

**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 Committee on Appropriations

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BILL: CS/SB 1396

INTRODUCER: Judiciary Committee and Senators Steube and Brandes

SUBJECT: Judgeships

DATE: March 1, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3.	<u>Harkness</u>	<u>Hansen</u>	<u>AP</u>	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1396 modifies the number of trial court judgeships authorized by statute to conform with the Florida Supreme Court's latest certification of need for additional judges. Specifically, the bill adds two circuit court judgeships to the Ninth Judicial Circuit Court, which includes Orange and Osceola Counties, and two county court judgeships to Hillsborough County. The bill also decreases the number of county court judgeships by 12 judgeships as follows: one from Escambia County, two from Pasco County, one from Putnam County, one from Alachua County, one from Polk County, three from Brevard County, one from Charlotte County, and one from Collier County. Although the Court decertified the need for one county court judge in Monroe County, the number of county court judges in Monroe County is not changed by the bill.

The bill has a cost savings of \$99,147 in recurring general revenue funds in Fiscal Year 2018-19 and a net annual cost savings to the state of \$1,944,878 in recurring general revenue funds beginning in Fiscal Year 2021-22.<sup>1</sup> The annual cost to fund the additional two circuit court judgeships and two county court judgeships created by the bill is \$1,446,924. The annual savings associated with decreasing the number of county court judgeships by 12 judgeships will be \$3,391,802 once the bill is fully implemented in Fiscal Year 2021-22.

The bill is effective July 1, 2018.

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<sup>1</sup> One of the counties subject to judicial decertification, Alachua County, does not have a judgeship with an expiring term until January 2021.

## II. Present Situation:

### Certification of Need for Additional Judges

Article V, section 9 of the Florida Constitution requires the Florida Supreme Court to submit recommendations to the Legislature when there is a need to increase or decrease the number of judges.<sup>2</sup> The constitutional provision further directs the Court to base its recommendations on uniform criteria adopted by court rule.

The Court's rule setting forth criteria for assessing judicial need at the trial court level is based primarily upon the application of case weights to circuit and county court caseload statistics.<sup>3</sup> These weights are a quantified measure of judicial time spent on case-related activity. The judicial workload is then based on judicial caseloads adjusted in the relative complexity of various case types.

In addition to the statistical information, the Court, in weighing the need for trial court judges, will also consider the factors below which primarily relate to the resources available to a judicial circuit:

- (i) The availability and use of county court judges in circuit court.
- (ii) The availability and use of senior judges to serve on a particular court.
- (iii) The availability and use of magistrates and hearing officers.
- (iv) The extent of use of alternative dispute resolution.
- (v) The number of jury trials.
- (vi) Foreign language interpretations.
- (vii) The geographic size of a circuit, including travel times between courthouses in a particular jurisdiction.
- (viii) Law enforcement activities in the court's jurisdiction, including any substantial commitment of additional resources for state attorneys, public defenders, and local law enforcement.

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<sup>2</sup> Article V, section 9 of the Florida Constitution states:

**Determination of number of judges.**—The supreme court shall establish by rule uniform criteria for the determination of the need for additional judges except supreme court justices, the necessity for decreasing the number of judges and for increasing, decreasing or redefining appellate districts and judicial circuits. If the supreme court finds that a need exists for increasing or decreasing the number of judges or increasing, decreasing or redefining appellate districts and judicial circuits, it shall, prior to the next regular session of the legislature, certify to the legislature its findings and recommendations concerning such need. Upon receipt of such certificate, the legislature, at the next regular session, shall consider the findings and recommendations and may reject the recommendations or by law implement the recommendations in whole or in part; provided the legislature may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses of the legislature, that such a need exists. A decrease in the number of judges shall be effective only after the expiration of a term. If the supreme court fails to make findings as provided above when need exists, the legislature may by concurrent resolution request the court to certify its findings and recommendations and upon the failure of the court to certify its findings for nine consecutive months, the legislature may, upon a finding of two-thirds of the membership of both houses of the legislature that a need exists, increase or decrease the number of judges or increase, decrease or redefine appellate districts and judicial circuits.

<sup>3</sup> Fla. R. Jud. Adm. 2.240(b)(1)(A).

- (ix) The availability and use of case-related support staff and case management policies and practices.
- (x) Caseload trends.<sup>4</sup>

In addition to the weighted caseload statistics, the Court will also consider the time to perform other judicial activities, such as reviewing appellate decisions, reviewing petitions and motions for post-conviction relief, hearing and disposing motions, and participating in meetings with those involved in the justice system.<sup>5</sup> Finally, the Court will consider any request for an increase or decrease in the number of judges that the chief judge of the circuit “feels are required.”<sup>6</sup>

### **Certification of Need for Additional Judges for FY 2018-2019**

Following its criteria for determining the need for judges, the Florida Supreme Court recently issued an order certifying the need for additional judges for the 2018-2018 fiscal year.<sup>7</sup> In the order, the Court requested two additional judgeships for the Ninth Judicial Circuit, which encompasses Orange and Osceola Counties, and two additional county court judgeships in Hillsborough County.<sup>8</sup> The Court also decertified the need for 13 county court judgeships as follows: one from Escambia County, two from Pasco County, one from Putnam County, one from Alachua County, one from Polk County, one from Monroe County, three from Brevard County, one from Charlotte County, and one from Collier County.<sup>9</sup>

### **Judicial Nominating Commissions**

Unless otherwise provided by law, the Governor fills a newly created judgeship by appointing a judge from among three to six persons nominated by a judicial nominating commission.<sup>10</sup> Once a vacancy occurs, a judicial nominating commission must submit its nominations to the Governor within 30 days, but the Governor may grant an extension to the commission of up to 30 days.<sup>11</sup> Within 60 days after receiving the nominations, the Governor must make an appointment to fill the vacancy.<sup>12</sup>

The appointee’s term will end “on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment.” Thus, the initial term of a judgeship created during the 2018 Session will end on

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<sup>4</sup> Fla. R. Jud. Admin. 2.240(b)(1)(B).

<sup>5</sup> Fla. R. Jud. Admin. 2.240(c).

<sup>6</sup> Fla. R. Jud. Admin. 2.240(d).

<sup>7</sup> *In Re: Certification of Need for Additional Judges*, 2017 WL 5623576 (Fla. 2017).

<sup>8</sup> *Id.* at \*3.

<sup>9</sup> *Id.* at \*4.

<sup>10</sup> FLA. CONST. art. V, s. 11; *Hoy v. Firestone*, 453 So. 2d 814 (Fla. 1984) (recognizing that the Legislature may provide for newly created judgeships to be filled by election or appointment).

<sup>11</sup> Fla. Const. art. V, s. 11(c). The judicial vacancies created by the bill do not occur until its effective date of July 1, 2018. However, “nothing in the Florida Constitution prevents the relevant judicial nominating commission (“JNC”) from beginning the process of nominating ... before the vacancy actually occurs.” *Advisory Opinion to the Governor re Judicial Vacancy Due to Mandatory Retirement*, 940 So. 2d 1090, 1095 (Fla. 2006) (Cantero, J., concurring).

<sup>12</sup> *Id.*

January 12, 2021. At the end of the appointed term, the judicial offices will be filled by election.<sup>13</sup>

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

This bill substantially conforms the number of trial court judgeships authorized by statute to the Florida Supreme Court's latest certification of need for additional judges. Specifically, the bill adds two circuit court judgeships to the Ninth Judicial Circuit Court, which includes Orange and Osceola Counties, and two county court judgeships to Hillsborough County. The bill also removes 12 county court judgeships as follows: one from Escambia County, two from Pasco County, one from Putnam County, one from Alachua County, one from Polk County, three from Brevard County, one from Charlotte County, and one from Collier County. Although the Court decertified the need for one county court judge in Monroe County, the number of county court judges is not changed by the bill.

The newly created judgeships will be filled by the Governor from among nominees by the appropriate judicial nominating commission. The decrease in judgeships will apply only upon the expiration of a judicial term.

The bill takes effect July 1, 2018.

### **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:**

In the jurisdictions where the bill creates new judgeships, litigants may have their cases resolved more quickly.

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<sup>13</sup> FLA. CONST. art V, s. 11(b).

## C. Government Sector Impact:

### **State Government**

#### ***New Circuit Court Judgeships***

When circuit court judgeships are created, other costs must be incurred in addition to the salary and benefits for each new judge. The largest of these costs are for the salary and benefits of a judicial assistant and a law clerk for each judge. According to the Office of the State Courts Administrator, the total costs to fund the addition of the two circuit court judgeships created by the bill are \$815,862 from the General Revenue Fund, of which \$14,394 are non-recurring costs.<sup>14</sup>

#### ***New County Court Judgeships***

When county court judgeships are created, the state must incur other costs in addition to the salary and benefits of each new judge. The largest of these costs are for the salary and benefits for a judicial assistant for each judge. According to the Office of the State Courts Administrator, the total costs to fund the addition of the two county court judgeships created by the bill are \$627,612 from the General Revenue Fund, of which \$9,596 are non-recurring costs.

#### ***Decrease in County Court Judgeships***

By decreasing the number of county court judgeships by 12, the state will eliminate the need to pay the salaries and benefits of 12 judges and 12 judicial assistants. Eleven of the 12 counties subject to decertification have a sufficient number of judges with expiring judicial terms to permit decertification during Fiscal Year 2018-19. Alachua County does not have a judgeship with an expiring term until January 2021. Therefore, the cost savings for decertification will be \$1,546,071 in recurring general revenue funds for Fiscal Year 2018-19.<sup>15</sup> The bill will result in additional savings of \$149,830 in Fiscal Year 2020-21 when the Alachua County decertification will occur.<sup>16</sup> The bill will reduce salaries and benefits costs by \$3,391,802 in recurring general revenue funds beginning in Fiscal Year 2021-22, the first year of full cost savings.<sup>17</sup>

### **Local Government**

Under article V section 14(c) of the Florida Constitution and s. 29.008, F.S., counties are required to provide the court system, including the state attorney and the public defender, with facilities, security, and communication services, including information technology. Under the bill, the counties will incur an indeterminate amount of costs associated with providing those services to the new judges and judicial staff. The clerks of the court will also be required to provide additional services to the new judges. However, counties having fewer county court judges as a result of the bill may have a reduction in costs.

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<sup>14</sup> Office of the State Courts Administrator, *Judicial Impact Statement* (Nov. 22, 2017) (on file with the Senate Committee on Judiciary).

<sup>15</sup> The 11 county judicial terms expire on January 2019; therefore, the FY 2018-19 cost savings estimate reflects a half-year of cost savings. The full-year cost savings for 11 circuits is \$3,092,142.

<sup>16</sup> One county judicial term in Alachua County expires on January 2021; therefore, the FY 2020-21 cost savings estimate reflects a half-year of savings. The full-year cost savings for one judgeship is \$299,660.

<sup>17</sup> *Id.* OSCA's judicial impact statement, based on the decertification of 13 county court judges, indicated reduction in salaries and benefits of \$3,691,462.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 26.031 and 34.022.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on January 25, 2018:**

The committee substitute no longer includes a provision that would have reduced the number of county court judges in Monroe County.

**B. Amendments:**

None.