

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 13 Senior Judges
SPONSOR(S): Policy Council; Civil Justice & Courts Policy Committee; Ambler; Rouson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 130

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	10 Y, 0 N, As CS	Bond	De La Paz
2)	Policy Council	17 Y, 0 N, As CS	Varn	Cicccone
3)	Criminal & Civil Justice Appropriations Committee			
4)	Criminal & Civil Justice Policy Council			
5)				

SUMMARY ANALYSIS

The Chief Justice of the Supreme Court of Florida can appoint retired justices or judges, who are often referred to as senior judges, to serve in judicial positions on a temporary basis. The courts use senior judges for temporary duty, for instance, to cover for an ill judge. Senior judges are currently paid out of the General Revenue Fund.

Council Substitute for Committee Substitute for House Bill 13 allows a local judicial circuit to create a program providing for additional appointments of senior judges provided that the state's costs for such appointments are by one or more parties. Under this bill:

- Any party may request appointment of a senior judge to conduct a non-dispositive hearing. Where the request is unilateral, the cost is not taxable against other parties.
- All parties may request appointment of a senior judge to conduct a dispositive hearing or the trial. The prevailing party's share of the costs advanced is taxable against a nonprevailing party.
- Jury trials are allowed in the voluntary trial resolution process involving a civil dispute if one party requests a jury trial. The trial resolution judge must preside over the trial, with the jury trial conducted according to the law governing civil jury trials.
- The use of the court resources is paid by the parties conducting the trial to the Operating Trust Fund.

This bill may have an indeterminate negative fiscal impact on state and local governments.

The bill takes effect upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. 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 allow the Chief Justice of the Supreme Court to temporarily assign retired justices or judges to any court in which they are qualified to serve.¹ 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.² Retired judges must comply with continuing judicial education requirements, including completion of 30 hours of approved judicial education programs every three years.³

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.⁴ No person may serve more than 60 days on temporary duty during a year without the approval of the Chief Justice.⁵

Retired judges may receive compensation as set by law.⁶ 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. Current law sets the compensation for retired justices or judges at not less than \$200 per day.⁷ According to the Florida Supreme Court's office, retired justices or judges are currently paid \$350 per day for service.⁸ In addition, retired justices or judges are entitled to necessary travel expenses.⁹

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 may serve as a mediator and may be associated with

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

² Florida Rule of Judicial Administration 2.030(a)(3)(B)

³ See Fla.R.Jud.Admin. 2.150.

⁴ Section 25.073(1), F.S.

⁵ See s. 25.073(2)(a), F.S.

⁶ See Fla.R.Jud.Admin. 2.030(a)(3)(A).

⁷ See s. 25.073(2)(a), F.S.

⁸ Email correspondence from the State Courts System, dated March 18, 2009, on file with the Civil Justice & Courts Policy Committee staff.

⁹ Section 25.073(2)(b), F.S.

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.

The state courts utilize the following internal procedures: A retired judge 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 senior judge becomes eligible for service and can be appointed to serve by the chief judge of a district or circuit court.¹⁰

Voluntary trial resolution is another alternative dispute resolution mechanism available to litigants. In lieu of mediation or arbitration of a dispute, opposing parties in a civil action may agree in writing to submit a dispute to voluntary trial resolution in lieu of litigating the matter in county or circuit court, provided no constitutional issues are involved in the dispute.¹¹ If the parties have reached such an agreement for the appointment of a member of The Florida Bar in good standing for more than five years to preside over the voluntary trial, the court will proceed with appointment of that person.¹² If the parties have failed to reach an agreement, the court will appoint the trial resolution judge. The parties are responsible for the compensation of the voluntary trial judge.¹³

The trial resolution judge conducts the hearing, determines any questions of law or fact, and renders a final decision.¹⁴ The trial resolution judge may administer oaths or affirmations and conduct the proceedings under the applicable rules of court, and the Florida Evidence Code applies to these proceedings.¹⁵ Any party may enforce a final decision rendered in a voluntary trial by filing a petition for final judgment in the circuit court in the circuit in which the voluntary trial took place. Upon entry of a final judgment by the circuit court, any party may appeal to the appropriate appellate court, but factual determinations during the voluntary trial are not subject to appeal.¹⁶

Effect of Bill

CS/CS/HB 13 amends s. 25.073, F.S., to allow the chief judge of a circuit to create a program to use senior judges to expedite cases in the circuit and amends s. 44.104, F.S., to allow the use of a jury in those voluntary trial resolutions involving a civil dispute if at least one party requests a jury trial.

Senior Judges

The use of senior judges program must be approved by the Chief Justice.

In general:

- Only senior judges who are otherwise eligible for appointment may be used in the program.
- The requesting party or parties must show the need for appointment because of scheduling difficulties. The program may not be used to avoid the assigned trial judge.

¹⁰ Telephone Conversation with Della White, office of former Chief Justice R. Fred Lewis, Supreme Court of Florida (January 2, 2008).

¹¹ See s. 44.104(1)

¹² See s. 44.104(2)

¹³ See s.44.104(3)

¹⁴ See 44.104(8)

¹⁵ Section 44.104(7) and (9), F.S. The trial resolution judge may also issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and may apply to the court for orders compelling attendance and production.

¹⁶ See s.44.104(11), F.S.

- No party may affect the selection of which a senior judge is appointed. Appointments are done by the chief judge of the circuit.

As to non-dispositive pre-trial hearings:¹⁷

- Any party to the litigation may request that a senior judge be appointed.
- If less than all of the parties to the case requested the use of a senior judge, then those parties must advance the cost and may not seek reimbursement from the other parties. If all parties request the appointment of a senior judge, then the parties split the advance cost and the prevailing party in the litigation may have that party's cost taxed against a non-prevailing party.

As to dispositive hearings and trials:¹⁸

- All parties to the litigation must request that a senior judge be appointed.
- The parties split the advance cost and the prevailing party in the litigation may have that party's cost taxed against a non-prevailing party.

As to the financial arrangements between the parties and the state:

- The requesting party or parties must advance the cost for employing the senior judge, including taxes and travel.
- The minimum time for employment of a senior judge employed under the program is one day. For more than one day, the employment must be for full days.
- The senior judge is paid at the court system's regular daily per diem rate for senior judges. A senior judge may not be paid more than one day per diem even if several paying hearings are lumped into one day.
- The funds collected from the requesting party or parties are deposited into the Operating Trust Fund within the state courts system.
- In order for the program to be cost-neutral, indigent persons may not have prepayment of costs waived.

Voluntary Trial Resolution

- The right to a jury trial is allowed in those voluntary trial resolutions involving a civil dispute if at least one party requests a jury trial.
- The voluntary trial resolution judge must preside over the jury trial, and it must be conducted according to the laws applicable to civil jury trials.
- There must be advanced written approval by the chief judge of the circuit in which the case is pending and the availability of sufficient resources to accommodate the request.
- The chief judge may establish a standard per diem rate for the use of the court resources to be paid by the parties conducting the trial to the Operating Trust Fund established in s. 25.3844, F.S.

¹⁷ A non-dispositive hearing is a hearing that cannot lead to a final judgment in favor of a party. A hearing regarding disputes over discovery is an example of a non-dispositive hearing.

¹⁸ A dispositive hearing is a hearing that may lead to a final judgment in favor of a party. Typical dispositive hearings include a motion to dismiss or a motion for summary judgment.

B. SECTION DIRECTORY:

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

Section 2. Amends s. 44.104, F.S., relating to the voluntary trial resolution process.

Section 3. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. Revenues to the state are dependent upon how much the program is utilized.

2. Expenditures:

Indeterminate, see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate, see Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Participants who elect to utilize a senior judge will be required to pay the regular per diem rate of such judges.

D. FISCAL COMMENTS:

CS/CS/HB 13 provides that the State Courts System is authorized to charge participants the total per diem cost of employing a senior judge. Senior judges are paid a daily rate of \$350 as an OPS employee. The term "cost" should include the daily rate plus other costs to the state including the Social Security and Medicare match (7.65%, or \$26.78) and travel per diems. At worst, state revenues should equal expenditures for the appointed senior judge. It is possible that several hearings could be scheduled on one day, which would lead to a positive fiscal impact for the Operating Trust Fund. This bill may, however, increase other costs to the state.

The bill does not discuss where the trials will be conducted, but it appears that the trials will be conducted in regular courtrooms in county courthouses. If the effect of this bill is to increase the total number of trials conducted in the state, the state will incur increased expenditures for juror compensation and the counties will incur increased expenditures for maintenance of courtrooms, security costs, and other incidental expenses.

If there is a large enough demand for the private assignment of senior judges, this demand could diminish the supply of senior judges to the point where the State Courts System might have to increase the daily per diem for senior judges or perhaps may not have sufficient senior judges to meet the current needs of the court system. In either case, the State Court System would be negatively affected.

For FY 2009-2010, the trial courts were appropriated \$2,182,084 from the General Revenue Fund for compensation to retired judges.¹⁹

¹⁹ Ch. 2009-81, L.O.F., appropriation 3141.

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:

Article I, s. 21 of the Florida Constitution provides that the "courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 16, 2010, the Civil Justice & Courts Policy Committee adopted 2 amendments to this bill. The amendments:

- Require that both parties agree to the appointment of a senior judge under this program if the hearing involved is a dispositive motion.
- Specify that a senior judge may only be paid one day per diem for one day of service.

On March 18, 2010, the Policy Council adopted one amendment to the Committee Substitute. The amendment:

- Allows the use of a jury in those voluntary trials involving a civil dispute if at least one party requests a jury trial.
- Specifies that the trial resolution judge must preside over the jury trial, and that it must be conducted according to the laws applicable to civil jury trials.
- Requires advance written approval by the chief judge of the circuit in which the case is pending and the availability of sufficient resources to accommodate the request. The chief judge may establish a standard per diem rate for the use of the court resources to be paid by the parties conducting the trial to the Operating Trust Fund.

The bill was reported favorably as a Council Substitute for the Committee Substitute. The analysis reflects the Council Substitute for the Committee Substitute.