

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 Governmental Oversight and Accountability Committee

BILL: SB 996

INTRODUCER: Senator Simmons

SUBJECT: Communications Among Branches of Government

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Boland</u>	<u>Maclure</u>	<u>JU</u>	Favorable
2.	<u>Roberts</u>	<u>Roberts</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Generally, opinions of the Florida Supreme Court or the various district courts of appeal are published online for the public, and copies of the opinions are furnished to the parties to the litigation and to the court below. Courts sometimes issue opinions that declare statutes unconstitutional, recommend statutory changes, or find the meaning of statutes unclear. Currently, the Legislature and the Governor are not notified by the clerk of the court of such opinions, unless the Legislature or a member of the executive branch happens to be a party to that particular litigation. The bill requires that, in regard to these categories of opinions, the clerk of the respective court shall furnish a copy of the opinion to the President of the Senate, the Speaker of the House of Representatives, and the Governor within 30 days after the opinion is published by the court.

This bill creates sections 25.079 and 35.079, Florida Statutes.

II. Present Situation:

Currently, opinions issued by the Florida Supreme Court and the five district courts of appeal are available on each of the courts' websites.¹ In addition, opinions are published by various private publishing companies. While the courts routinely provide copies of the opinion to the parties to the litigation, opinions are not generally provided to nonparties.

¹ The opinions of the Florida Supreme Court are found at <http://www.floridasupremecourt.org/decisions/index.shtml>. In addition, the webpage contains links to the opinions of each of the five district courts of appeal.

Appellate court opinions sometimes declare a statute invalid. Often an executive branch agency is a party to the litigation and receives a copy of the opinion. However, a statute can be declared invalid in cases in which no government entity is a party to the litigation. For example, in *Massey v. David*, the Florida Supreme Court declared a statute unconstitutional because the statute impermissibly encroached on the rulemaking authority of the court.² The *Massey* case was a legal malpractice case between an attorney and a former client. Therefore, no government entity was involved. Likewise, courts occasionally issue opinions that recommend statutory changes or identify technical or policy problems in statutes.³ Currently, there is no policy, formal or otherwise, of notifying anyone other than the parties to the litigation and the court below of any court opinion.⁴

Previously, a section of the Florida Statutes mandated that copies of the reports of the decisions of the Supreme Court and of the district courts of appeal be distributed to the Governor, each Cabinet officer, each justice of the Supreme Court, each judge of the district courts of appeal, each circuit judge, each judge of county courts, each state attorney, each public defender, each state university and legal depository, and two copies thereof to the Attorney General. Also, the statute required that such copies be distributed to the clerks of the United States district courts in the Northern, Middle, and Southern Districts of Florida. Further, that same statute required that copies of the reports of decisions of the Supreme Court and the district courts of appeal be transmitted by mail or express to the Governor of each state and territory which sends the reports of its courts to this state.⁵ The statute, along with several related sections, was repealed in 2009.⁶

III. Effect of Proposed Changes:

This bill applies to opinions issued by the Florida Supreme Court or any Florida district court of appeal. If any such court issues an opinion declaring a statute, regulation, or government practice unconstitutional, recommending statutory or regulatory changes, or finding that the meaning of a statute is unclear, then the clerk of that court must submit a copy of the opinion to the President of the Senate, the Speaker of the House of Representatives, and the Governor within 30 days after the opinion is published by the court.

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.

² *Massey v. David*, 979 So. 2d 931 (Fla. 2008).

³ *L.A. Fitness Int'l, LLC v. Mayer*, 980 So. 2d 550, 561 (Fla. 4th DCA 2008).

⁴ Telephone conversation with the clerk's office of the Florida First District Court of Appeal (March 17, 2011).

⁵ Section 25.311, F.S. (2008).

⁶ Chapter 2009-204, s. 21, Laws of Fla. (repealing ss. 25.311, 25.321, 25.331, 25.361, and 25.381, F.S.).

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill provides that the Florida Supreme Court and the district courts of appeal must provide copies of certain opinions to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Article V, subsection 2(a), of the Florida Constitution, provides that the Florida Supreme Court “shall adopt rules for the practice and procedure” in all courts. The Florida Supreme Court has interpreted this provision to mean that the Court has the exclusive power to create rules of practice and procedure and statutes that encroach on that power, if not merely incidental to substantive legislation, are unconstitutional.⁷ If the Court were to determine that the provisions of this bill created a procedural rule, the Court could hold the statute invalid or adopt it as a rule of court.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator has released a judicial impact statement concerning this bill.⁸ The statement concluded that the bill can be anticipated to increase appellate court workload relating to the identification and selection of opinions required to be transmitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor, and with the transmission of those opinions by electronic or other means. However, the statement noted that the fiscal impact arising from this increased workload cannot be precisely quantified.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁷ *Massey*, 979 So. 2d at 937.

⁸ Office of the State Courts Administrator, *2011 Judicial Impact Statement for SB 996*, February 23, 2011 (on file with the Senate Committee on Judiciary).

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:**

None.

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