

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 175 Florida Court Educational Council

SPONSOR(S): Justice Appropriations Subcommittee; 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	9 Y, 3 N, As CS	Smith	Gusky
3) Judiciary Committee			

SUMMARY ANALYSIS

In 1978, the Supreme Court established the Florida Court Education Council ("FCEC" or "Council") to oversee educational programs for Florida judges and certain court personnel. The Council also makes budget, program and policy recommendations to the Supreme Court regarding continuing education. The Chief Justice of the Supreme Court selects the members of the Council, with representation from all levels of trial and appellate courts and others involved with the judicial branch. The Office of the State Courts Administrator ("OSCA") provides staff support to the FCEC through its Court Education section.

In 1982, the Legislature established the Court Education Trust Fund, which is the primary funding source for training provided to judges and other court personnel. The trust fund's sole revenue source is statutorily authorized fees assessed in specified civil actions. Current law directs the Supreme Court to administer the fund through the FCEC.

The bill establishes the Florida Court Educational Council in law and transfers responsibility for the administration of the Court Education Trust Fund directly to the FCEC. The bill provides that membership of the FCEC is composed of 17 active judges; two members from the District Court of Appeals, ten members from the Circuit Court and five members from the County Courts. The bill also establishes the Council's administrative duties, provides examples of administrative expenses, limits the number of employees, and requires the Council to submit an annual report to the President of the Senate and the Speaker of the House of Representatives.

The bill provides that if any provisions of the bill are declared invalid for any reason, the fees that would be distributed to the Court Education Trust Fund may not be assessed, any unencumbered balance in the trust fund shall revert to the General Revenue Fund, and the trust fund shall be terminated.

The bill has an indeterminate fiscal impact on revenues and expenditures. See Section II.

The effective date of the bill is January 1, 2018.

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;¹ and make budgetary, programmatic, and policy recommendations to the Supreme Court regarding continuing education.² 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)³

The Office of the State Court Administrator ("OSCA") provides staffing for the FCEC through its Court Education section. There are currently 16 full-time equivalent (FTE) positions funded through the Court Education Trust Fund, of which 11.5 positions are "fully engaged in direct service delivery."⁴ The staff supplied to the Council assists with budgeting, record keeping, and processing travel reimbursements and other budgetary items.⁵ 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 providing periodic and timely instruction to circuit and county court judges who have responsibility for domestic violence cases.

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 three years.⁶

¹ 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.).

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

³ *Id.* at p.3-5.

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

⁵ 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.

⁶ 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.

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 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.⁷

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, 28 publications were maintained online.⁸

Court Education Trust Fund

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

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 managing funds and adopting a comprehensive plan, the Supreme Court, through the FCEC, is required to provide a report to the President of the Senate and the 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 2015-2016, the Court Education Trust Fund had a nonrecurring cash balance on July 1, 2015 of \$1,204,003¹⁵, revenues totaling \$2,585,010¹⁶ and cash disbursements totaling \$2,019,300.¹⁷ According to the OSCA, the administrative expenses associated with providing court education and training was approximately \$255,000 for Fiscal Year 2015-2016.¹⁸

Effect of the Bill

The bill amends s. 25.384, F.S., to remove the Supreme Court as the administrator of the Court Education Trust Fund and transfer that responsibility to the FCEC. The Council is required to adopt a comprehensive plan to operate the fund similar to the comprehensive plan required under current law.

⁷ See e.g., note 5, p.23 Exhibit 9.

⁸ See note 4, Section III.

⁹ ch. 82-168, L.O.F.

¹⁰ s. 25.384(2), F.S.

¹¹ The statute refers to the Supreme Court and the Florida Court Education 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.

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

¹³ s. 28.2401(3), F.S., (\$3.50).

¹⁴ s. 34.041(1)(b), F.S., (\$3.50).

¹⁵ Transparency Florida website: <http://www.transparencyflorida.gov/Reports/TrustFundsDetailReport> (Last accessed February 19, 2017).

¹⁶ *Id.*, at <http://www.transparencyflorida.gov/Reports/TrustFundRevReport>.; (Last accessed February 19, 2017).

¹⁷ *Id.*, at <http://www.transparencyflorida.gov/Reports/TrustFundsDetailReport> (Last accessed February 19, 2017).

¹⁸ 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."

The trust fund will continue to receive revenues from the same fees and will continue providing training and education for judges and other court personnel.

The bill amends s. 25.385, F.S., to statutorily terminate the Florida Court Educational Council as it was constituted prior to January 1, 2018 and replace the council as provided in the section. The bill specifies that the Council consists of 17 members, all active judges: two members from the Florida Conference of District Court of Appeal Judges, ten members from the Florida Conference of Circuit Court Judges, and five members from the Florida Conference of County Court Judges. All members shall be elected to staggered terms by the council of their respective judicial conference. Nine of the members would serve two year terms ending on December 31, 2019, and eight members would serve two year terms ending on December 31, 2020. Council members may serve consecutive terms. Vacancies are to be filled for the remainder of an unexpired term in the same manner as the original appointment. The Council must elect a chair from its membership to serve a 1-year term and may also elect other offices from its membership as it deems necessary.

The bill allows the Council to employ up to 15 full-time employees and prohibits the employees from being assigned to any duties which do not deal directly with court education. The Council must employ less than 15 full-time employees if the council determines that the training objectives of the council can be accomplished with fewer than 15 employees. The Council and its employees must be headquartered at the First District Court of Appeals in Tallahassee.

The bill requires the FCEC to:

- Adopt guidelines for administrative expenses that minimize administrative expenses and maximize educational opportunities for judges and judicial staff;
- Adopt policies related to the selection and approval of education and training programs;
- Adopt reporting formats; and
- Submit a report each year to the President of the Senate and the Speaker of the House of Representatives in substantially the same form as current law.

The bill provides examples of administrative expenses as related to the section, such as:

- Office space expenses;
- Salaries for full-time employees, unless such employees teach judges or judicial staff on a full-time basis;
- Compensation for part-time employees, unless such employees teach judges or judicial staff on a full time basis; and
- Leasing or purchase of equipment and supplies.

Upon approval of the Council, any employee who documents time spent teaching judges or judicial staff on less than a full-time basis may have the pro rata portion of their salary deducted from the calculation of administrative expenses.

The bill repeals a definition of "family or household member" that is related to the term "domestic violence" as the term "family or household member" is not used in s. 25.385, F.S.

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. 28.2401(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 substantially amends and retitles s. 25.385, F.S., relating to the standards for instruction of circuit and county court judges.

Section 3 includes provisions that address if any provision of section 1 or 2 is declared invalid.

Section 4 provides an effective date of January 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has an indeterminate impact on state revenues. If any provision in Section 1 or 2 of the bill is declared invalid for any reason, the additional filing fee of \$3.50 pursuant to ss. 28.2401(3), 28.241(1)(a)1.c., 28.241(1)(a)2.e., and 34.041(1)(b), F.S. would no longer be collected.

If any provision in section 1 or 2 of the bill is declared invalid, there would be a non-recurring increase the General Revenue Fund as any remaining unencumbered funds from the Court Education Trust Fund would revert to that fund.

2. Expenditures:

The fiscal impact on state expenditures is indeterminate. While the bill allows a maximum of 15 employees dedicated to the council, if the council determines the training objectives could be accomplished with less than 15 employees, the number must be reduced.

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:

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:

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 Educational/ 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.

On March 20, 2017, the Justice Appropriations Subcommittee adopted an amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Changes the composition of the Florida Court Educational Council to include 17 total members that are active judges, of which two are from the District Court of Appeals, ten are from the Circuit Court and five are from the County Court.
- Limits terms of the council members to two year staggered terms and provides guidelines for filling vacancies during an unexpired term.
- Provides examples of administrative expenses and removes the 15 percent cap on permissible administrative expenses.
- Provides additional reporting requirements if administrative expenses exceed a specific threshold.
- Changes the limit of full-time-employees from three to 15 and changes the designated headquarters of the Council from the Ninth Judicial Circuit to the First District Court of Appeals.
- Provides an effective date of January 1, 2018, instead of July 1, 2017.