

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 7003	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Judiciary Committee; Civil Justice Subcommittee; Metz	115 Y's	1 N's
COMPANION BILLS:	CS/SB 828	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 7003 passed the House on April 28, 2014, as CS/SB 828.

The bill repeals, modifies or updates outdated provisions in the Florida Statutes related to the court system. Specifically:

- Statutes that repeat provisions in the state constitution are repealed as unnecessary.
- Statutes that create additional criteria for judicial office are repealed as such requirements conflict with constitutional qualifications for office.
- The statute on proceedings supplementary, a means for collection of a judgment, is modernized and clarified.
- Statutes are amended or repealed to reflect current practices or to eliminate outdated or unnecessary provisions.

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

The bill was approved by the Governor on June 20, 2014, ch. 2014-182, L.O.F., and will become effective on July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

In general, this bill repeals or modifies outdated provisions of the Florida Statutes related to the court system. Specifically:

Section 25.151, F.S., prohibits a retired justice from engaging in the practice of law. The statute is not currently enforced, and similar statutes have been found unconstitutional.¹ The bill repeals the statute.

Art. V, s. 3(c), Fla.Const., requires the Supreme Court to appoint a clerk. Section 25.191, F.S., requires the Supreme Court to appoint a clerk. The bill repeals the statutory requirement, which repeal will have no effect as the same requirement remains in the state constitution.

Art. V, s. 3(c), Fla.Const., requires the Clerk of the Supreme Court to "perform such duties as the court directs." Section 25.231, F.S., provides that the Clerk of the Supreme Court must perform duties as directed by the Supreme Court. The bill repeals the statutory requirement, which will have no effect as the same requirement remains in the state constitution.

Sections 25.241(1), and 25.281, F.S., provide that the Clerk and Marshall of the Supreme Court are to be paid a salary. Art. V, s. 3(c), Fla.Const., requires that the Clerk and Marshall of the Supreme Court must be paid. The bill repeals the statutory requirement, which will have no effect as the state constitution requires payment of the salaries and because state employees are paid for performing their duties. See also s. 29.23, F.S., created by this bill.

Section 25.351, F.S., allows the library of the Supreme Court to purchase books and to trade them with other libraries. It is unclear why this needs to be in statute. The bill repeals the statutory regarding books, which repeal is unlikely to have any practical effect.

Article V, s. 1, Fla.Const., requires that the state be divided into judicial circuits that follow county lines. Section 26.01, F.S., simply provides that there will be 20 judicial circuits. Section 26.021, F.S. provides which counties are in each circuit. The bill repeals s. 26.01, F.S., merging it into s. 26.021, F.S., for simplicity.

Section 26.021, F.S., divides the state into judicial circuits, as required by the state constitution. The statute lists the counties in each judicial circuit. Three of the 20 judicial circuits have special statutory residency requirements. Article V, s. 8, Fla.Const., sets the constitutional requirements for eligibility to serve as a justice of judge. The courts have ruled that no additional requirement for judicial office may be created by statute.² The bill adds the language from s. 26.01, F.S., and repeals the special residential requirements for certain judicial offices at the circuit court level.

Section 26.51, F.S., requires that the salaries of circuit judges be paid "in equal monthly installments." The language first appeared in a 1925 statute setting the salaries of a number of state officials.³ At the time, salaries were in the general statutes. The practice since 1969 has been for the salaries of these state officials to be a part of the General Appropriations Act rather than in the compiled Florida Statutes. All of the other state officials, including county judges, appellate judges, and Supreme Court justices, are paid monthly without statutory direction. It is unclear why this clause, only applicable to one class of state officials (circuit judges), has remained in statute. The bill repeals the statutory

¹ See *In re The Florida Bar-Code of Judicial Conduct*, 281 So.2d 21 (Fla. 1973); see also, art. V, s. 15, FLA.CONST. (Supreme Court's exclusive jurisdiction over the practice of law).

² *Miller v. Mendez*, 804 So.2d 1243 (Fla. 2001)(cannot require residency within circuit at time of qualifying when constitution only requires residency at time of taking office); *Levey v. Dijols*, 990 So.2d 688, 692 (Fla. 4th DCA) ("Any statute that restricts eligibility beyond the requirements of the Florida Constitution is invalid."), *rev. denied*, 994 So.2d 304 (Fla. 2008).

³ Chapter 11335. L.O.F., s. 1 (1925).

requirement that circuit judges be paid in equal monthly installments. The bill should have no impact on judicial salaries or when they are paid.

Section 26.55, F.S., creates the Conference of Circuit Court Judges. The bill amends the section at the request of the Conference to:

- Specify that a retired judge who is actively engaged in the practice of law is excluded from automatic membership.
- Provide that membership in the Conference, and operation of the Conference, are as set forth in court rule.
- Eliminate the annual report requirement.
- Make grammatical and technical changes.

Section 27.55, F.S., provides for the compensation of a public defender and the payment of expenses of a public defender should the state create a new judicial circuit. There are no current known plans for creation of a new judicial circuit, and, if there were, the payment of salaries and expenses relating to such creation would normally be a part of the law creating such circuit or would be in the General Appropriations Act for that legislative session. The bill repeals the statute regarding such expenses, which should have no impact.

The state constitution requires that certain employees of the court system are to be paid an annual salary. The requirement related to some of those employees is repeated in various statutes repealed by this bill. The practice since 1969 has been for the salaries of constitutional state officials, including those in the judicial branch, to be a part of the General Appropriations Act rather than in the compiled Florida Statutes. This bill creates s. 29.23, F.S., to consolidate all of the constitutional salary provisions into one statute reflecting current practices. The section provides that salaries of justices and judges must be part of the General Appropriations Act, and salaries of appellate marshals and clerks are determined in accordance with s. 25.382, F.S. (current law regarding court system budgeting). The newly created statute reflects long-standing policies.

Article V, s. 2(c), Fla.Const., provides for selection of a chief judge in each district court of appeal. Section 35.12, F.S., also provides for selection of a chief judge in each district court of appeal. The bill repeals the statutory provision, which repeal would have no practical effect.

Article V, s. 4(a), Fla.Const., requires that three judges hear a case before a district court of appeal, and that the "concurrence of two" is required for a decision. Section 35.13, F.S., requires the same. The bill repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution.

Article V, s. 14(a), Fla.Const., provides that the salaries of justices and judges are to be set by general law. Section 35.19, F.S., provides that the salaries of judges of the district courts of appeal are to be set by law. The bill repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution. See also s. 29.23, F.S., created by this bill.

Article V, s. 4(c), Fla.Const., requires each district court of appeal to appoint a clerk to serve at the pleasure of the court. Section 35.21, F.S., also requires each district court of appeal to appoint a clerk to serve at the pleasure of the court. The bill repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution.

Article V, s. 4(c), Fla.Const., provides that the salary of a clerk of a district court of appeal is to be set by general law. Section 35.22(1), F.S., provides that the compensation of the clerk of a district court of appeal is to be set by law. The bill repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution. See also s. 29.23, F.S., created by this bill.

Section 35.25, F.S., provides that the duties of the clerk of a district court of appeal "shall be as prescribed by the rules of the court." No rules have been promulgated to prescribe the specific duties of a clerk of a district court of appeal. Article V, s. 4(c), Fla.Const., requires the clerk to "perform such duties as the court directs." Because a clerk of a district court of appeal serves at the pleasure of the court, formal rulemaking is unnecessary. The adoption of internal operating procedures, both formal and informal, is sufficient to govern the conduct of a clerk (or any other employee who serves at the pleasure of an appointing body). The bill repeals the statute, which repeal is anticipated to have no effect on appellate court clerks or their operation.

Article V, s. 4(c), Fla.Const., provides that the salary of a marshal of a district court of appeal is to be set by general law. Section 35.27, F.S., provides that the compensation of the marshal of a district court of appeal is to be set by law. The bill repeals the statutory provision, which repeal will have no effect as the same provision remains in the state constitution. See also s. 29.23, F.S., created by this bill.

Section 38.13, F.S., provides for the appointment of a judge ad litem in a particular civil case. The law, first enacted in 1887, provides that, where the trial judge is disqualified, the parties to the action may agree on an attorney at law to act as the judge for that particular case. The statute was helpful at a time when most rural judicial circuits had only one judge, but it is outdated today. The need for the statute has been superseded by art. V, s. 2(b), Fla.Const. (power of the Chief Justice to appoint a judge to another court), Fla.R.Jud.Admin. 2.330 (disqualification of a judge), and the concept of arbitration in general. The bill repeals the statute allowing the appointment of a judge ad litem.

The Judicial Qualifications Commission is created by art. V, s. 12, Fla.Const. Section 43.20, F.S., recognizes the Judicial Qualifications Commission in statute. A 1996 constitutional amendment increased the membership of the commission from 13 to 15 members. This bill amends s. 43.20, F.S., to conform to the change from 13 to 15 members.

Section 56.29, F.S., provides statutory procedures for proceedings supplementary, a proceeding used in the collection of a judgment. A Florida Bar Journal article⁴ and two appellate courts⁵ note that the current statutory procedure is outdated. The bill requires that the judgment debtor file a motion requesting proceedings supplementary, allows for hearings regarding fraudulent conveyances, provides for impleader of a third party who may be in possession of property of the debtor or who may have received a fraudulent conveyance from the judgment debtor, and allows the court to enter any order, judgment or writ required. The changes appear to reflect common practice regarding proceedings supplementary.⁶ This section of the bill applies to existing cases.

Section 57.101, F.S., provides that a party to an appeal before the Supreme Court cannot be made to pay for copies made by the Clerk of the Supreme Court that the party did not order. It is unclear how or why copies would be made by the Clerk except where actually ordered by a party, and thus the statute has no apparent meaning. The bill repeals the statute.

Section 92.15, F.S., provides that a receipt of a receiver of a United States Land Office shall in all cases be prima facie evidence that the title to the land covered by the receipt has passed from the United States to the person named in the receipt as having paid for the land. Federal law in the 1800's recognized that certain settlers of land who paid a nominal registration fee would be given a receipt that was evidence of the payment of the fee giving the settlor the right to possess the land. That receipt was not a title document like a deed, and so "the statute was passed with a view to obviating the inconvenience that ensued from the delays so frequently occurring in the issuance from Washington of

⁴ *Caught in the Web of Florida's Statutory Proceedings Supplementary: Procedural and Constitutional Problems Facing Impleaded Third Parties*, 86 Fla.Bar J. No. 10, p. 28 (December 2012).

⁵ *Okaloosa New Opportunity, LLC v. LD Projects, LLC*, 109 So.3d 1209, 1214 (Fla. 5th DCA 2013); *B & I Contractors, Inc. v. Mel Re Constr. Mgt.*, 66 So.3d 1035, 1037-38 (Fla. 2d DCA 2011).

⁶ The changes do not, however, address all of the deficiencies in the statutes that are noted in the article or the case law.

the letters patent, and in recognition of the fact that the full equitable title had passed from the government to the [settlor]."⁷ The last appellate case under the statute was decided in 1914,⁸ and the records of the Florida land grant office show that it closed in 1933.⁹ All land grant properties should have had numerous recorded title transactions since then, and reference to such receipts appears outdated and unnecessary. See generally, ch. 712, F.S. (the Marketable Record Title Act). The bill repeals the statute.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

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:

None.

⁷ *Boley v. Wynn*, 67 So. 117 (Fla. 1914). See also *Yellow River R. Co. v. Harris*, 17 So. 568 (Fla. 1895).

⁸ *Boley v. Wynn*, 67 So. 117 (Fla. 1914).

⁹ Click on 49.9.7 at <http://www.archives.gov/research/guide-fed-records/groups/049.html> (last accessed on May 7, 2014).