

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 175 Florida Court Educational Council  
**SPONSOR(S):** Civil Justice & Claims Subcommittee; Byrd and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 748

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	11 Y, 5 N, As CS	MacNamara	Bond
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

In 1982, the Legislature established the Court Education Trust Fund, which is the primary funding source for training provided to judges and staff of the judicial branch. Those funds are generated by \$3.50 fees authorized by statute and assessed in civil actions. Current law authorizes the Supreme Court to administer the fund through the Florida Court Education Council ("FCEC" or "Council"), the composition of which is not set by statute. The 20 member Council makes budgetary, programmatic, and policy recommendations to the Court regarding judicial education. The Chief Justice selects the members of the Council.

The bill transfers responsibility for the Court Education Trust Fund from the Supreme Court to the FCEC. The bill provides that membership of the FCEC is composed of the 20 chief judges of the circuit courts and the 5 chief judges of the District Courts of Appeal. The bill also provides guidance as to the administrative duties to be performed by the Council, establishes a headquarters in the 9th Judicial Circuit, limits administrative costs and the number of employees, and requires the Council to submit an annual report to the Senate President and the Speaker of the House of Representatives.

The bill appears to reduce program FTE's by 12 and limits trust fund expenditures for administrative overhead, but the overall fiscal impact on the Court Education Trust Fund is unknown. The bill does not appear to have a fiscal impact on local governments.

The effective date of the bill is July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background and Current Law**

##### Florida Court Education Council

In 1978, the Supreme Court established the Florida Court Education Council ("FCEC"). The FCEC was originally created to oversee educational programs for Florida judges and certain court support personnel;<sup>1</sup> and making budgetary, programmatic, and policy recommendations to the Supreme Court regarding continuing education.<sup>2</sup> The Council is currently comprised of 20 members, chosen by the Chief Justice, and selected from the following entities:

- The Supreme Court (1)
- The Appellate Courts (2)
- The Circuit Courts (4)
- The County Courts (4)
- Deans and Associate Deans (4)
- Trial Court Administrators (1)
- Florida Court Personnel (2)
- The Universal Planning Committee (2)<sup>3</sup>

The Office of the State Court Administrators ("OSCA") provides staffing for the FCEC through their Court Education section. There are currently 15 full-time employees ("FTEs") paid through the Court Education Trust Fund, of which 11 are "fully engaged in direct service delivery."<sup>4</sup> The staff supplied to the Council assists with budgeting, record keeping, and processing travel reimbursements and other budgetary items.<sup>5</sup> Staff also assists in planning and developing training and works with other entities to help judges meet their educational requirements.

Pursuant to s. 25.385, F.S., the FCEC is also required to establish standards for instruction of circuit and county court judges who have responsibility for domestic violence cases, providing such instruction on a periodic and timely basis.

##### Continuing Judicial Education

Rule 2.320 of the Florida Rules of Judicial Administration requires all county, circuit, and appellate judges and Supreme Court justices to comply with continuing education requirements. Each judge and justice is required to complete a minimum of 30 credits hours of approved judicial education programs every 3 years.<sup>6</sup>

In addition to the 30-hour continuing education requirement, every new judge must complete the Florida Judicial College program. This program, organized by the FCEC, includes an in-depth trial skills

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<sup>1</sup> See e.g., Fla. R. Jud. Admin. 2.320(c-e). The FCEC develops the educational programs for the Florida Judicial College. See generally *In Re 2015 Florida Judicial College*, Fla. Admin. Order No. AOSC14-57 (October 2, 2014) (on file with the Clerk, Fla. Sup. Ct.).

<sup>2</sup> See *In Re Florida Court Education Council*, Fla. Admin. Order No. AOSC16-42 (June 30, 2016) (on file with Clerk, Fla. Sup. Ct.).

<sup>3</sup> *Id.* at p.3-5.

<sup>4</sup> OSCA 2017 Judicial Impact Statement Draft, HB 175 (Created January 16, 2017) (Received by the Civil Justice & Claims Subcommittee on February 2, 2017).

<sup>5</sup> Office of Program Policy Analysis & Government Accountability ("OPPAGA") Report, No. 15-13, p. 18 (December 2015). Available at [oppaga.state.fl.us/MonitorDocs/Reports/pdf/1513rpt.pdf](http://oppaga.state.fl.us/MonitorDocs/Reports/pdf/1513rpt.pdf).

<sup>6</sup> Fla. R. Jud. Admin. 2.320(b)(2). These requirements are similar to the continuing legal education (CLE) credits attorneys in the state are required to obtain every 3 years. See Fla. Bar Reg. R. 6-10.3.

workshop, a mock trial experience, intensive substantive law courses, and a mentoring program providing one-on-one guidance from experienced judges. The FCEC also provides educational opportunities to magistrates, staff, and other court personnel.<sup>7</sup>

Last year, approximately 3,200 judges and court staff received in person training, and an additional 142 individuals attended distance learning sessions. In addition to these in person training sessions, twenty-eight publications were maintained online.<sup>8</sup>

### Court Education Trust Fund

In 1982, the Legislature enacted s. 25.384, F.S., creating the Court Education Trust Fund.<sup>9</sup> The funds are used to provide education and training for judges and other court personnel as defined and determined by the FCEC.<sup>10</sup> The Legislature allowed the Supreme Court, through the FCEC, to administer the fund.<sup>11</sup> The moneys credited to the trust fund include filing fees from circuit civil cases,<sup>12</sup> service charges and filing fees in probate matters,<sup>13</sup> and filing fees from civil proceedings in county court.<sup>14</sup>

The statute requires the Supreme Court, through the FCEC, to adopt a comprehensive plan for the operation of the trust fund and the expenditure of moneys deposited in the trust fund. The comprehensive plan must provide for travel, per diem, tuition, educational materials, and other related costs incurred for educational programs that will benefit the state.

In addition to the management of funds and adoption of a comprehensive plan, the Supreme Court, through the FCEC, is required to provide a report to the President of the Senate and Speaker of the House of Representatives detailing the fees deposited in the fund and the costs incurred in providing education and training for judges.

For fiscal year 2015-16, the Court Education Trust Fund had revenues totaling \$2,585,090<sup>15</sup> with expenditures totaling \$2,477,738.<sup>16</sup> For FY 2015-16, the administrative expenses associated with court education was approximately \$255,000.<sup>17</sup>

### **Effect of the Bill**

The bill removes the Supreme Court as administrator of the Court Education Trust Fund and transfers that responsibility to the FCEC. The Council is required to adopt a comprehensive plan for operation of the fund similar to the comprehensive plan required under current law. Likewise, the fund is to be funded by the same fees and will continue providing training and education for judges and other court personnel.

The bill also amends s. 25.385, F.S., to specify that the Council consists of 25 members: the chief judge of each judicial circuit (20 members) and the chief judge of each district court of appeal (5 members). The Council must elect a chair from its membership to serve a 1-year term and may also

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<sup>7</sup> See e.g., note 5, p.23 Exhibit 9.

<sup>8</sup> See note 4, Section III.

<sup>9</sup> ch. 82-168, L.O.F.

<sup>10</sup> s. 25.384(2), F.S.

<sup>11</sup> The statute refers to the Supreme Court and the Florida Court Educationa/ Council. As such, the statute as written references a council with a slightly different name than the "Florida Court Education Council" established by the Supreme Court. However, in operation, the Council has acted pursuant to s. 25.384, F.S. since its adoption.

<sup>12</sup> ss. 28.241(1)(a)1.c., and 28.241(1)(a)2.e., F.S. (\$3.50).

<sup>13</sup> s. 28.2401(3), F.S., (\$3.50).

<sup>14</sup> s. 34.041(1)(b), F.S., (\$3.50).

<sup>15</sup> Transparency Florida, Court Education Trust Fund Revenue Report, FY 2015-16 (Last accessed January 25, 2017).

<sup>16</sup> 2015-16 Annual Report on Activities Sponsored through the Court Education Trust Fund (September 30, 2016) (On file with the CJC Sub).

<sup>17</sup> See note 4, Section III. This total was calculated using the definition of administrative costs consistent with the definition utilized by the US Department of Labor: "the allocable portion of necessary and reasonable costs that are not related to the direct provision of services."

elect other offices from its membership as it deems necessary. The Council must be headquartered in the 9th Judicial Circuit (Orange and Osceola counties). The bill allows the Council to employ up to 3 full-time employees.

The bill requires the FCEC to:

- Adopt guidelines for administrative expenses, capping the total amount at 15% of the previous fiscal year's deposited funds
- Adopt policies related to the selection and approval of education and training programs.
- Submit a report each year to the Senate President and the Speaker of the House of Representatives in substantially the same form as current law.

The bill repeals a definition of "family or household member" as the term is not used in the section.

Lastly, the bill requires that the Court Education Trust Fund be terminated, with all remaining unencumbered funds reverting to the General Revenue Fund, in the event that any provision contained in sections 1 or 2 of the bill is declared invalid for any reason. In such circumstance, the \$3.50 additional fee pursuant to ss. 28.0241(3), 28.241(1)(a)1.c., 28.241(1)(a)2.e., and 34.041(1)(b), F.S. (probate, general circuit civil, foreclosure, and general county civil, respectively) would no longer be collected.

#### B. SECTION DIRECTORY:

Section 1 amends s. 25.384, F.S., relating to the Court Education Trust Fund.

Section 2 amends s. 25.385, F.S., relating to the standards for instruction of circuit and county court judges.

Section 3 relating to a finding that any provision of sections 1 or 2 is invalid.

Section 4 provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

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

##### 2. Expenditures:

The fiscal impact of the bill on the Court Education Trust Fund is unclear, see Fiscal Comments.

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

##### 1. Revenues:

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

##### 2. Expenditures:

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

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

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

#### D. FISCAL COMMENTS:

For fiscal year 2015-16, the Court Education Trust Fund incurred \$2,477,738 in total expenditures. The two largest components of this figure are Salaries (\$1,070,161) and In-State Court Education Programs

(\$1,264,732).<sup>18</sup> While the bill would reduce FTE's from 15.0 to 3.0, and would limit administrative overhead, it is unclear whether the savings resulting from reducing salaries, benefits and administrative savings would revert to the state, would allow the trust fund balance to increase, or would be used to improve programming.

In OSCA's 2017 Judicial Impact Statement draft for the bill, the Office stated that "[i]t is unclear if an FCEC-controlled Court Education unit staffed by a maximum of three employees would be able to continue to produce meaningful, high-quality education to meet [the judicial education] requirements."<sup>19</sup>

If any provision in Section 1 or 2 of the bill is found invalid, there would be a non-recurring increase in state government revenues as the remaining unencumbered funds from the Court Education Trust Fund would revert to the General Revenue Fund.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

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

The bill does not appear to require counties or municipalities to take 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 sales tax shared with counties or municipalities.

##### **2. Other:**

Article V, s. 2(a) of the state Constitution provides that "[t]he supreme court shall adopt rules for the practice and procedure in all courts... [and] the administrative supervision of all courts[.]" Article V, s. 14(d) of the state Constitution provides that "[t]he judiciary shall have no power to fix appropriations."

#### **B. RULE-MAKING AUTHORITY:**

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

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

At lines 69-70 of the bill, it places a cap on administrative expenses at 15%. There is no definition of "administrative expense."

The bill also contains the original language from ss. 25.384, F.S., and 25.385, F.S., that refers to the FCEC as the Florida Court Educationa/ Council. The Council, as established by the Supreme Court, is called the Florida Court Education Council.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 9, 2017, the Civil Justice & Claims Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by adding cross-references to filing fees that may be affected by the bill. This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.

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<sup>18</sup> See note 14.

<sup>19</sup> See note 4, Section V.