

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SPB 2522

INTRODUCER: For consideration by Appropriations Committee

SUBJECT: District Courts of Appeal

DATE: February 8, 2022

REVISED: _____

ANALYST

STAFF DIRECTOR

REFERENCE

ACTION

Dale

Harkness

Pre-meeting

I. Summary:

SPB 2522 creates a sixth appellate district court of appeal, which will have its headquarters in the Tenth Judicial Circuit, Lakeland, Polk County. The bill realigns the judicial circuits within the existing First, Second, and Fifth districts and creates a sixth district composed of the Ninth, Tenth, and Twentieth circuits. The Third and Fourth districts remain unchanged.

Under the bill, the First DCA will decrease from 15 appellate judges to 13; the Second DCA will decrease from 16 appellate judges to 12; the Fifth DCA will increase from 11 appellate judges to 12; and the Sixth DCA will have 12 appellate judges. The bill ultimately adds a total of seven new appellate judgeships overall.

The bill makes conforming changes to account for the creation of the sixth district and provides for the addition of a sixth office for the appellate public defender and the Criminal Conflict and Civil Regional Counsel. The bill also recognizes the addition of a judicial nominating commission for the sixth district.

The bill also authorizes the Chief Justice of the Supreme Court to implement a pilot program under which the Fifth and Sixth District Courts of Appeal are to provide for remote court proceedings from their alternate headquarters.

The overall fiscal impact from creating a sixth DCA and changing the existing boundaries of the appellate districts is unknown, but is expected to have a significant fiscal impact on the General Revenue Fund. The State Courts System, with input from its District Court of Appeal Budget Commission, is assisting to identify specific facility, staffing and operational needs and such information is forthcoming. See Section V. Fiscal Impact Statement.

II. Present Situation:

Florida Court System

Florida's court system consists of two trial-level courts and two appellate-level courts. The trial-level courts consist of 67 county courts and 20 circuit courts.¹ The appellate-level courts consist of the Supreme Court and five district courts of appeal.² Each of Florida's 67 counties has at least one county court judge.³ County courts hear violations of municipal and county ordinances, traffic offenses, landlord-tenant disputes, misdemeanor criminal matters, simplified dissolution of marriage cases, and monetary disputes involving an amount in controversy up to and including \$30,000.⁴ Circuit courts hear all criminal and civil matters not within the jurisdiction of the county court, including family law, dependency, juvenile delinquency, mental health, probate, guardianship matters, and civil matters involving an amount in controversy exceeding \$30,000.⁵

The majority of trial court decisions that are appealed are reviewed by the district courts of appeal (DCAs). The DCAs decide most appeals from circuit court cases and many administrative law appeals from actions by the executive branch. DCAs must also review county court decisions invalidating a provision of Florida's constitution or statutes⁶ and may hear decisions of a county court that are certified by the county court to be of great public importance.⁷ The Supreme Court is the highest court in Florida and has mandatory jurisdiction over all death penalty cases, district court decisions declaring a state statute or provision of the state constitution invalid, bond validations, rules of court procedure, and statewide agency actions relating to public utilities.⁸

The current appellate districts are organized as follows:⁹

Appellate District	Circuits
First DCA	1, 2, 3, 4, 8, 14
Second DCA	6, 10, 12, 13, 20
Third DCA	11, 16
Fourth DCA	15, 17, 19
Fifth DCA	5, 7, 9, 18

¹ See Art. V, ss. 5 and 6, Fla. Const.

² 2019-2020 Florida State Courts Annual Report, The Supreme Court of Florida, available at <https://www.flcourts.org/Publications-Statistics/Publications/Annual-Reports>.

³ Art. V, s. 6(a), Fla. Const.

⁴ See Art. V, s. 6(b), Fla. Const; s. 34.01, F.S

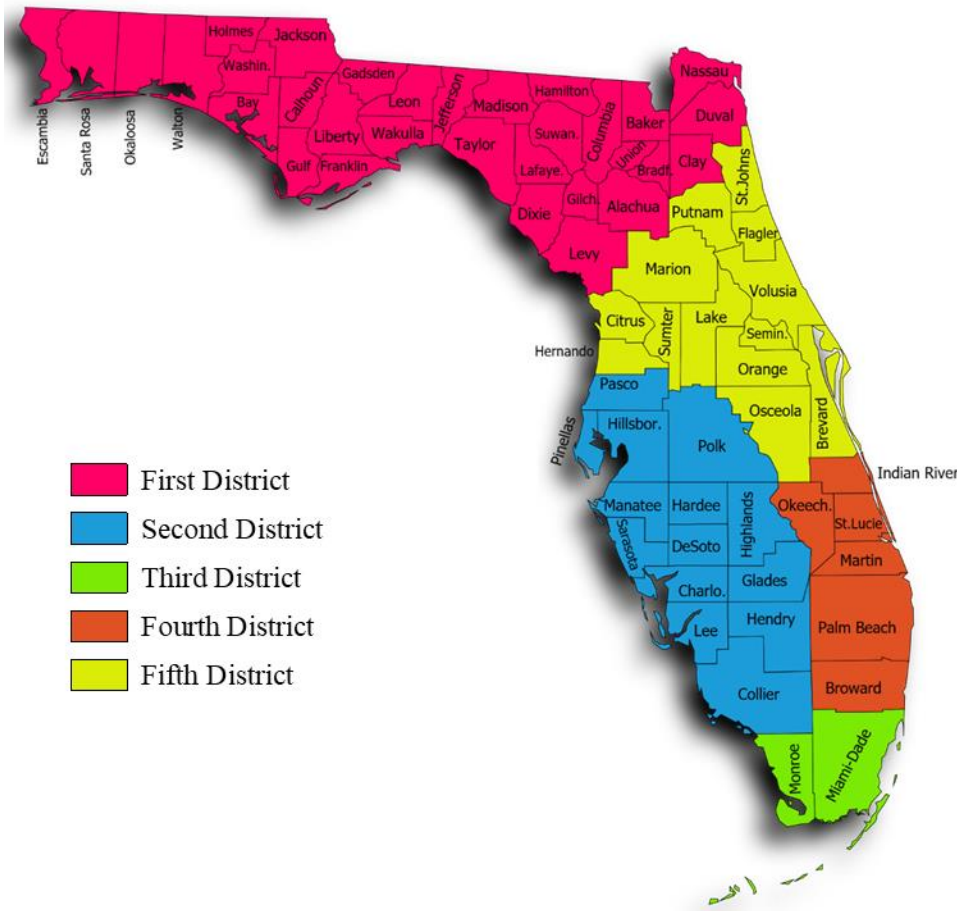
⁵ See Art. V, s. 5(b), Fla. Const.; s. 26.012, F.S

⁶ Section 35.065, F.S.

⁷ Section 35.065, F.S

⁸ Ch. V, s. 3(b), Fla. Const.

⁹ See ss. 35.01-35.043, F.S.



DCA Headquarters

Section 35.05(1), F.S., designates the following official headquarters for the five DCAs:

- First DCA: Second Judicial Circuit, Tallahassee, Leon County.
- Second DCA: Tenth Judicial Circuit, Lakeland, Polk County.
- Third DCA: Eleventh Judicial Circuit, Miami-Dade County.
- Fourth DCA: Fifteenth Judicial Circuit, Palm Beach County.
- Fifth DCA: Seventh Judicial Circuit, Daytona Beach, Volusia County.

Additionally, section 35.05(2), F.S., provides that a DCA may designate other locations within the district as branch headquarters. Under section 35.051, F.S., a DCA judge who lives more than 50 miles from his or her DCA courthouse or designated branch DCA location is eligible to have a personal headquarters and to be reimbursed for trips between these locations in a manner similar to Supreme Court justices.¹⁰

The personal headquarters, which may serve only as judicial chambers and must be used for official judicial business, may be in any appropriate facility, including a county courthouse.¹¹ However, no county is required to provide space to a DCA judge for his or her personal

¹⁰ Section 35.051(1), F.S

¹¹ Section. 35.051(1)(a), F.S.

headquarters.¹² The DCA may agree with a county regarding the use of courthouse space, but state funds shall not be used to lease the space.¹³

Judicial Vacancies

Article V, section 11 of the Florida Constitution provides the process for filling a judicial vacancy. Pursuant to the Florida Constitution, whenever a vacancy occurs in a judicial office to which election for retention applies, the Governor shall fill the vacancy by appointing a candidate nominated by the appropriate judicial nominating commission.¹⁴

Supreme Court Certification Process

Currently, Florida's DCAs are divided into five appellate districts and employ 64 appellate judges throughout the state.¹⁵ Article V, section 9 of the Florida Constitution authorizes the Supreme Court to 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." The Florida Constitution further provides that if the Supreme Court finds that a need exists for such action, the Supreme Court shall, prior to the next regular legislative session, certify to the legislature its findings and recommendations concerning such a need.¹⁶

The last time an appellate district was added was in 1979 when the legislature created the Fifth DCA and increased the number of judges in each appellate district. The First DCA increased from 7 to 9 judges; the Second, Third and Fourth DCAs increased from 7 to 8 judges; and the newly-created Fifth DCA was allotted 6 judges.^{17 18}

Pursuant to Rule 2.241 of the Florida Rules of Judicial Administration, the chief justice is required to appoint a committee at least once every eight years¹⁹ to assess the capacity of the district courts to effectively fulfill their constitutional and statutory duties. The appointed committee must make a recommendation to the Supreme Court concerning the decisions that it

¹² Section 35.051(3)(a), F.S.

¹³ Section 35.051(3)(b), F.S.

¹⁴ Art. V, s. 11(a), Fla. Const.

¹⁵ See s. 35.01, F.S.

¹⁶ Art. V, s. 9, Fla. Const.

¹⁷ Ch. 79-413, Laws of Fla.

¹⁸ See Ch. 79-413, Laws of Fla., (creating s. 35.063, F.S., and providing that a district court of appeal judge residing in realigned country, may, at his option, "be a judge of the new district or remain with the present district by serving sworn notice, within one month of the effective date of the act, of intent to change residence in order to continue to serve the district in which he is presently serving.")

¹⁹ Rule 2.241, Fla. R. Jud. Admin.

should make with respect to the certification process.²⁰ The last time a committee conducted a DCA jurisdictional assessment was in 2006.²¹

On May 6, 2021, Chief Justice Canady issued an administrative order creating the District Court of Appeal Workload and Jurisdiction Assessment Committee (“the Committee”).²² The Committee directed its evaluation based on five factors: effectiveness, efficiency, access to appellate review, professionalism, and public trust and confidence. The Committee met a total of six times and solicited input in the form of surveys, a public hearing, and additional outreach from appellate judges, non-appellate judges, attorneys, litigants, Department of Corrections (DOC) inmates, and the public.²³

The majority of the Committee recommended adding at least one new appellate district to the Florida court system. On November 24, 2021, in response to the Committee’s report and recommendations, the Florida Supreme Court issued two opinions certifying the need for one additional county court judge in Lake County and the creation of a sixth appellate district. According to the Florida Supreme Court, the primary rationale for the creation of a sixth appellate district was that the creation of such would promote public trust and confidence.²⁴ Specifically, according to the Florida Supreme Court and the District Court of Appeal Workload and Jurisdiction Assessment Committee, an additional appellate district would help provide adequate access to oral arguments and other proceedings, foster public trust and confidence based on geography and demographic composition, and attract a diverse group of well-qualified applicants for judicial vacancies including applicants from all circuits within each district.²⁵ The Florida Supreme Court also certified a need for six additional appellate judgeships and one additional county court judgeship in Lake County. The Supreme Court did not decertify any county, circuit, or appellate judgeships.²⁶

On December 22, 2021, the Supreme Court issued a supplemental opinion, in which it certified the need for one more district court judgeship, for a total of seven new district court judgeships

²⁰ The certification process balances the potential impact and disruption caused by changes in appellate districts against the need to address circumstances that limit the quality and efficiency of, and public confidence in, the appellate review process. Given the impact and disruption that can arise from any alteration in judicial structure, prior to recommending a change in districts, the assessment committee and the supreme court shall consider less disruptive adjustments including, but not limited to, the addition of judges, the creation of branch locations, geographic or subject-matter divisions within districts, deployment of new technologies, and increased ratios of support staff per judge. Rule 2.241(c), Fla. R. Jud. Admin.

²¹ *Final Report and Recommendations*, District Court of Appeal Workload and Jurisdiction Assessment Committee (Sept. 30, 2021), available at <https://www.flcourts.org/content/download/791118/file/dca-assessment-Committee-Final-Report.pdf> at p. 3.

²² *In Re: District Court of Appeal Workload and Assessment Committee*, Fla. Admin. Order No. AOSC21-13 (May 6, 2021).

²³ Further information regarding the committee’s process and findings can be found in the District Court of Appeal Workload and Jurisdiction Assessment Committee Final Report and Recommendations issued September 30, 2021, and available at <https://www.flcourts.org/content/download/791118/file/dca-assessment-Committee-Final-Report.pdf> (last visited on Feb. 2, 2022).

²⁴ *In Re: Redefinition of Appellate Districts and Certification of Need for Additional Appellate Judges*, Supreme Court of Florida No. SC21-1543, (Supp. Opinion Dec. 22, 2021).

²⁵ *Id.* Citing to Assessment Committee Report at 3-4.

²⁶ *In Re: Redefinition of Appellate Districts and Certification of Need for Additional Appellate Judges*, Supreme Court of Florida No. SC21-1543 (Nov. 24, 2021).

overall.²⁷ The Court left unchanged its previous certifications with respect to the district and circuit realignments.²⁸

The Office of Criminal Conflict and Civil Regional Counsel

The Office of Criminal Conflict and Civil Regional Counsel (“regional counsel’s office”) serves indigent clients who are entitled by law to taxpayer-funded legal representation.²⁹ These clients may be involved in criminal or civil cases.

The Office of the Public Defender represents indigent criminal defendants initially. However, if the public defender’s office determines that it cannot represent a defendant because of a conflict of interests, it must move for the court to withdraw as counsel. If the court grants the motion, then the court may appoint the regional counsel’s office to represent the client.³⁰ The regional counsel also is responsible for representation in certain civil matters set forth in statute, including capacity and dependency proceedings. Also, the regional counsel may represent a client in any other matter in which the client is constitutionally entitled to representation.³¹

There are five regional counsel offices, one for each of Florida’s five appellate districts. Just as each public defender’s office has one public defender and several assistant public defenders, each regional counsel’s office is led by a regional counsel and staffed by several assistant regional counsels.³² Each regional counsel is appointed by the Governor to a 4-year term.³³

Judicial Nominating Commissions

Judicial Nominating Commissions (JNCs) select nominees to fill judicial vacancies within the Florida court system.³⁴ There are twenty-seven separate JNCs: one for the Florida Supreme Court; one for each of the five appellate districts;³⁵ one for each of Florida’s twenty judicial circuits; and one Statewide Commission for Judges of Compensation Claims.³⁶ The JNCs are required to operate in accordance with the Uniform Rules of Procedure applicable to each level of JNC.³⁷ JNC members serve four-year terms, except when an appointment is made to fill a vacant, unexpired term.^{38 39}

²⁷ *In Re: Redefinition of Appellate Districts and Certification of Need for Additional Appellate Judges*, Supreme Court of Florida No. SC21-1543, (Supp. Opinion Dec. 22, 2021).

²⁸ *Id.*

²⁹ Section 27.511, F.S.

³⁰ Section 27.511(5), F.S.

³¹ Section 27.511(6)(a), F.S.

³² Section 27.511(4), F.S.

³³ Section 27.511(3)(a), F.S.

³⁴ Executive Office of the Governor (Florida), *Judicial and Judicial Nominating Commission Information*, <https://www.flgov.com/judicial-and-judicial-nominating-commission-information/> (last visited Feb. 2, 2022).

³⁵ Section 43.291, F.S.

³⁶ Executive Office of the Governor (Florida), *Judicial and Judicial Nominating Commission Information*, <https://www.flgov.com/judicial-and-judicial-nominating-commission-information/> (last visited Feb. 2, 2022).

³⁷ *Id.*

³⁸ *Id.*

³⁹ See Art. V, ss. 11 and 20, Fla. Const.

Office of the Judges of Compensation Claims

The Office of the Judges of Compensation Claims (OJCC) is responsible for the mediation and adjudication of disputes over workers compensation benefits.⁴⁰ Each Judge of Compensation Claims is appointed by the Governor for a four-year term, based upon a list of three persons recommended by the Statewide Judicial Nominating Commission.⁴¹ Per s. 440.45, F.S., this commission is composed of 15 electors as follows:

- Five members, at least one of whom must be a member of a minority group as defined in s. 288.703, one of each who resides in each of the territorial jurisdictions of the district courts of appeal, appointed by the Board of Governors of The Florida Bar from among The Florida Bar members who are engaged in the practice of law.
- Five electors, at least one of whom must be a member of a minority group as defined in s. 288.703, one of each who resides in each of the territorial jurisdictions of the district courts of appeal, appointed by the Governor.
- Five electors, at least one of whom must be a member of a minority group as defined in s. 288.703, one of each who resides in the territorial jurisdictions of the district courts of appeal, selected and appointed by a majority vote of the other 10 members of the commission.⁴²

III. Effect of Proposed Changes:

Creation of a Sixth Appellate District and Realignment of Existing Districts (Sections 1 through 5)

The bill realigns the territorial jurisdictions of the district courts of appeal and establishes a Sixth District Court of Appeal, effective January 1, 2023, as follows:

- Realigns the First Appellate District to remove the Fourth Judicial Circuit (Clay, Duval, and Nassau counties).
- Realigns the Second Appellate District to remove the Tenth (Hardee, Highlands, and Polk counties) and the Twentieth (Charlotte, Collier, Glades, Hendry, and Lee counties) judicial circuits. The bill also moves the headquarters for the Second Appellate District to the Sixth Judicial Circuit (Pinellas County).
- Does not make changes to the Third or Fourth Appellate Districts.
- Realigns the Fifth Appellate District to add the Fourth Judicial Circuit (Clay, Duval, and Nassau counties) and remove the Ninth Judicial Circuit (Orange and Osceola counties)
- Establishes a Sixth Appellate District headquartered in the Tenth Judicial Circuit (Lakeland, Polk County), which includes the Ninth (Orange and Osceola counties), the Tenth (Hardee, Highlands, and Polk counties), and Twentieth (Charlotte, Collier, Glades, Hendry, and Lee counties) judicial circuits.

⁴⁰ See s. 440.45, F.S.

⁴¹ Section 440.45(2)(a), F.S.

⁴² Section 440.45(1)(b), F.S.

DCA	Current Circuits	Realigned Circuits
First DCA	1, 2, 3, 4, 8, 14	1, 2, 3, 8, 14
Second DCA	6, 10, 12, 13, 20	6, 12, 13
Third DCA	11, 16	11, 16
Fourth DCA	15, 17, 19	15, 17, 19
Fifth DCA	5, 7, 9, 18	4, 5, 7, 18
Sixth DCA	N/A	9, 10, 20

Realignment of District Headquarters (Section 6)

Based upon the addition of the new sixth appellate district, the bill reorganizes the existing appellate headquarters by changing the second appellate district from the Tenth Judicial Circuit, Lakeland, Polk County, to the Sixth Judicial Circuit, Pinellas County, and accordingly appoints the Tenth Judicial Circuit, Lakeland, Polk County as the headquarters of the newly created sixth district.

Addition and Realignment of Appellate Judges (Section 7)

Based upon the addition of the new sixth appellate district, the bill reorganizes the existing appellate judges and adds a total of seven new appellate judges statewide. In accordance with the Supreme Court’s certification of need, the bill:

- Decreases the number of appellate judges in the First DCA from 15 to 13;
- Decreases the number of appellate judges in the Second DCA from 16 to 12;
- Leaves the number of appellate judges in the Third DCA at 10;
- Leaves the number of appellate judges in the Fourth DCA at 12;
- Increases the number of appellate judges in the Fifth DCA from 11 to 12; and
- Provides the newly created Sixth DCA with 12 appellate judges.

The Office of Criminal Conflict and Civil Regional Counsel, Appellate Public Defender, and JNC (Sections 8 through 11)

The bill makes conforming changes to account for the addition of a sixth appellate district, with respect to the offices for the appellate public defender and criminal conflict and civil regional counsel. The bill provides for each office to have a sixth office located within the sixth appellate district. The bill also amends s. 43.291, F.S., to recognize a sixth JNC within the sixth appellate district and provides language to effectuate a period of transitions with regards to judicial vacancies and nominations.

Expansion of Statewide Nominating Commission for the Office of the Judges of Compensation Claims (Section 12)

The bill makes conforming changes to the commission responsible for selecting nominations for the Office of the Judges of Compensation Claims by adding a total of three electors to the commission representing the newly created sixth district. One of these three electors will be appointed by the Board of Governors of the Florida Bar, one by the Governor, and one selected

and appointed by a majority vote of the other members of the commission. The bill also eliminates language requiring the Governor to appoint members in odd-numbered district courts of appeal to two-year terms and members who reside in even number districts to four-year terms.

Current Second District Court of Appeal property (Section 15)

The bill requires that all property located at the Lakeland headquarters of the current Second District of Appeal must remain in Lakeland and be transferred to the Sixth District Court of Appeal unless the Office of the State Court Administrator determines that such property is critical to the continuing operations of the Second District Court of Appeal.

Pilot Program (Section 16)

The bill authorizes the Chief Justice of the Supreme Court to implement a pilot program under which the Fifth and Sixth District Courts of Appeal are authorized to implement innovative practices, incorporate leading technologies, and provide for remote court proceedings from their alternate headquarters, as authorized in s. 35.051, F.S. The program expires June 30, 2025, unless otherwise provided by law and the Supreme Court shall provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which includes recommendations for incorporating such practices and technology in each district.

Judicial Appointments and Commissions (Section 17)

The bill provides for a five-year transition period for the judicial representation within the districts recognizing that the current judges' residences will not correlate with the new district's geographical boundaries. The legislative intent is that territorial jurisdiction of each district court which has been realigned shall include any contiguous district court which was also realigned.

The bill provides a process for filling judicial vacancies. First, vacancies created by the realignment must be filled by judges presently residing in the new district whose residency has not changed since their original appointment. If vacancies still exist, they must be filled by judges who resided in the new district at the time of their original appointment but who have subsequently changed their residence and currently reside in a district with excess judges. If there are still insufficient judges to fill vacancies, the Supreme Court must assign judges from a contiguous district with excess judges to one with insufficient judges for 1-year terms. After all judges residing in contiguous districts have been allocated, the remaining judge vacancies shall be appointed by the Governor.

Except as expressly provided, the bill takes effect upon becoming a law.

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:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Florida Supreme Court's amended certification of need the total impact for the additional DCA judges including judicial assistants and staff attorneys would be approximately \$4.3 million in general revenue funding and 28 FTE.⁴³

The State Courts System, with input from its District Court of Appeal Budget Commission, is assisting to identify specific facility, staffing and operational needs and such information is forthcoming.

There will be significant costs associated with building a new 6th DCA courthouse. Fifty million dollars has been appropriated for this purpose in the Senate Proposed Bill (SPB 2500). Costs associated with an interim facility in which to operate while a more permanent facility is considered could be partially mitigated from the creation of the proposed pilot program.

VI. Technical Deficiencies:

None.

⁴³ Supreme Court Supplemental Opinion No SC21-1543

<https://www.floridasupremecourt.org/content/download/816724/opinion/sc21-1543.pdf> (last visited Feb. 2, 2022).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 27.51, 27.511, 27.53, 29.001, 29.008, 35.01, 35.02, 35.03, 35.043, 35.05, 35.06, and 440.45.

This bill creates section 35.044 of the 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.