

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7113 PCB CVJS 11-10 Supreme Court

**SPONSOR(S):** Civil Justice Subcommittee; Metz

**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	10 Y, 4 N	Johnson	Bond
1) Judiciary Committee	13 Y, 5 N	Johnson	Havlicak

### SUMMARY ANALYSIS

This bill repeals outdated statutes relating to the Florida Supreme Court. Statutes that are repealed are:

- Section 25.151, F.S., which provides that “[n]o justice of the Supreme Court of Florida drawing retirement compensation as provided by any law shall engage in the practice of law.”
- Section 25.191, F.S., which provides that the “Supreme Court shall appoint a Clerk of the Supreme Court who shall hold office during the pleasure of the court.”
- Section 25.211, F.S., which provides that the “clerk shall have an office in the Supreme Court Building.”
- Section 25.231, F.S., which provides that the “Clerk shall perform such duties as may be directed by the court.”
- Section 25.371, F.S., which provides that “[w]hen a rule is adopted by the Supreme Court concerning practice and procedure, and such rule conflicts with a statute, the rule supersedes the statutory provision.”

This proposed committee bill does not appear to have a fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Retired Justices**

This bill repeals s. 25.151, F.S., which prohibits a retired justice from engaging in the practice of law.<sup>1</sup> This provision has been in the Florida Statutes since 1957.<sup>2</sup>

Florida Supreme Court justices are subject to mandatory retirement from the court on or after their 70<sup>th</sup> birthday.<sup>3</sup> Furthermore, the justices are subject to merit retention votes upon the next general election following his or her appointment and every six years thereafter.<sup>4</sup>

Since 2000, there have been six justices to leave the Supreme Court:<sup>5</sup> in 2003, Justice Shaw could not run again; in 2002, Justice Harding retired and returned to private practice; in 2009, Justices Wells and Anstead faced mandatory retirement; and in 2008, Justices Cantero and Bell resigned and returned to private practice.<sup>6</sup>

Eliminating this statutory prohibition of retired justices engaging in the practice of law will allow justices to retire from the Supreme Court and draw retirement while practicing law.

##### **Clerk of the Supreme Court**

This bill repeals sections 25.191, 25.211, and 25.231, F.S. These statutes require the appointment of a Clerk of the Supreme Court; require the clerk have an office in the Supreme Court Building; and require that the clerk perform duties as directed by the court.

These provisions have been in the Florida Statutes since 1957.<sup>7</sup> Each statutory provision provides a mandate relating to the clerk and the inner mechanics and workings of the Supreme Court.

This bill will not remove the ability for the Supreme Court to have a clerk; it merely removes the statutory mandate to do so.<sup>8</sup> Similarly, the clerk's office and duties are not changed through this bill, which only removes the statutory requirement for the office to be located in the Supreme Court Building<sup>9</sup> and the clerk's duties<sup>10</sup> to be provided by the court.

##### **Rules of the Court**

This bill repeals section 25.371, F.S., which provides that a rule of the Supreme Court concerning practice and procedure supersedes a contrary statutory provision. This provision has been in the Florida Statutes since 1957.<sup>11</sup> Article V, s. 2(a), Fla. Const., provides, "[t]he Supreme Court shall adopt rules for the practice and procedure in all courts." The Supreme Court of Florida has held that where the court has promulgated rules relating to practice and procedure, contrary statutes are

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<sup>1</sup> For a list of all Florida Supreme Court justices, and the circumstances of their departure from the court, see "Dates of Service" link at <http://www.floridasupremecourt.org/justices/index.shtml> (hereinafter, "Dates of Service").

<sup>2</sup> Laws 1957, c. 57-274, § 1.

<sup>3</sup> <http://www.floridasupremecourt.org/justices/merit.shtml>.

<sup>4</sup> *Id.*

<sup>5</sup> Dates of Service.

<sup>6</sup> *Id.*

<sup>7</sup> Laws 1957, c. 57-274, § 1.

<sup>8</sup> Section 25.191, F.S.

<sup>9</sup> Section 25.211, F.S.

<sup>10</sup> Section 25.231, F.S.

<sup>11</sup> Laws 1957, c. 57-274, § 1.

unconstitutional to the extent of the conflict.<sup>12</sup> Repeal of this statutory provision will not remove the ability of the Supreme Court's power to promulgate rules of practice and procedure.

**B. SECTION DIRECTORY:**

Section 1 repeals s. 25.151, F.S., relating to a retired justice practicing law.

Section 2 repeals s. 25.191, F.S., requiring the Supreme Court appoint a clerk.

Section 3 repeals s. 25.211, F.S., relating to the clerk's office.

Section 4 repeals s. 25.231, F.S., relating to the clerk's duties.

Section 5 repeals s. 25.371, F.S., relates to the court's rulemaking power.

Section 6 provides an effective date of July 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

This bill does not appear to have any impact on state revenues.

2. Expenditures:

This bill does not appear to have any impact on state expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

This bill does not appear to have any impact on local revenues.

2. Expenditures:

This bill does not appear to have any impact on local expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill does not appear to have any impact on the private sector.

**D. FISCAL COMMENTS:**

None.

**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.

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<sup>12</sup> See e.g. *Massey v. David*, 976 So. 2d 931, 937 (Fla. 2008).

2. Other:

None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.