duty during a year without the approval of the Chief Justice.<sup>5</sup>

Retired judges may receive compensation as set by law.<sup>6</sup> Only persons who meet the qualifications set forth in s. 25.073(1), F.S., 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.<sup>7</sup> According to the Florida Supreme Court’s office, retired justices or judges are currently paid \$350 per day for service. In addition, retired justices or judges are entitled to necessary travel expenses.<sup>8</sup>

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.

A person seeking appointment as a senior judge must submit an application to the Chief Justice of the Supreme Court of Florida’s office. The Chief Justice’s office then requests information from the Judicial Qualifications Committee to determine if there is any reason why that person should not be a senior judge. After the Judicial Qualifications Committee responds 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 a district or circuit court.<sup>9</sup>

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<sup>1</sup> Article 5, Section (2)(b) Florida Constitution; Florida Rule of Judicial Administration 2.030(a)(3)(A)

<sup>2</sup> Florida Rule of Judicial Administration 2.030(a)(3)(B)

<sup>3</sup> See Fla.R.Jud.Admin. 2.150.

<sup>4</sup> Section 25.073(1), F.S.

<sup>5</sup> See s. 25.073(2)(a), F.S.

<sup>6</sup> See Fla.R.Jud.Admin. 2.030(a)(3)(A).

<sup>7</sup> See s. 25.073(2)(a), F.S.

<sup>8</sup> Section 25.073(2)(b), F.S.

<sup>9</sup> Telephone Conversation with Della White, Chief Justice R. Fred Lewis’ Office, Supreme Court of Florida (January 2, 2008).

## Effect of Bill

This bill amends s. 25.073, F.S., to remove the restriction relating to justices or judges who lost in a bid for reelection or who were not retained in a retention election for their last term in office. This bill allows any former justice or judge, who is not currently practicing law and who failed to win re-election or be retained after more than 12 years of service as a justice or judge or who served at least one complete term as a justice or judge but chose not to stand for retention or re-election after his or her most recent term, to receive compensation for serving in judicial positions on a temporary basis subject to acceptance and appointment.

### C. SECTION DIRECTORY:

Section 1 amends s. 25.073, F.S., regarding retired justices or judges assigned to temporary duty.

Section 2 provides an effective date of July 1, 2008.

## 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:

None.

### D. FISCAL COMMENTS:

This bill broadens the list of retired judges eligible to serve as senior judges for compensation. However, no new senior judge positions are created by this bill.

## 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, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Supreme Court of Florida conducted oral arguments in 2003 on committee recommendations regarding the use of senior judges. The court issued an opinion on May 1, 2003, which held in part that justices or judges who fail to win reelection or retention in their last judicial position are not eligible for senior judge service. The court observed that "while qualified and competent judges may occasionally fail to win re-election or retention, we agree with the Committee that concerns of public trust and confidence and deference to the constitutional electoral process dictate that the expressed will of the voters prevail."<sup>10</sup> So long as the opinion in this case remains in effect, this bill may have no effect.

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 5, 2008, the Committee on Courts adopted one amendment to this bill. The amendment added that a retired justice or retired judge, for purposes of this section, is a justice or judge who failed to win re-election or be retained after more than 12 years of service as a justice or judge OR served at least one complete term as a justice or judge, but chose not to stand for retention or re-election after his or her most recent term. The bill was then reported favorably with an amendment.

On April 1, 2008, the Safety & Security Council reported the bill favorably as a council substitute. This analysis is drafted to the council substitute.

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<sup>10</sup> *In re Report and Recommendations of Committee on Appointment and Assignment of Senior Judges*, 847 So. 2d 415 (Fla. 2003).