

or judges to temporary duty in any court for which the judge is qualified.¹ The Legislature defined the terms “retired justice” or “retired judge” as any former justice or judge who “[h]as not been defeated in seeking reelection to, or has not failed to be retained in seeking retention in, his or her last judicial office” and is not engaged in the practice of law.² Retired judges that serve in this capacity are commonly referred to as “senior judges.”

Use of Senior Judges

In 1992, the Florida Supreme Court summarized the justification for using senior judges:

Florida trial courts have continued to address workload pressures by relying heavily on the temporary assignment of senior judges. A total of 4,582 days of service was provided by senior judges in fiscal year 1990-91. This is the equivalent of approximately 19.2 judge years. Were it not for the availability of this resource, the delays in scheduling hearings and trials outlined previously would be much greater. We expect demand for senior judge service to continue to grow since no new judgeships were authorized for the [1991-1992] fiscal year. . . . The use of senior judges is the most cost-effective and flexible program we have to address scheduling problems and emergencies as they arise.³

Due to the increase in population and legal activity in the state since the 1990-1991 data cited by the Supreme Court, the use of senior judges has increased significantly. According to the Office of the State Courts Administrator, during the latest fiscal year, 2006-2007, senior judges served 7,177 days.

Efficiency Considerations

The Supreme Court has noted, “We also emphasize the importance of continued funding for the use of retired judges. These judges play an important role and their services are available at much less expense than full-time judges.”⁴ Senior judges are paid \$350 per day of service, which is a “small fraction” of the cost of hiring enough new judges to perform the same workload.⁵

III. Effect of Proposed Changes:

This bill adds a provision to s. 25.073, F.S., which currently excludes those justices or judges who lost or were not retained by vote in their last judicial office from being defined as a “retired justice” or “retired judge,” for the purposes of that section. The new provision would allow the chief justice of the Supreme Court, or a chief judge of a judicial circuit, if the authority is delegated by the chief justice, to assign a judge or justice who was voted out of office, or was not

¹ Article V, s. 2(b) of the State Constitution.

² Section 25.073(1), F.S. However, Florida Rule of Judicial Administration 2.205(3)(B) states, “For the purpose of judicial administration, a ‘retired judge’ is defined as a judge not engaged in the practice of law who has been a judicial officer of this state. A retired judge shall comply with all requirements that the supreme court deems necessary relating to the recall of retired judges.”

³ *In re Certification of Judicial Manpower*, 592 So. 2d 241, 246 (Fla. 1992).

⁴ *In re Certification of Need for Additional Judges*, 669 So. 2d 1037, 1039 (Fla. 1996).

⁵ *In re Report and Recommendations of the Comm. on the Appointment and Assignment of Senior Judges*, 847 So. 2d 415, 429 app. (Fla. 2003).

retained, to temporary duty, pursuant to article V, section 2(b) of the Florida Constitution, provided that the judge has not been:

- Reprimanded, fined, suspended, or disciplined by the Supreme Court for violations of the Florida Code of Judicial Conduct or rules relating to The Florida Bar, or
- Charged by the Judicial Qualifications Commission for a violation and not exonerated.

All parties to the litigation over which the judge would preside must consent to the judge's assignment to temporary duty.

However, the bill's impact is not immediately clear because the Florida Supreme Court may not concur with the practice, and the State Constitution vests authority for assignment of retired justices or judges with the court.⁶ In 2002, the Florida Supreme Court's Committee on the Appointment and Assignment of Senior Judges issued its recommendations to the court. Among other recommendations, the committee recommended that a judge or justice defeated in an election or retention vote should not be eligible for senior judge service. In endorsing the committee's recommendation, the court noted:

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. Thus, judges or justices who fail to win reelection or retention in their last judicial position are not eligible for senior judge service.⁷

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁶ Article V, s. 2(b) of the State Constitution.

⁷ *Id.* at 418.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has the potential to expand the pool of eligible senior judges. It is not immediately clear how many judges would become eligible to be used as senior judges under this bill, though the number is probably relatively small. Nor is it clear if the Supreme Court would back away from the position it adopted in 2003, as discussed in Section III of this analysis, that justices or judges who were defeated in their last election or retention vote should not be assigned as senior judges.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on April 8, 2008:**

Rather than eliminating, as the underlying bill did, the general prohibition in existing law against a former justice or judge serving as a senior judge if he or she lost an election bid or a retention vote, the committee substitute specifies that the judge may serve as a senior judge unless:

- He or she has been reprimanded, fined, suspended, or disciplined by the Supreme Court for violations of the Florida Code of Judicial Conduct or rules regulating The Florida Bar;
- He or she has been charged by the Judicial Qualifications Commission for a violation and not exonerated;
- The parties to the litigation over which the justice or judge will preside do not consent.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
