

**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.)

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Prepared By: The Professional Staff of the Judiciary Committee

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BILL: SB 462

INTRODUCER: Senator Bogdanoff

SUBJECT: Terms of Courts

DATE: January 30, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Cibula	JU	<b>Pre-meeting</b>
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**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 The repealed provisions relate to: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;
- Terms 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;
- 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;
- Term of the district courts of appeal;
- A requirement that criminal trials be heard in the term of court prior to civil cases; and
- A requirement that persons in custody be arraigned and tried in the term of court unless good cause is shown.

This bill repeals the following sections of the Florida Statutes: 25.051, 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, 35.10, 35.11, 907.05, and 907.055.

This bill creates two provisions related to the Judiciary. Section 43.43, F.S., allows the Supreme Court to set terms of court for the Supreme Court, district courts of appeal, and circuit courts.

Section 43.44, F.S., allows an appellate court to may withdraw a mandate within 120 days after its issuance.

This bill amends multiple statutes that currently use the language of terms of court. The changes consist of conforming provisions made to the following sections of the Florida Statutes: 26.46, 27.04, 30.12, 30.15, 34.13, 35.05, 38.23, 112.19, 206.215, 450.121, 831.10, 831.17, 877.08, 902.19, 903.32, 905.01, 905.09, 905.095, 914.03, 924.065, and 932.47.

## 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.<sup>1</sup>

- 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 61 judges.
- The circuit courts, the highest level trial court in each of the 20 judicial circuits, are served by approximately 599 judges. The circuit courts hear, for example, felony cases, family law matters, and civil cases in which the matter in controversy exceeds \$15,000.
- The county courts, the lowest level trial courts, having at least one judge in each county, are served by approximately 322 judges. The county courts hear, for example, misdemeanor cases, small claims cases, and civil cases in which the matter in controversy does not exceed \$15,000.

Terms of court were developed to ensure that circuit judges showed up to conduct court business in past times when riding the circuit involved traversing potentially difficult terrain from one county seat to the next.<sup>2</sup> Terms of court were required by the state constitution<sup>3</sup> until Article V was substantially rewritten in 1957.

Current law mandates a minimum of two terms of court for the Supreme Court, circuit courts, and district courts of appeal, each. 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. 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

<sup>1</sup> Office of Program Policy Analysis and Government Accountability, Fla. Legislature, Government Program Summaries, *State Courts System* (last updated Dec. 30, 2011), <http://www.oppaga.state.fl.us/profiles/1072/> (last visited Jan. 29, 2012).

<sup>2</sup> See George S. Reynolds III, *The First One Hundred Years 1868-1968*, <http://www.leoncountyfl.gov/2ndcircuit/index.php?Page=FirstHundred.php> (describing the history of the Second Judicial Circuit, including how the terms of court provided for the circuit judge to travel down the Apalachicola River, and were changed to accommodate the arrival of steamboat service along the river) (last visited Dec. 8, 2011).

<sup>3</sup> Article V, s. 8 of the Constitution of 1885 included this sentence: "Such Judge shall hold at least two terms of his court in each county within his Circuit every year, at such times and places as shall be prescribed by law, and may hold special terms."

of the 20 circuits which provides for the starting day of each term. Enacted in 1957, ss. 35.10 and 35.11, F.S., require the district courts of appeal to hold two regular terms each year at their headquarters and allow for special terms as needed. The regular terms of the district courts of appeal shall commence on the second Tuesday in January and July.

Today, terms of court seem an archaic concept. Circuit judges come and go from each of the counties as needed, and far more often than once every six months. Reference to terms of court is still relevant, however, 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,<sup>4</sup> a rare procedure.

In addition to repealing statutes establishing the terms of court, this bill repeals a number of statutory provisions incidental to the terms of court concept. The present situation for the relevant provisions is discussed in the "Effect of Proposed Changes" section of this bill analysis, below.

### **III. Effect of Proposed Changes:**

#### **Repeal of Terms of Court**

The bill repeals the statutes that set out the court system's regular and special terms of court. This includes the repeal of s. 25.051, F.S., requiring the Supreme Court to hold two terms in each year; ss. 26.21-26.365, F.S., requiring at least two regular terms of the circuit court to be held in each county each year and allowing for special terms as needed; and ss. 35.10 and 35.11, F.S., requiring the district courts of appeal to hold two regular terms each year and allowing for special terms as needed.

According to the Office of the State Courts Administrator (OSCA), a simple repeal of appellate terms of court would have the unintended consequences of "impair(ing) the ability of appellate courts to finalize cases," and "leav(ing) trial court chief judges without explicit authority to convene grand juries."<sup>5</sup> However, proposed ss. 43.43 and 43.44, F.S., avoid these technical complications, in addition to establishing a uniform timeframe for withdrawal of a mandate by an appellate court.

#### ***Authorization of Florida Supreme Court over Terms***

Section 9 creates s. 43.43, F.S., authorizing the Florida Supreme Court to establish terms of court for the Supreme Court and for the lower courts, if the Court wishes. Finalization of cases is addressed in this authorization of "the supreme court to establish, by rule, new terms of court, to

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<sup>4</sup> A mandate is "[a]n order from an appellate court directing a lower court to take a specified action." Black's Law Dictionary (9th ed. 2009).

<sup>5</sup> Fla. Office of the State Courts Administrator, *2011 Judicial Impact Statement: SB 1398*, Mar. 3, 2011 (on file with the Senate Committee on Judiciary).

authorize the district courts of appeal and circuit courts to independently set their own terms, or to dispense with terms of court altogether.”<sup>6</sup>

### **Convening Grand Juries**

*Present Situation:* Section 905.01, F.S., currently permits circuit court chief judges to “dispense with the convening of grand juries by written order directing clerks of court not to summon jurors.”<sup>7</sup>

*Effect of the Bill:* Section 19 amends s. 905.01, F.S., addressing the authority to convene grand juries. Specifically, the bill requires circuit court chief judges to regularly order the convening of grand juries for terms of six months.

### **Timeframe for Withdrawal of Mandate by Appellate Court**

*Present Situation:* Under current law, a mandate may only be withdrawn during the current term of the appellate court. In effect, some appellate court opinions are subject to withdrawal for nearly six months while others may be subject to withdrawal only for a few days. The Florida Supreme Court in 1932, explained the scope and limits of the power to withdraw:

But, be that as it may, a majority of the court have reached the conclusion that the correct rule, which should be recognized and applied in such situation, is that the jurisdiction of this court, like the jurisdiction of courts generally, persists to the end of the term, and then terminates, but that, during the term at which a judgment of this court is rendered, this court has jurisdiction and power which it may exercise, as the circumstances and justice of the case may require, to reconsider, revise, reform, or modify its own judgments for the purpose of making the same accord with law and justice, and that it has power to recall its own mandate for the purpose of enabling it to exercise such jurisdiction and power in a proper case.<sup>8</sup>

*Effect of the Bill:* Section 10 creates s. 43.44, F.S., which provides that an appellate court may withdraw a mandate for up to 120 days after it is filed with a lower court.

### **Repeal of Incidental Provisions**

This bill repeals a number of statutory provisions incidental to the terms of court concept.

### ***Judge to Attend First Day of Term***

*Present Situation:* Initially 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

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<sup>6</sup> Fla. Office of the State Courts Administrator, *2012 Judicial Impact Statement: SB 462*, Oct. 27, 2011 (on file with the Senate Committee on Judiciary).

<sup>7</sup> *Id.*

<sup>8</sup> *Chapman v. St. Stephens Protestant Episcopal Church, Inc.*, 138 So. 630, 632 (Fla. 1932). The *Chapman* case specifically provides that the power to withdraw a mandate may be limited by statute.

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:* Initially enacted in 1849, s. 26.38, F.S., requires a judge who misses the first day of each term to state the reasons for 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:* Initially enacted in 1849, s. 26.39, F.S., requires the clerk of court to notify the Chief Financial Officer (CFO) 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.

### ***Order of Cases Tried in Circuit Court***

*Present Situation:* Enacted in 1939, s. 907.05, F.S., requires that criminal trials be heard in the term of court prior to civil cases, if they can be tried without injury to the interests of the state or defendant.

*Effect of the Bill:* Section 1 repeals s. 907.05, F.S.

### ***Trial of Persons in Custody***

*Present Situation:* Enacted in 1939, s. 907.055, F.S., requires that persons in custody be arraigned and tried in the term of court when the indictment or information for a felony is filed, unless good cause is shown for a continuance.

*Effect of the Bill:* Section 1 repeals s. 907.055, F.S.

### **Conforming Provisions**

This bill amends multiple statutes that currently use the language of terms of court. Sections 2-8 and 11-24 of the bill consist of conforming provisions made to the following sections of the Florida Statutes: 26.46, regarding jurisdiction of a resident judge; 27.04, regarding witnesses in a criminal case; 30.12, regarding the power to appoint a sheriff; 30.15, regarding powers, duties, and obligations of the sheriff; 34.13, regarding methods of prosecution; 35.05, regarding the headquarters of a district court of appeal; 38.23, regarding contempt of court; 112.19, regarding law enforcement officers; 206.215, regarding court costs; 450.121, regarding child labor law; 831.10, regarding forged bills; 831.17, regarding second or subsequent offenses for possession of counterfeit coins; 877.08, regarding coin-operated machines; 902.19, regarding when a prosecutor is liable for costs; 903.32, regarding defects in a criminal bond; 905.01, regarding grand jury terms; 905.09, regarding discharge and recall of a grand jury; 905.095, regarding extension of a grand jury term; 914.03, regarding attendance of witnesses; 924.065, regarding appearance bonds; and 932.47, F.S., regarding an information filed by a prosecuting attorney.

### **Effective Date**

The bill provides an effective date of January 1, 2013.

## **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:**

The Office of the State Courts Administrator reports that it is not expecting the bill to have an impact on court workload and “little effect on judicial time.”<sup>9</sup>

**VI. Technical Deficiencies:**

None.

**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.

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

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<sup>9</sup> Fla. Office of the State Courts Administrator, *supra* note 5.