

**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 Judiciary

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BILL: SB 1630

INTRODUCER: Senator Stargel

SUBJECT: Venue for Constitutional Challenges

DATE: March 29, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 1630 amends the change of venue statute to provide that constitutional challenges naming the State or a statewide elected official as defendants may be changed to a court outside the Second Judicial Circuit in Leon County. The bill effectively waives venue on behalf of the Legislature, State agencies, and statewide-elected officials in cases specifically involving constitutional challenges to statutes or other legislative actions. The intent of the bill is to ensure that a single trial court does not have a monopoly over cases involving issues of statewide importance.

Procedurally, when cases challenging statutory provisions or other legislative actions are filed against the State or a statewide elected official in the Second Judicial Circuit in Leon County, the bill provides that the case is subject to being transferred to a new venue in one of two ways:

- (1) By mutual agreement of the parties on venue (unless, presumably, the parties agree to the Second Judicial Circuit); or
- (2) Transfer by the Clerk of the Florida Supreme to a venue selected through a blind, random selection process (unless the Second Judicial Circuit is selected through that process).

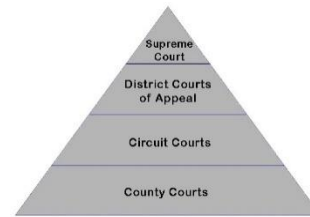
The effective date of the bill is July 1, 2019.

## II. Present Situation:

### Florida's Court System

The Florida Constitution vests all judicial power in:

- The supreme court;
- The district courts of appeal;
- The circuit courts; and
- The county courts.<sup>1</sup>



The Constitution provides that “[n]o other courts may be established by the state, any political subdivision or any municipality.”<sup>2</sup> Additionally, the Constitution vests the Florida Supreme Court with broad authority to administer the state courts system and establish court rules of procedure.<sup>3</sup>

### Clerk of the Florida Supreme Court

Unlike the clerks of the circuit courts who are independent, constitutional officers carrying out court-related functions,<sup>4</sup> the clerk of the Florida Supreme Court is appointed directly by the Supreme Court.<sup>5</sup> As an appointee, the clerk of the Florida Supreme Court serves at the court’s pleasure, completing duties as directed by the court.<sup>6</sup>

### Legislative Powers Concerning Court Jurisdiction

The Constitution confers some authority over the jurisdiction of the courts to the Legislature. Although the territorial and subject matter jurisdiction of the Florida Supreme Court is primarily defined by the Constitution, the Legislature has constitutional authority to provide for the territorial jurisdiction and the subject matter jurisdiction of the courts.<sup>7</sup>

### *Territorial Jurisdiction*

The Legislature is constitutionally required to establish the territorial or geographic jurisdiction of the appellate court districts and the judicial circuits “following county lines.”<sup>8</sup> Currently, there

<sup>1</sup> FLA. CONST. art. V., s. 1.

<sup>2</sup> *Id.* (although the Constitution permits the Legislature to establish quasi-judicial, administrative courts and a civil traffic infraction hearing officer system).

<sup>3</sup> FLA. CONST. art. V, s. 2.

<sup>4</sup> FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.

<sup>5</sup> FLA. CONST. art. V, s. 3(c).

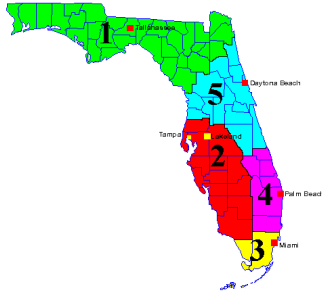
<sup>6</sup> *Id.*

<sup>7</sup> “Jurisdiction” is defined as “[a] government’s general power to exercise authority over all persons and things within its territory; esp., a state’s power to create interests that will be recognized under common-law principles as valid in other states <New Jersey’s jurisdiction>.” BLACK’S LAW DICTIONARY (10th ed. 2014). For courts, jurisdiction is defined as “[a] court’s power to decide a case or issue a decree <the constitutional grant of federal-question jurisdiction>.” *Id.* Additionally, jurisdiction is defined geographically: “A geographic area within which political or judicial authority may be exercised <the accused fled to another jurisdiction>.” *Id.*

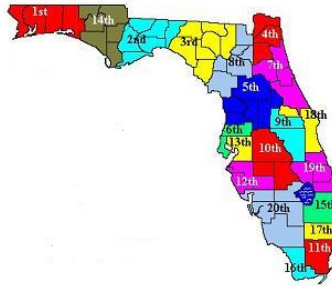
<sup>8</sup> FLA. CONST. art. V, s. 1.

are five district courts of appeal,<sup>9</sup> 20 judicial circuits, and 67 county courts, one in each of Florida’s 67 counties<sup>10</sup> as constitutionally required.<sup>11</sup>

The following maps illustrate the territorial jurisdictions of these courts:<sup>12</sup>



Five District Courts of Appeal



Twenty Judicial Circuits



Sixty-Seven Counties

**Subject Matter Jurisdiction**

The Legislature’s authority over the subject matter jurisdiction of the Florida Supreme Court and district courts of appeal is fairly limited. With a few exceptions,<sup>13</sup> the Constitution sets out the subject matter jurisdiction of the Supreme Court and the appellate courts.

On the other hand, under the Constitution, the Legislature is granted broad authority to define the jurisdiction<sup>14</sup> of the county courts: “The county courts shall exercise the jurisdiction *prescribed by general law*. Such jurisdiction shall be uniform throughout the state.”<sup>15</sup>

Because the jurisdiction of the circuit court is limited by the jurisdiction of the county courts under the Constitution, the Legislature’s authority to define the jurisdiction of the circuit courts is also fairly broad:

<sup>9</sup> Florida Courts, *Court System Organization & Structure*, <http://www.flcourts.org/florida-courts/> (last visited Jan. 29, 2019). The First District sits in Tallahassee; the Second District sits in Lakeland; the Third District sits in Miami; the Fourth District sits in West Palm Beach; and the Fifth District sits in Daytona Beach. Florida Courts, *District Courts of Appeal*, <https://www.flcourts.org/Florida-Courts/District-Courts-of-Appeal> (last visited Jan. 29, 2019).

<sup>10</sup> Florida Courts, *Court System Organization & Structure*, <http://www.flcourts.org/florida-courts/> (last visited Jan. 29, 2019).

<sup>11</sup> FLA. CONST. art. V, s. 6(a) (“There shall be a county court in each county.”).

<sup>12</sup> Ron DeSantis, 46<sup>th</sup> Governor of Florida, Judicial and Judicial Nominating Commission Information, *The Florida Court System*, <https://www.flgov.com/judicial-and-judicial-nominating-commission-information/> (last visited Jan. 29, 2019).

<sup>13</sup> See Art. V, s. 3(b)(2), FLA. CONST. (“When provided by *general law*, [the supreme court] shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.”) (emphasis added); FLA. CONST. art. V, s. 4(b)(2) (“District courts of appeal shall have the power of direct review of administrative action, *as prescribed by general law*.”) (emphasis added).

<sup>14</sup> See *Alexdex Corp. v. Nachon Enterprises, Inc.*, 641 So. 2d 858, 861 (Fla. 1994) (“The jurisdiction of the courts of the state is broadly defined by our State Constitution; however, the legislature may further define a court’s jurisdiction so long as the jurisdiction, as redefined, is not in conflict with the Constitution. . . . Absent a constitutional prohibition or restriction, the legislature is free to vest courts with exclusive, concurrent, original, appellate, or final jurisdiction.”) (citing *State v. Sullivan*, 95 Fla. 191, 116 So. 255 (1928)).

<sup>15</sup> FLA. CONST. art. V, s. 6(b) (emphasis added). Additionally, the Legislature establishes the number of judges to serve in each county. *Id.* at s. 6(a).

The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals *when provided by general law*. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action *prescribed by general law*.<sup>16</sup>

### ***Subject Matter Jurisdiction of the County and Circuit Courts***

As provided by the Legislature in s. 34.01, F.S., the county court is a trial court that has jurisdiction over cases demanding money judgments less than \$15,000. Because the circuit courts have exclusive jurisdiction over “all actions at law not cognizable by the county courts,” the Legislature has provided that the circuit court has jurisdiction in cases demanding money judgments of \$15,000 or above.<sup>17</sup> While there are some areas of concurrent jurisdiction,<sup>18</sup> county courts generally have jurisdiction over criminal misdemeanors, municipal and county ordinances, and matters in equity within the jurisdictional amount (such as an eviction); whereas circuit courts generally have jurisdiction over criminal felony cases, contested dissolution of marriage actions, and matters in equity within its jurisdictional amount.

Additionally, with two exceptions, the circuit court has appellate jurisdiction over county court cases. Under the two exceptions, the district court of appeal has appellate jurisdiction when a county court either (1) declares a statute or constitutional provision invalid or (2) certifies a question of great public importance.<sup>19</sup> Additionally, if the law applied by the circuit court sitting in its appellate capacity is in question, a party may seek review by the appropriate district court of appeal by filing a petition for writ of certiorari.<sup>20</sup>

Importantly, both the county and circuit courts have the power to decide constitutional claims and arguments raised in lawsuits or petitions over which the court otherwise has subject matter jurisdiction.

### **Venue Generally**

“Venue refers to the county, district, or other geographical area, location, or situs in which, for the sake of fairness, convenience, or other commanding policy considerations, a cause is to be tried. It is the place or geographical location of trial.”<sup>21</sup>

<sup>16</sup> FLA. CONST. art. V, s. 5(b) (emphasis added).

<sup>17</sup> Section 26.012(2)(a), F.S.

<sup>18</sup> County and circuit courts both have jurisdiction in disputes between a homeowners association and parcel owners, as well as uncontested divorce proceedings under the simplified procedures.

<sup>19</sup> Section 26.012(1), F.S.

<sup>20</sup> FLA. CONST. art. V, s. 4(b)(3) (authorizing district courts of appeal to issue writs of certiorari among others). Philip J. Padovano, *Appellate Practice*, 2 Fla. Prac., § 30:5 (2017 ed.) (“A party may file a petition for writ of certiorari to review . . . an appellate decision of a lower court[.]”). On petition for writ of certiorari, the district court reviews for whether the circuit court departed from the essential requirements of the law; or, put another way, whether the circuit court “(1) afforded the parties due process of law[,] and (2) applied the correct law.” *Id.*

<sup>21</sup> 56 FLA. JUR. 2d Venue § 1 (footnote and citations omitted).

### ***Distinction between Venue and Jurisdiction***

Venue is a distinct concept from jurisdiction. “Jurisdiction is the *power* to determine a cause of action. Venue is the *geographical place* where the cause of action can be determined.”<sup>22</sup> Venue “concerns the privilege of being accountable to a court in a particular location while jurisdiction is the power to act, that is, the authority to adjudicate the subject matter.”<sup>23</sup>

Because venue is a privilege, it may be waived or agreed to by stipulation of the parties.<sup>24</sup> Subject matter jurisdiction or the power of a court to act over a particular matter, however, cannot be waived.<sup>25</sup> Thus, “improper venue does not necessarily defeat the court’s jurisdiction.”<sup>26</sup>

### **Florida Venue Laws**

#### ***Legislative Powers Concerning Venue***

“It is well settled that except as its power may be limited by express constitutional provisions fixing or regulating venue, a legislature may at its discretion fix the venue or place of trial of civil actions[.]”<sup>27</sup> Laws fixing venue must “not transgress fundamental guaranties of equal protection of laws” nor “arbitrarily and unreasonably discriminate against particular persons.”<sup>28</sup>

Article 3, section 11 of the Florida Constitution contains the only prohibition concerning a law on venue, prohibiting the Legislature from passing a special or general law “of local application pertaining to . . . change of civil or criminal venue[.]”<sup>29</sup> Otherwise, the Florida Constitution is silent on the subject of venue.<sup>30</sup>

#### ***Court Interpretation of Venue Statutes***

The courts generally view the venue statutes as limitations on the existing common law principles governing venue, not as replacing the common law.<sup>31</sup> Thus, Florida venue laws are a mix of statutory provisions and case-derived principles and interpretations.

#### ***General Venue Statutes***

In Florida, chapter 47, F.S. contains the general statutes governing venue. The general venue statute apply only to actions against residents of Florida and provides that such actions can only be brought in the county where:

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<sup>22</sup> Henry P. Trawick, Jr., *Local Action Rule*, Trawick’s Fla. Prac. & Proc. § 5:5 (2018-2019 ed.)(footnotes omitted) (citing *City of Kissimmee v. Patterson*, 67 So. 2d 223 (Fla. 1953) for proposition that government can waive venue).

<sup>23</sup> 56 FLA. JUR. 2d Venue § 1 (footnote and citations omitted).

<sup>24</sup> See n. 22, *supra*.

<sup>25</sup> *Id.*

<sup>26</sup> See n. 23, *supra*.

<sup>27</sup> *O’Brien v. Mitchell*, 190 So. 2d 189, 190 (Fla. 1st DCA 1966) (citing *Petersburg v. Earle*, 109 So. 2d 388 (Fla.App.2d, 1959).

<sup>28</sup> *Id.*

<sup>29</sup> FLA. CONST. art. III, s. 11(a)(6).

<sup>30</sup> 56 Fla. Jur 2d Venue § 2.

<sup>31</sup> Trawick, Fla. Prac. & Proc. § 5:5 at n. 9 and surrounding text. See n. 22, *supra*.

- The defendant resides;
- The cause of action accrued; or
- The property at issue in the suit is located.<sup>32</sup>

Put another way, for suits *not* involving real property, “a defendant has the privilege of being sued either in the county of his residence or in the county where the cause of action accrued.”<sup>33</sup>

Chapter 47, F.S., also addresses a number of venue scenarios, such actions involving multiple defendants residing in multiple counties or multiple causes of action accruing in different counties. When there are multiple defendants, the proper venue is any county where one of the defendants resides.<sup>34</sup> When there are multiple causes of action arising in multiple counties, an appropriate venue is any county where any cause of action arose (unless the court finds it more expedient to hold separate trials).<sup>35</sup>

### ***“Home Venue Privilege” When the State or a State Official is the Defendant***

Generally, the determination of venue when the State or a State official or agency is named as a defendant is the same as in other cases. The State or State official or agency enjoys essentially the same privilege as other defendants, referred to as the “home rule privilege.” “The home venue privilege provides that, absent waiver or exception, venue in a suit against the State, or an agency or subdivision of the State, is proper only in the county in which the State, or the agency or subdivision of the State, maintains its principal headquarters.”<sup>36</sup>

Tallahassee, in Leon County, is the seat of *state* government “where the offices of the governor, lieutenant governor, cabinet members and the supreme court shall be maintained and the sessions of the legislature shall be held.”<sup>37</sup> Thus, the courts in Leon County, within the Second Judicial Circuit, are always appropriate venues under the local action rule when the suit names a State official, branch of government, or agency as a defendant.

Like other parties, “[i]mproper venue can be waived, even by governmental entities.”<sup>38</sup> Waiver of venue on behalf of a State governmental entity is usually accomplished through a special venue statute.<sup>39</sup>

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<sup>32</sup> Section 47.011, F.S.

<sup>33</sup> *Id.* at 578-79 (citations omitted).

<sup>34</sup> Section 47.021, F.S.

<sup>35</sup> Section 47.041, F.S. Other common venue issues are addressed in ss. 47.025, F.S. (contract provisions in real property naming venue outside Florida void); 47.031, F.S. (concerning venue for receiverships of real property lying in more than one circuit); 47.051, F.S. (venue in actions against corporations); 47.061, F.S. (venue in actions on promissory notes); 47.071, F.S. (concerning territorial jurisdiction and venue of navigable waterways); and 47.081, F.S. (concerning military residents).

<sup>36</sup> *Florida Dept. of Children & Families v. Sun-Sentinel, Inc.*, 865 So. 2d 1278, 1286 (Fla. 2004)(citations omitted). *See also* Henry P. Trawick, Jr., *Public Officers and Entities*, Fla. Prac. & Proc. § 5:2 (2018-2019 ed.) (citing *McCarty v. Lichtenberg*, 67 So. 2d 655 (Fla. 1953) for proposition that venue for State is where executive offices or official residences are located).

<sup>37</sup> FLA. CONST. art. II, s. 2.

<sup>38</sup> Trawick’s Fla. Prac. & Proc. § 5:5. *See* n. 22, *supra*.

<sup>39</sup> Henry P. Trawick, Jr., *Public Officers and Entities*, Fla. Prac. & Proc. § 5:2 (2018-2019 ed.).

### *Special Venue Statutes*

Chapter 47, F.S.<sup>40</sup> and various other statutory provisions in Florida law mandate venue or otherwise provide exceptions to venue in more specific situations. These provisions are sometimes referred to as special venue statutes.<sup>41</sup>

For instance, s. 68.083, F.S., contains an exception to the usual privilege for defendants in determining venue for civil actions under the false claims act and mandates that the venue for such actions is the Second Judicial Circuit in Leon County.

On the hand, s. 337.19, F.S., is an example of a statutory waiver of the home rule privilege for a State agency, the Department of Transportation, providing that suit against a State agency may be brought in multiple venues:

Any action or suit brought against the department shall be brought in the county or counties where the cause of action accrued, or in the county of the department's district headquarters responsible for the work, or in Leon County.<sup>42</sup>

### *Other Exceptions to Home Venue Privilege*

In addition to statutory waivers, the Florida Supreme Court has recognized three other exceptions to the State's home venue privilege: (1) the "sword-wielder" doctrine; (2) when a governmental defendant is named as a joint tortfeasor; and (3) when a "good cause" petition is filed for access to confidential public records.<sup>43</sup>

In discussing the origins of the home venue privilege and when certain exceptions apply, the Florida Supreme Court explained and distinguished the "sword-wielder doctrine" from when a party seeks a declaration of constitutional rights without any accompanying injury or damages by a state agency or officer, noting that the home venue privilege still applies in declaratory rights cases:

Florida's home venue privilege dates back to *Smith v. Williams*, 160 Fla. 580, 35 So. 2d 844 (1948), where this Court distinguished between two different types of suits against state agencies. The first type is those suits

in which the primary purpose of the litigation is to obtain a judicial interpretation or declaration of a party's rights or duties under ... rules and regulations [promulgated by the state agency], where no unlawful invasion

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<sup>40</sup> Other venue issues addressed in ch. 47 are: s. 47.025, F.S. (contract provisions in real property naming venue outside Florida void); s. 47.031, F.S. (concerning venue for receiverships of real property lying in more than one circuit); s. 47.051, F.S. (venue in actions against corporations); s. 47.061, F.S. (venue in actions on promissory notes); s. 47.071, F.S. (concerning territorial jurisdiction and venue of navigable waterways); and s. 47.081, F.S. (concerning military residents).

<sup>41</sup> Henry P. Trawick, Jr, *Special venue statutes*, Trawick, Fla. Prac. & Proc. § 5:4 (2018-2019 ed.).

<sup>42</sup> See also *id.* (listing and citing multiple special venue statutes).

<sup>43</sup> *Florida Dept. of Children & Families v. Sun-Sentinel, Inc.*, 865 So. 2d 1278, 1287-88 (Fla. 2004) (citing *Barr v. Fla. Bd. of Regents*, 644 So. 2d 333, 336 (Fla. 1st DCA 1994), accord Henry P. Trawick, Jr., *Florida Practice and Procedure*, § 5-2 (1993 ed.)) (recognizing three exceptions and creating fourth exception concerning public records). See also 56 Fla. Jur 2d Venue § 55, n. 2.

of a lawful right secured ... by the Constitution or laws of the jurisdiction is directly threatened in the county where suit is instituted.

*Id.* at 846–47. The second type is those suits

in which the primary purpose of the litigation is to obtain direct judicial protection from an alleged unlawful invasion of the constitutional rights of the plaintiff within the county where the suit is instituted, because of the enforcement or threatened enforcement by a state agency of rules and regulations alleged to be unconstitutional as to the plaintiff, and where the validity or invalidity of the rules and regulations sought to be enforced comes into question only secondarily and as incidental to the main issue involved.

*Id.* at 847.

Unlike those of the second type, which fall under what has now been termed the “sword-wielder” exception, those of the first type are subject to the state’s home venue privilege. The reason for subjecting such suits to the home venue privilege is “to promote orderly, efficient, and economical government.” *Id.* The home venue privilege allows for such suits to be “defended at a minimum expenditure of effort and public funds.” *Id.* It also allows for a “uniformity of interpretation” and “prevents conflicting judicial rulings in different jurisdictions.” *Id.*; *see also Carlile*, 354 So. 2d at 364 (“Such a rule promotes orderly and uniform handling of state litigation and helps to minimize expenditure of public funds and manpower.”); *Triple “A” Enters.*, 387 So. 2d at 943 (“The common law venue privilege allows for uniform interpretation by one court, thus promoting efficient and uniform rulings, and minimizing expenditure of effort and public funds.”).<sup>44</sup>

### **Changing Venue under Florida Law**

Chapter 47, F.S., addresses when the court has the power and a “duty” to grant a change in venue<sup>45</sup> and sets forth the procedures for changing venue. The courts have also promulgated Florida Rule of Civil Procedure 1.060<sup>46</sup> concerning the transfer of an action to a different venue to correct a mistake in venue.

#### ***Distinction between Change and Transfer***

Notably, changes in venue under ch. 47, F.S., and transfers under the Rules of Civil Procedure are two different things serving two different purposes:

- A change in venue under ch. 47, F.S., is intended to prevent a miscarriage of justice in the *correct* venue or afford a more convenient venue, even though the case is filed in the correct court.

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<sup>44</sup> *Florida Dept. of Children & Families v. Sun-Sentinel, Inc.*, 865 So. 2d 1278, 1287 (Fla. 2004).

<sup>45</sup> Section 47.091, F.S.

<sup>46</sup> *See also* Fla. Fam. L. R. P. 12.060.



- A transfer under the rules of civil procedure is meant to correct a *mistake* in venue, i.e., when a case is filed in the wrong court.<sup>47</sup>

The venue statutes and the rules are complementary. Florida Rule of Civil Procedure 1.060 explicitly states that a determination that a case has been filed in the wrong venue is determined by looking at the venue statutes.<sup>48</sup>

### ***Statutory Authorization for a Court to Change the Venue***

Section 47.091, F.S., generally provides that a court has the authority and, in some cases, the duty to grant a change in venue. Sections 47.101, 47.121, and 47.122, F.S., respectively, authorize the courts to grant a change in venue in three instances, even though venue is correct:<sup>49</sup>

- (1) The party believes he or she will not receive a fair trial in the county where the action is pending.<sup>50</sup> The court may deny this motion after hearing objections and evidence.<sup>51</sup>
- (2) It appears impracticable to obtain a qualified jury in the county where the action is pending. Under this scenario, the court shall grant a change in venue.<sup>52</sup>
- (3) Either for the convenience of the witnesses and parties or in the interest of justice, a court *may* grant a change in venue.<sup>53</sup>

When changing venue for either the convenience of the parties or in the interests of justice, the court is directed to transfer venue to a court that could otherwise be a proper venue.<sup>54</sup>

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

SB 1630 amends s. 47.122, F.S., the change of venue statute to provide that statewide constitutional challenges naming the State or a statewide elected official as a defendant may be transferred to a court outside the Second Judicial Circuit in Leon County.

The bill creates three subsections. Subsection (1) retains the original statutory language authorizing a change in venue for convenience to the parties or for the sake of justice.

<sup>47</sup> Henry P. Trawick, Jr., *Transfer*, Trawick, Fla. Prac. & Proc. § 5:9 (2018-2019 ed.).

<sup>48</sup> Fla. R. Civ. P. 1.060(b) provides as follows:

**(b) Wrong Venue.** When any action is filed laying venue in the wrong county, the court may transfer the action in the manner provided in rule 1.170(j) to the proper court in any county where it might have been brought in accordance with the venue statutes. When the venue might have been laid in 2 or more counties, the person bringing the action may select the county to which the action is transferred, but if no such selection is made, the matter shall be determined by the court.

*See also* Fla. Fam. L. R. P. 12.060(b).

<sup>49</sup> Henry P. Trawick, Jr., *Change of Venue*, Trawick, Fla. Prac. & Proc. § 5:10 (2018-2019 ed.).

<sup>50</sup> Section 47.101(1), (2), F.S. The moving party must file a verified motion stating his or her belief that he or she will not receive a fair jury trial in the court where the action is pending because the county's inhabitants are either (1) unduly influenced by the adverse party, or (2) generally prejudiced against the movant, finding the movant too "odious." The motion must be supported by affidavits from at least two, reputable, disinterested citizens of the county. *Id.*

<sup>51</sup> Section 47.111, F.S.

<sup>52</sup> Section 47.121, F.S.

<sup>53</sup> Section 47.122, F.S.

<sup>54</sup> *Id.* Trawick's notes that the s. 47.122, F.S. does not currently apply to the State or its subdivisions. *See* Henry P. Trawick, Jr., *Inconvenient venue*, Trawick, Fla. Prac. & Proc. § 5:11 (2018-2019 ed.).

Subsection (2) provides that any trial court within the state is an appropriate venue for cases involving both:

- State entities as a party, including statewide elected officials in their official capacities, the Legislature, and other state agencies; and
- State constitutional challenges to statutes or other legislative action.

When cases meeting the foregoing criteria are filed in the Second Judicial Circuit in Leon County, the case is subject to being transferred to a new venue in one of two ways:

- By mutual agreement of the parties on venue (unless, presumably, the parties agree to the Second Judicial Circuit); or
- Transfer by the Clerk of the Florida Supreme to a venue selected through a blind, random selection process (unless the Second Judicial Circuit is selected through that process).

Subsection (3) contains the statement of legislative intent for subsection (2), to ensure a single trial court, the Second Judicial Circuit in Leon County, does not have effectively have a monopoly over issues of statewide constitutional importance. Thus, the bill effectively overrules the reasoning set out in *Smith v. Williams*, 160 Fla. 580, 35 So. 2d 844 (1948) and recently reaffirmed in *Florida Dept. of Children & Families v. Sun-Sentinel, Inc.*, 865 So. 2d 1278, 1287 (Fla. 2004), noting that the policy reasons behind having one court determine constitutional issues; i.e., to minimize public expenditures and maintain uniform, non-conflicting interpretation of constitutional issues.

The effective date of the bill is July 1, 2019.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

The bill requires the Clerk of the Florida Supreme Court to implement a blind, random selection process for purposes of transferring cases involving constitutional issues against statewide-elected officials. Article V, section 3(c) provides that “[t]he supreme court

shall appoint a clerk . . . who shall hold office during the pleasure of the court and perform such duties *as the court directs*.”

Because the Clerk of Florida Supreme Court serves at the direction of the Florida Supreme Court, the bill’s directive to the Clerk of the Florida Supreme Court may not be enforceable under Florida’s constitutional separation of powers provision in article II, section 3 of the Florida Constitution (unless the Florida Supreme Court ratifies the directive). Article II, section 3 provides as follows:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

To avoid any separation of powers issue, the word “shall” on line 27 of the bill could be changed to “is authorized to.” Another option is to change the “Clerk of the Florida Supreme Court” to the “Clerk of the Second Judicial Circuit.” The clerks of the circuit courts are independent, elected constitutional officers who complete court-related functions but are not serving solely at the direction of the judicial branch.<sup>55</sup>

Additionally, the bill appears to be aimed at actions solely raising constitutional challenges to statutes and legislative acts and not at secondary constitutional challenges (which may already be subject to venue in a court other than the Second Judicial Circuit). Thus, it may be helpful to add the word “solely” on line 25 to clarify the scope of the bill, as follows: “such action solely challenges the constitutionality of ...”.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Because plaintiffs were already subject to the home rule privilege when suing a State agency or official for a declaration of constitutional rights, an increase in litigation expenses is unlikely. Additionally, when the constitutional issue is secondary to injury or damages caused by State action where the plaintiff or the plaintiff’s property is located, the “sword-wielder doctrine” already provides an exception to permit removal of the case to a court venue in the location where the damage or injury is occurring.

### C. Government Sector Impact:

State agencies and other statewide-elected officials will bear more expense in litigating constitutional issues in various venues around the state. On the other hand, judges from

<sup>55</sup> FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.

circuits other than the Second Circuit will have the opportunity to preside over and gain experience interpreting constitutional issues.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

By permitting more trial courts to determine constitutional issues around the state, more conflicting decisions may be rendered from varying judicial perspectives and philosophies, creating more opportunity for higher level review. However, the creation of more conflict also creates more uncertainty in the law and its application.

**VIII. Statutes Affected:**

This bill substantially amends section 47.122, Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.