

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Judiciary Committee

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BILL: SB 1584

INTRODUCER: Senator Altman

SUBJECT: Senior Judges

DATE: March 24, 2009                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	<b>Favorable</b>
2.	_____	_____	JA	_____
3.	_____	_____	WPSC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

The bill provides for the development of a program, subject to the discretion of the circuit chief judge and subject to approval of the Chief Justice of the Supreme Court, to use senior judges to preside over civil cases and trials upon the written request of a party. The bill requires prepayment for the senior judge’s services, which will be calculated at a per diem cost for the services as established by administrative order of the circuit chief judge. The costs will be assessed against a non-prevailing party and deposited into the Operating Trust Fund within the state courts system.

Under the bill, funds collected through the program will not diminish legislative appropriations to judicial circuits for the retention of senior judges who have not been requested by the parties. The bill also specifies that any funds collected under the program will not diminish or affect the power of the Chief Justice to assign judges to temporary duty in any court for which the judge is qualified, or to delegate to a circuit chief judge the power to assign judges for duty within the circuit.

This bill substantially amends section 25.073, Florida Statutes.

**II. Present Situation:**

The Florida Constitution grants the Chief Justice of the Supreme Court the power to assign consenting retired justices or judges to temporary judicial duty in any court for which the judge

is qualified to serve.<sup>1</sup> The Chief Justice may delegate to a chief judge of a judicial circuit the power to assign judges for temporary duty in that circuit.

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 who “[i]s not engaged in the practice of law.”<sup>2</sup> Retired judges or justices who serve in this capacity are commonly referred to as “senior judges.”<sup>3</sup>

### **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.<sup>4</sup>

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.

### **Efficiency Considerations**

The Supreme Court has noted “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.”<sup>5</sup> 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.<sup>6</sup>

### **Compensation of Senior Judges**

Under existing law, any retired justice or judge assigned to temporary duty in any of Florida’s courts, pursuant to Art. V of the Florida Constitution, must be compensated as follows:

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<sup>1</sup> FLA. CONST. art. V, s. 2.

<sup>2</sup> 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.”

<sup>3</sup> Fla. R. Jud. Admin 2.205(a)(3)(D).

<sup>4</sup> *In re Certification of Judicial Manpower*, 592 So. 2d 241, 246 (Fla. 1992).

<sup>5</sup> *In re Certification of Need for Additional Judges*, 669 So. 2d 1037, 1039 (Fla. 1996).

<sup>6</sup> *In re Report and Recommendations of the Comm. on the Appointment and Assignment of Senior Judges*, 847 So. 2d 415, 429 app. (Fla. 2003).

- No less than \$200 for each day or portion of a day that the senior judge is assigned to temporary duty; however, no senior judge may serve for more than 60 days in any year without approval from the Chief Justice; and
- Necessary travel expenses incident to the performance of duties required by the assignment.<sup>7</sup>

Reimbursements made to senior judges under these provisions originate from moneys to be appropriated for this purpose.<sup>8</sup>

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

#### **Senior Judge Program**

The bill authorizes the chief judge of any judicial circuit, upon approval of the Chief Justice of the Supreme Court, to establish a program for the use of retired justices or judges to preside over civil cases and trials upon the written request of one or more parties.

The bill does not specify whether the written notice must be in the form of a motion filed with the court, or whether it is simply contemplated that a party provide written correspondence to the court requesting that a senior judge preside over the case or trial. In addition, the bill does not provide a resolution for those scenarios where one party may request a retired justice or judge, but the other party opposes the use of a senior judge to preside over the case.

#### **Qualifications and Compensation**

Under the created program, the bill specifies that a retired justice or judge must meet the qualifications specified in current law. The retired judge or justice will be paid by the parties at the same rate set by the Chief Justice for retired justices or judges. An additional court cost must be assessed against a nonprevailing party or parties for the per diem cost of using a retired justice or judge as established by an administrative order of the chief judge.

The party requesting use of a retired judge or justice must prepay at least the per diem cost for the anticipated number of days requested prior to the appointment of the retired judge or justice.<sup>9</sup> If the party remitting the prepayment prevails in the matter, the prepayment will be refunded upon payment of the costs of the retired justice or judge by the nonprevailing party. Under the bill, the additional court costs will be deposited into the Operating Trust Fund within the state courts system.<sup>10</sup>

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<sup>7</sup> Section 25.073(2), F.S. The travel expense provision cross-references s. 112.061, F.S., which establishes the procedures for reimbursement, as well as which travel expenses may be reimbursed. For example, if a judge is required to travel out of town, he or she may receive compensation in the amount of \$80 per diem or, if actual expenses exceed \$80, he or she will receive actual expenses for lodging at a single-occupancy rate in addition to \$6 for breakfast, \$11 for lunch, and \$19 for dinner.

<sup>8</sup> Section 25.073(3), F.S.

<sup>9</sup> The bill specifies that the minimum per diem cost is one day.

<sup>10</sup> The Operating Trust fund is established for use as a depository of fees and related revenue for the purpose of supporting the program operations of the judicial branch and for other appropriate purposes. Section 25.3844, F.S.

The bill does not identify who is responsible for the payment of the per diem costs in the event that the parties reach a settlement prior to completion of the event over which the retired judge or justice is presiding. It may be difficult to determine a “prevailing” or “nonprevailing” party if settlement occurs or if the judge grants relief to both parties. For example, a plaintiff may receive a judgment in his or her favor at trial, with the defendant simultaneously receiving a judgment in his or her favor on a counterclaim filed against the plaintiff. In addition, it may be difficult to determine the anticipated number of days the senior judge will serve in some cases. As a result, calculation of the prepayment amount owed by the requesting party may be difficult.

### **Senior Judge Eligibility**

Only retired justices or judges who are on the list that is approved by the Chief Justice are eligible for appointment in the program. Moreover, the assignment of retired justices or judges must be made in compliance with the current judge assignment procedures adopted in each judicial circuit.

### **Appropriations for Use of Senior Judges**

The bill clarifies that the costs, including per diem costs, collected under the senior judge program will not diminish or otherwise affect legislative appropriations to judicial circuits for retention of retired justices or judges who have not been requested by the parties under this program. It appears to be the intent of the bill to preclude reductions in legislative funding of the use of senior judges to aid the management of judicial caseloads, when revenue is generated from the use of senior judges under the program created by the bill.

### **Other Senior Judge Assignments**

The bill provides that the use of senior judges under this program may not diminish or otherwise affect the power and authority of the Chief Justice to assign justices or judges, including consenting retired justices or judges, to temporary duty in any court for which the justice or judge is qualified or to delegate to a chief judge of a judicial circuit the power to assign justices or judges for duty in that circuit.

### **Effective Date**

The bill provides that the act will take effect upon becoming a law.

## **IV. Constitutional Issues:**

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

None.

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

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Litigants who choose or agree to use senior judges to preside over a civil action and who later fail to prevail in the action may be subject to additional costs associated with the use of the senior judge.

C. Government Sector Impact:

Costs collected that are associated with the use of senior judges under this bill will be deposited into the Operating Trust Fund for use by the state courts system. It is unknown how many parties will request the use of a senior judge in civil cases and trials. Therefore, quantifiable data is not available to determine the recurring revenue that will be generated by the assessment of these costs to nonprevailing parties.<sup>11</sup>

The Office of State Courts Administrator (OSCA) reports that the bill will create some reduction in circuit judicial workload due to the assignment of civil cases to selected and compensated retired justices or judges. The OSCA further reports that it anticipates minimal expenditures related to court workload in assigning senior judges to these civil cases.<sup>12</sup>

**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.)

None.

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<sup>11</sup> Office of State Courts Administrator, *Judicial Impact Statement, SB 1584*, 2 (Feb. 22, 2009).

<sup>12</sup> *Id.*

B. Amendments:

None.

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

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