

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.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 1398

INTRODUCER: Senator Bogdanoff

SUBJECT: Judiciary

DATE: April 1, 2011

REVISED: 04/13/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maclure	Maclure	JU	Fav/1 amendment
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input checked="" type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill repeals multiple provisions related to the judiciary. The repealed provisions relate to:

- Regular terms of court for the Florida Supreme Court;
- Compensation of the Florida Supreme Court marshal;
- Commissions for taking a census of the population of judicial circuits;
- Term of the circuit courts;
- A judge's attendance at the first day of a term;
- A judge's stated reason for nonattendance;
- The penalty for nonattendance of a judge;
- Adjournment of court upon nonattendance of a judge;
- Calling the docket at end of a term;
- Identification of the sheriff as the executive officer of the circuit court;
- Requiring the clerk of circuit court, or his or her deputy clerk, to reside at the county seat or within two miles of the county seat;
- Regular terms of court for the district courts of appeal;
- Compensation of the marshals for the district courts of appeal; and

- Guardians of incapacitated world war veterans.

This bill repeals the following sections of the Florida Statutes: 25.051, 25.281, 26.011, 26.21, 26.22, 26.23, 26.24, 26.25, 26.26, 26.27, 26.28, 26.29, 26.30, 26.31, 26.32, 26.33, 26.34, 26.35, 26.36, 26.361, 26.362, 26.363, 26.364, 26.365, 26.37, 26.38, 26.39, 26.40, 26.42, 26.49, 28.08, 35.10, 35.27, and 744.103.

II. Present Situation:

Article V of the Florida Constitution establishes the judicial branch of government, including prescribing the various courts in which the judicial power is vested. The Florida State Courts System consists of all officers, employees, and divisions of the entities noted below.¹

- The Supreme Court, the highest state appellate court, has seven justices and statewide jurisdiction. The Chief Justice is the administrator of the state courts system. The court also regulates admission of lawyers to The Florida Bar and the discipline of judges and lawyers.
- The district courts of appeal, the state appellate courts, have jurisdiction within the limits of their five geographic districts and are served by approximately 60 judges.
- The circuit courts, the highest level trial court in each of the 20 judicial circuits, are served by approximately 600 judges. The circuit courts hear, for example, felony cases, family law matters, and civil cases over \$15,000.
- The county courts, the lowest level trial courts, with at least one judge in each county, are served by approximately 320 judges. The county courts hear, for example, misdemeanor cases, small claims cases, and civil cases under \$15,000.

Some of the other entities that also have a role in the judicial system include:

- Office of the State Courts Administrator, created by the Supreme Court to assist in administering the state courts system;
- Judicial nominating commissions, which recommend persons to fill judicial vacancies;
- Judicial Qualifications Commission, which investigates and recommends discipline of judges;
- Clerks of court, who have multiple responsibilities, including keeping a docket for court cases, reporting case filings and dispositions, and collecting court costs and fees;
- State attorneys, who prosecute or defend on behalf of the state, all suits, applications, or motions, civil or criminal, in which the state is a party;
- Attorney General, who represents the state in criminal appeals and other issues related to state agency legal actions;
- Statewide Prosecutor, who prosecutes on behalf of the state for crimes that include multiple jurisdictions;
- Public defenders, who represent indigent persons charged with a felony or certain misdemeanors, alleged delinquents, and other persons, such as alleged mentally ill persons, who are being involuntarily placed (usually for health care reasons);

¹ Office of Program Policy Analysis and Government Accountability, Fla. Legislature, Government Program Summaries, *State Courts System* (last updated Jan. 12, 2011), <http://www.oppaga.state.fl.us/profiles/1072/> (last visited Mar. 30, 2011).

- Capital Collateral Regional Counsels, who represent indigent persons in death row appeals; and
- Sheriffs, who are responsible for executing all processes of the courts and for the provision of bailiffs.

This bill repeals a number of statutory provisions related to the judiciary. The present situation for each of the relevant provisions is discussed in the “Effect of Proposed Changes” section of this bill analysis, below.

III. Effect of Proposed Changes:

Regular Terms of Supreme Court

Present Situation: Enacted in 1957, s. 25.051, F.S., requires the Supreme Court to hold two terms in each year, in the Supreme Court Building, commencing respectively on the first day of January and July, or the first day thereafter if that is a Sunday or holiday.

Effect of the Bill: Section 1 repeals s. 25.051, F.S.

Compensation of Supreme Court Marshal

Present Situation: Article V, subsection (3)(c) of the Florida Constitution requires that the Supreme Court appoint a marshal and provides that the salary of the marshal “shall be fixed by general law.” Enacted in 1957, s. 25.281, F.S., requires that the compensation of the marshal “be provided by law.”

Currently, a personnel schedule supporting preparation of the annual general appropriations act prescribes the salary associated with specific categories of state-employee positions, including the marshal of the Supreme Court.²

Effect of the Bill: Section 1 repeals s. 25.281, F.S. This bill does not affect the current constitutional requirement for the marshal’s compensation to be fixed by general law.³

Census Commission; Judicial Circuits

Present Situation: Enacted in 1956, s. 26.011, F.S., provides the methods through which the Legislature can have the Governor appoint commissioners to take a census of the population of a judicial circuit and gives those findings, as proclaimed by the Governor, the force of law.

Effect of the Bill: Section 1 repeals s. 26.011, F.S.

² The schedule, although not part of the general appropriations act, guides the Legislature in prescribing an annual appropriation of positions and salaries and benefits for the Supreme Court. Conversation with staff of the Senate Budget Subcommittee on Criminal and Civil Justice Appropriations (Mar. 19, 2011).

³ FLA. CONST. art. V, s. 3(c).

Terms of Circuit Courts

Present Situation: Sections 26.21-26.365, F.S., require at least two regular terms of the circuit court to be held in each county each year and allow for special terms as needed. There is a separate statute for each of the 20 circuits which provides for the starting day of each term.

Effect of the Bill: Section 1 repeals ss. 26.21-26.365, F.S.

Judge to Attend First Day of Term

Present Situation: Enacted in 1849, s. 26.37, F.S., requires every judge of a circuit court, unless prevented by sickness or other providential causes, to attend the first day of each term of the circuit court. If the judge fails to attend, he or she is subject to a \$100 deduction from his or her salary.

Effect of the Bill: Section 1 repeals s. 26.37, F.S.

Judge's Reason for Nonattendance

Present Situation: Enacted in 1849, s. 26.38, F.S., requires a judge who misses the first day of each term to state the reasons of such failure in writing to be handed to the clerk of the court.

Effect of the Bill: Section 1 repeals s. 26.38, F.S.

Penalty for Nonattendance of Judge

Present Situation: Enacted in 1849, s. 26.39, F.S., requires the clerk of court to notify the Chief Financial Officer of the state when a judge fails to attend the first day of the term of court. The CFO is then directed to deduct \$100 from the judge's pay for every such default.

Effect of the Bill: Section 1 repeals s. 26.39, F.S.

Adjournment of Court upon Nonattendance

Present Situation: Enacted in 1828, s. 26.40, F.S., requires that, whenever a judge does not attend on the first day of any term, the court shall stand adjourned until 12 o'clock on the second day. If the judge does not attend court at that time, the clerk must continue all causes and adjourn the court to such time as the judge may appoint or to the next regular term.

Effect of the Bill: Section 1 repeals s. 26.40, F.S.

Calling Docket at End of Term

Present Situation: Enacted in 1828, s. 26.42, F.S., requires a judge, after other court business of the term has been completed, to call the remaining cases on the docket and make such orders and entries as necessary.

Effect of the Bill: Section 1 repeals s. 26.42, F.S.

Executive Officer of Circuit Court

Present Situation: Enacted in 1845, s. 26.49, F.S., identifies the sheriff of the county as the executive officer of the circuit court of the county.

Effect of the Bill: Section 1 repeals s. 26.49, F.S.

Place of Residence

Present Situation: Enacted in 1851, s. 28.08, F.S., requires that the clerk of the circuit court or a deputy clerk must reside at the county seat or within two miles of the county seat.

Effect of the Bill: Section 1 repeals s. 28.08, F.S.

A candidate, at the time of qualifying as candidate for public office, must subscribe to an oath that he or she is a qualified elector of the county.⁴ In order to be a qualified elector, one must be a resident of Florida and the county in which he or she registers to vote.⁵ The Division of Elections has “opined that unless otherwise provided constitutionally, legislatively or judicially, the qualifications one must possess for public office, which would include residency, are effective at the commencement of the term of office.”⁶ Thus, according to the division opinion, a county constitutional officer must be a resident of the county at the time of assuming office.⁷

Regular Terms of District Courts of Appeal

Present Situation: Enacted in 1957, s. 35.10, F.S., requires the district courts of appeal to hold two regular terms each year at their headquarters. The terms shall commence on the second Tuesday in January and July.

Effect of the Bill: Section 1 repeals s. 35.10, F.S.

Compensation of District Court of Appeal Marshal

Present Situation: Article V, subsection 4(c) of the Florida Constitution requires that a district court of appeal appoint a marshal and provides that the compensation of the marshal “shall be fixed by general law.” Enacted in 1957, s. 35.27, F.S., provides that the compensation of the marshal “shall be as provided by law.”

⁴ Section 99.021, F.S.

⁵ Fla. Dept. of State, Div. of Elections, Advisory Opinion DE 94-04 (March 3, 1994).

⁶ *Id.*

⁷ *See id.*

Currently, a personnel schedule supporting preparation of the annual general appropriations act prescribes the salary associated with specific categories of state-employee positions, including the marshals of the district courts of appeal.⁸

Effect of the Bill: Section 1 repeals s. 35.27, F.S. This bill does not affect the current constitutional requirement for the marshal's compensation to be fixed by general law.⁹

Guardians of Incapacitated World War Veterans

Present Situation: Enacted in 1974, s. 744.103, F.S., provides that the provisions of the guardianship law shall extend to incapacitated world war veterans, provided for in chapters 293 and 294, F.S. The statute further provides that the provisions of this law are cumulative to those chapters. However, chapters 293 and 294, F.S., have both been repealed in previous legislative sessions or had provisions transferred to part VIII of chapter 744, F.S. (governing veterans' guardianship). Former s. 293.16, F.S., setting forth the procedure for placing veterans with a federal agency such as United States Department of Veterans Affairs, was transferred and renumbered as s. 394.4672, F.S.

Effect of the Bill: Section 1 repeals s. 744.103, F.S.

Effective Date

The bill provides an effective date of July 1, 2011.

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.

⁸ The schedule, although not part of the general appropriations act, guides the Legislature in prescribing an annual appropriation of positions and salaries and benefits for the district courts of appeal. Conversation with staff of the Senate Budget Subcommittee on Criminal and Civil Justice Appropriations (Mar. 19, 2011).

⁹ FLA. CONST. art. V, s. 4(c).

B. Private Sector Impact:

None.

C. Government Sector Impact:

See “Related Issues” section, below, for possible impact on judicial workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill repeals provisions relating to terms of court. Reference to terms of court is still relevant today for two purposes: designating the terms of local grand juries and limiting withdrawal of an appellate mandate. Historically, although not explicitly required by statute, the terms of a grand jury coincide with the term of the court. In the appellate courts, the terms of court limit an appellate court's ability to withdraw a mandate, a rare procedure. Under current law, a mandate may only be withdrawn during the current term of the appellate court, which leads to the result of some appellate court opinions being subject to withdrawal for nearly six months while others may only be subject to withdrawal for a few days.

The Office of the State Courts Administrator (OSCA) noted that repeal of appellate terms of court “may impair the ability of appellate courts to finalize cases. Similarly, because grand juries are impaneled for specific terms of court, repeal of terms of court in the various judicial circuits will leave trial court chief judges without explicit authority to convene grand juries.”¹⁰ The OSCA also noted the potential for an increase in judicial workload related to “requests to reopen criminal appeals and other appellate matters for which mandates have already been issued.”¹¹

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 387558 by Judiciary on April 12, 2011:

Deletes everything after the enacting clause and reinserts the substance of the bill with the following significant changes:

¹⁰ Fla. Office of the State Courts Administrator, *2011 Judicial Impact Statement: SB 1398*, Mar. 3, 2011 (on file with the Senate Committee on Judiciary).

¹¹ *Id.*

- Creates an undesignated section of Florida Statutes that would implement statutory eligibility criteria for defendants admitted to county pretrial release programs. The new section:
 - Sets forth a state policy that only indigent defendants who qualify for the appointment of the public defender are eligible for participation in pretrial release programs;
 - Prescribes a policy that private sector resources be used to assist defendants in pretrial release, to the greatest possible extent;
 - Expresses the intent of the Legislature that the new section not be interpreted to restrict courts from placing reasonable conditions on a defendant who is being released from custody by the court;
 - Requires locally created pretrial release programs to adhere to the indigency eligibility requirement of the new section and preempts all conflicting local ordinances, practices, or orders;
 - Requires the court to find a defendant indigent, in writing, pursuant to the procedures set forth in Florida Rule of Criminal Procedure 3.111, and to order that the defendant is eligible to participate in a pretrial release program;
 - Prohibits interference by a pretrial release program when a defendant seeks to post a surety bond set forth in a predetermined bond schedule;
 - Authorizes a county to reimburse a licensed surety agent for the costs of a bail bond that secures the appearance of the defendant at all court proceedings in lieu of utilizing the services of a local pretrial release program.
- Authorizes the Florida Supreme Court to establish terms of court for the Supreme Court and for the lower courts, if the Court wishes;
- Provides in statute (new s. 43.44, F.S.) that an appellate court may withdraw a mandate for up to 120 days after it is filed with the lower court.
- Amends multiple sections of statute to conform to the bill's repeal of provisions relating to terms of court.
- Repeals the following statutes in addition to those repealed by the bill:
 - s. 35.11, F.S., which authorizes a district court of appeal to hold special terms;
 - s. 907.05, F.S.; which requires that criminal trials be heard in the term of court prior to civil cases; and
 - s. 907.055, F.S., which requires that persons in custody be arraigned and tried in the term of court unless good cause is shown.
- Removes from the bill provisions that would have repealed the following statutes:
 - s. 25.281, F.S., which requires that the compensation of the marshal of the Supreme Court be provided by law;
 - s. 26.011, F.S., which provides methods through which the Legislature can have the Governor appoint commissioners to take a census of the population of a judicial circuit;
 - s. 26.49, F.S., which identifies the sheriff of the county as the executive officer of the circuit court of the county;
 - s. 28.08, F.S., which requires that the clerk of the circuit court or a deputy clerk must reside at the county seat or within two miles of the county seat;
 - s. 35.27, F.S., which provides that the compensation of the marshal of a district court of appeal shall be as provided by law; and

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- s. 744.103, F.S., which provides that the provisions of the guardianship law shall extend to certain incapacitated world war veterans.
 - Specifies that the provisions relating to eligibility for government-funded pretrial release are effective October 1, 2011, while all other provisions (e.g., relating to terms of court) take effect January 1, 2012. (WITH TITLE AMENDMENT)

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