

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 971 Judiciary  
**SPONSOR(S):** Civil Justice Subcommittee; Gaetz  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1570

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 5 N, As CS	Caridad	Bond
2) Government Operations Subcommittee	10 Y, 3 N	Meadows	Williamson
3) Judiciary Committee			

### SUMMARY ANALYSIS

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 in 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. This prohibition currently applies to retired judges or justices serving temporary duty.

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). The number of members and composition of each JNC is provided for by statute.

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 FRS;
- Provides that certain members of the JNC serve at the pleasure of the governor;
- Provides that each expired term or vacancy is filled by appointment in the same manner as the member whose position is being filled;
- Deletes an obsolete provision providing that the Executive Office of the Governor establish uniform rules of procedure consistent with the State Constitution when suspending for cause a member of the JNC.

This bill may have a fiscal impact on state government. Because the bill appears to provide an increase in benefits to members of the FRS, an actuarial study is required to determine the estimated cost and to meet state constitutional requirements.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Retirement

##### *Present Situation*

A "senior judge" is an honorary designation that refers to a retired judge serving on assignment to temporary judicial duty. 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 in which they are qualified to serve.<sup>1</sup> 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.<sup>2</sup> Retired judges must comply with continuing judicial education requirements, including completion of 30 hours of approved judicial education programs every three years.<sup>3</sup>

Current law 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.<sup>4</sup> A justice or judge may not serve more than 60 days on temporary duty during a year without the approval of the Chief Justice.<sup>5</sup>

Retired judges may receive compensation as set by law.<sup>6</sup> 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.<sup>7</sup> According to the Florida Supreme Court's office, retired justices or judges are currently paid \$350 per day for service. In addition, retired justices or judges are entitled to necessary travel expenses.<sup>8</sup>

Chapter 121, F.S., relates to the Florida Retirement System (FRS). Section 121.021(39)(b), F.S., defines "termination", providing that:

"[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 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 this 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.<sup>9</sup> However, a person may not be reemployed by an employer participating in the FRS before meeting the definition of

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<sup>1</sup> Art. V, s. (2)(b) Fla. Const.; *See also* Fla.R.Jud.Admin. 2.205(a)(3)(A).

<sup>2</sup> Fla. R.Jud.Admin. 2.205(a)(3)(B).

<sup>3</sup> *See* Fla.R.Jud.Admin. 2.320.

<sup>4</sup> Section 25.073(1), F.S.

<sup>5</sup> *See* s. 25.073(2)(a), F.S.

<sup>6</sup> *See* Fla.R.Jud.Admin. 2.030(a)(3)(A).

<sup>7</sup> *See* s. 25.073(2)(a), F.S.

<sup>8</sup> Section 25.073(2)(b), F.S.

<sup>9</sup> Section 121.091(9)(c), F.S.

"termination" in s. 121.021, F.S., and may not receive both a salary from the employer and retirement benefits for 6 calendar months after meeting the definition of "termination."<sup>10</sup>

#### *Effect of Proposed Changes*

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 Chapter 121, F.S.

The bill revises s. 121.591, F.S., to conform retirement system provisions to temporary appointment of retired justice of judges as senior judges.

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 FRS.

#### Judicial Nominating Commission

##### *Present Situation*

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).<sup>11</sup> The number of members and composition of each JNC is provided for by statute.<sup>12</sup> 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.<sup>13</sup> Circuit and county court judges are determined by election<sup>14</sup> but vacancies on the circuit or county courts that occur between elections are filled in the same manner as vacancies on the appellate bench.<sup>15</sup>

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 court within that circuit. Section 43.291, F.S., implements the constitutional provisions. Each JNC consists of nine members appointed by the Governor.<sup>16</sup> Members serve 4 year terms.<sup>17</sup> All JNC members must be residents of the territorial jurisdiction serviced by the JNC to which the member is appointed.<sup>18</sup>

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 in the practice of law.<sup>19</sup> 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.

##### *Effect of Proposed Changes*

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

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<sup>10</sup> *Id.*

<sup>11</sup> See art. V, s.11, Fla. Const.

<sup>12</sup> See s. 43.291, F.S.

<sup>13</sup> See art. V, s. 11(a), Fla. Const.

<sup>14</sup> Circuits and counties may, by local option, choose to select judges in the same manner as appellate judges are selected. See art. V, s. 10, Fla. Const.

<sup>15</sup> See art. V, s. 11(b), Fla. Const.

<sup>16</sup> Section 43.291(1), F.S.

<sup>17</sup> Section 43.291(3), F.S.

<sup>18</sup> Section 43.291(1)(a), (b), F.S.

<sup>19</sup> Section 43.291(1)(b), F.S.

- Updates provisions relating to the staggering of terms for members selected from the list provided by the Board of Governors of the Florida Bar;
- Provides that an appointment to a JNC of a member selected from a list of nominees provided by the Board of Governors of the Florida Bar — unless it is to a vacant, unexpired term — is for 4 years;
- Provides that each expired term or vacancy is filled by appointment in the same manner as the member whose position is filled; and
- Deletes an obsolete requirement that the Executive Office of the Governor establish uniform rules of procedure consistent with the State Constitution when suspending for cause a member of a JNC.

**B. SECTION DIRECTORY:**

Section 1 amends s. 25.073, F.S., to provide that if a retired justice or judge is assigned to temporary duty, such assignment does not affect his or her eligibility for benefits under the FRS or renew his or her membership in the FRS.

Section 2 amends s. 43.291, F.S., relating to Judicial Nominating Commissions.

Section 3 amends s. 121.021, F.S., to conform retirement system provisions to temporary appointment of retired justices or judges.

Section 4 amends s. 121.091, F.S., to conform retirement system provisions to temporary appointment of retired justices or judges.

Section 5 amends s. 121.591, F.S., to conform retirement system provisions to temporary appointment of retired justices or judges.

Section 6 provides an effective date of July 1, 2012.

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

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

1. Revenues:

None.

2. Expenditures:

Unknown. See Fiscal Comments.

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

1. Revenues:

None.

2. Expenditures:

None.

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

The bill does not appear to have any direct economic impact on the private sector.

#### D. FISCAL COMMENTS:

The provisions of the bill provide for an improvement of benefits under the FRS for judges and justices. As such, an actuarial study is required to determine the estimated cost.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The 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.

##### 2. Other:

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.<sup>20</sup>

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Civil Justice Subcommittee amended the bill to provide that members of the JNC appointed, except those selected from a list provided by the Florida Bar, shall serve at the pleasure of the governor. It also deleted provisions related to the term "normal retirement date" and made other conforming provisions to retirement law.

The analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

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<sup>20</sup> 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. *See* "Retired Judges Returning to Temporary Duty Status within Six Months of Retirement," September 2011.