

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 1570

INTRODUCER: Senator Simmons

SUBJECT: Judiciary

DATE: January 24, 2012 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | O'Connor | Cibula | JU | Favorable |
| 2. | _____ | _____ | BC | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

Senate Bill 1570:

- Provides that if a retired judge or justice is assigned to temporary duty, such assignment does not affect his or her eligibility for benefits under the Florida Retirement System;
- Provides that each expired term or vacancy on a judicial nominating commission (JNC) is filled by appointment in the same manner as the member whose position is being filled;
- Updates provisions relating to the staggering of terms of members of a JNC who are selected from the list provided by the Board of Governors of the Florida Bar;
- Provides that an appointment to a judicial nominating commission of a member selected from a list of nominees provided by the Board of Governors of The Florida Bar is for a term of 4 years, unless the appointment is to fill a vacancy or an unexpired term; and
- Deletes a requirement that the Executive Office of the Governor establish uniform rules of procedure consistent with the State Constitution when suspending a member of a judicial nominating commission for cause.

This bill substantially amends sections 25.073 and 43.29, Florida Statutes.

II. Present Situation:

Retirement

The Florida Constitution and the Florida Rules of Judicial Administration allow the Chief Justice of the Supreme Court to temporarily assign retired justices and judges to any court on which they are qualified to serve. Under current law, a public employee or officer who retires or terminates participation in the Deferred Retirement Option Program (DROP) on or after July 1, 2010, and who becomes employed by an employer participating in the Florida Retirement System (FRS) during the first six months after retirement or termination of DROP, is not considered retired and may not receive retirement benefits.¹ This prohibition currently applies to retired judges or justices serving temporary duty.

A "senior judge" is an honorary designation that refers to a retired judge serving on assignment to temporary judicial duty.² The Florida Constitution and the Florida Rules of Judicial Administration allow the Chief Justice of the Supreme Court to temporarily assign retired justices and judges to any court on which they are qualified to serve. 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.³ Retired judges must comply with continuing judicial education requirements, including completion of 30 hours of approved judicial education programs every 3 years.⁴

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.⁵ A justice or judge may not serve more than 60 days on temporary duty during a year without the approval of the Chief Justice of the Supreme Court.⁶

Retired judges may receive compensation as set by law.⁷ 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.⁸ According to the Office of the State Courts Administrator, retired justices or judges are currently paid \$350 per day for service. In addition, retired justices or judges are entitled to necessary travel expenses.⁹

Chapter 21, F.S., relates to the Florida Retirement System (FRS). Section 121.021(39)(b), F.S., defines "termination," providing that:

¹ Section 121.021(39), F.S.

² FLA. CONST. art. 5, s. (2)(b); Fla. R. Jud. Admin. 2.205(a)(3)(A).

³ Fla. R. Jud. Admin. 2.205(a)(3)(B).

⁴ Fla. R. Jud. Admin. 2.320.

⁵ Section 25.073(1), F.S.

⁶ Section 25.073(2)(a), F.S.

⁷ Fla. R. Jud. Admin. 2.205(a)(3)(A).

⁸ Section 25.073(2)(a), F.S.

⁹ Section 25.073(2)(b), F.S.

"[T]ermination" for a member electing to participate in the Deferred Retirement Option Program [(DROP)] occurs when the program participant ceases all employment relationships with participating employers in accordance with statute

However, the section further provides that any member of the FRS who retires or terminates DROP participation on or after July 1, 2010, and who becomes employed by any FRS employer during the first six calendar months after such time, does not meet the requirements for "termination." Such individuals are not considered retired and, therefore, may not receive retirement benefits.

Section 121.091, F.S., sets out what retirement benefits are payable to an individual who has terminated employment under s. 121.021(39)(a), F.S., or begun participation in DROP. The statute provides that, any person whose retirement is effective on or after July 1, 2010, who is retired under the chapter, may be reemployed by an employer that participates in a state-administered retirement system and receive both retirement benefits and compensation from such employer.¹⁰ However, a person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of "termination" in s. 121.021, F.S.

Judicial Nominating Commission

Trial court judgeships that become vacant during a judge's term and all appellate judgeships are filled by the Governor from a list of nominees provided by a judicial nominating commission (JNC).¹¹ The number of members and composition of each JNC is provided for by statute.¹² When an appellate judgeship becomes vacant, candidates submit their applications to the JNC for that court. The commission sends a list of three to six nominees to the Governor and the Governor fills the vacancy by selecting from that list.¹³ Circuit and county court judges are determined by election¹⁴ but vacancies on the circuit or county courts that occur between elections are filled in the same manner as vacancies on the appellate bench.¹⁵

Article V, s. 11(d), Fla. Const., provides that a JNC must be created by general law for the Supreme Court, each district court of appeal, and each judicial circuit for all trial courts within that circuit. Section 43.291, F.S., implements the constitutional provisions. Each JNC consists of nine members appointed by the Governor.¹⁶ Members serve four year terms.¹⁷ All JNC members must be residents of the territorial jurisdiction serviced by the JNC to which the member is appointed.¹⁸

The Governor may appoint five of the nine members of each JNC without input from The Florida Bar. Two of those five appointees must be members of The Florida Bar who are engaged

¹⁰ Section 121.091(9)(c), F.S.

¹¹ FLA. CONST. art. V, s. 11.

¹² Section 43.291, F.S.

¹³ FLA. CONST. art. V, s. 11(a).

¹⁴ Circuits and counties may, by local option, choose to select judges in the same manner as appellate judges are selected. *See* FLA. CONST. art. V, s. 10.

¹⁵ FLA. CONST. art. V, s. 11(b).

¹⁶ Section 43.291(1), F.S.

¹⁷ Section 43.291(3), F.S.

¹⁸ Section 43.291(1)(a)-(b), F.S.

in the practice of law.¹⁹ The remaining four members are appointed by the Governor from a list of nominees selected and provided by the Board of Governors of The Florida Bar. The Governor may reject all of the nominees recommended for the position and request that the Board submit a new list of three different nominees who have not previously been recommended by the Board. These four members of the JNC must be members of The Florida Bar engaged in the practice of law. The Governor may suspend a member of a JNC for cause through an executive order as outlined in the State Constitution.²⁰

III. Effect of Proposed Changes:

Retirement

The bill provides that the definition of "termination" in s. 121.021(39)(b), F.S., relating to individuals participating in DROP, does not apply to a retired judge or justice assigned to temporary duty. Instead, termination occurs upon the judge's retirement from non-temporary, active duty as a judge. The bill also provides that s. 121.091(9)(c), F.S., does not apply to a retired judge serving temporary duty and that temporary duty under this section is not considered reemployment or employment after retirement for purposes of ch 121, F.S.

In sum, the bill provides that if a retired judge or justice is assigned to temporary duty, such assignment does not affect his or her eligibility for benefits under the Florida Retirement System.

Judicial Nominating Commission

The bill provides that members of the JNC, except the four members selected from a list provided by the Florida Bar, shall serve at the pleasure of the governor. The bill also:

- Provides that each expired term or vacancy is filled by appointment in the same manner as the member whose position is being filled;
- Updates provisions relating to the staggering of terms for JNC members selected from the list provided by the Board of Governors of the Florida Bar;
- Provides that an appointment to a judicial nominating commission of a member selected from a list of nominees provided by the Board of Governors of The Florida Bar is for a term of 4 years, unless the appointment is to fill a vacancy or an unexpired term; and
- Deletes a requirement that the Executive Office of the Governor establish uniform rules of procedure when suspending for cause a member of a JNC because such procedures are detailed under Article IV, section 7 of the State Constitution.

Effective Date

The bill provides an effective date of July 1, 2012.

¹⁹ Section 43.291(1)(b), F.S.

²⁰ FLA. CONST. art. IV, s. 7(a).

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:

None.

C. Government Sector Impact:

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

The bill appears to require an actuarial study in order to determine the estimated cost and to meet the requirements of Article X, s. 14 of the State Constitution.²¹

VI. Technical Deficiencies:

Lines 64 and 72 of the bill refer to “each current member of the judicial nominating commission.” It is unclear to what time period the word “current” refers. It is not clear, for example, whether members would be considered “current” within the meaning of the bill if they were members as of the effective date of the bill, the date of passage, or at some other point in time.

Section 43.291, F.S., as amended by the bill only provides for the terms of four of the nine members of a JNC. The Legislature may wish to revise the bill to specify terms of all nine members of a JNC.

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.

B. **Amendments:**

None.

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

²¹ The Senate Committee on Governmental Oversight and Accountability published a report finding that the creation of an exception to the six-month termination period in s. 121.021(3), F.S., constitutes an increase in benefits which requires an actuarial study. Committee on Governmental Oversight and Accountability, The Florida Senate, *Retired Judges Returning to Temporary Duty Status Within Six Months of Retirement* (Issue Brief 2012-217) (Sept. 2011).