

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7027 PCB JDC 22-01 The Judicial Branch
SPONSOR(S): Appropriations Committee, Judiciary Committee, Gregory
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	19 Y, 0 N	Mathews	Kramer
1) Appropriations Committee	22 Y, 2 N, As CS	Smith	Pridgeon

SUMMARY ANALYSIS

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. The appellate-level courts consist of the Supreme Court and five district courts of appeal. The appellate courts are created by statute and are identified specifically in chapter 35 of the Florida Statutes. Article V, Section 9 of the Florida Constitution provides a mechanism by which the Supreme Court may certify a need for additional judges in the county, circuit, and appellate courts; decertify the need for such judges; or certify the need for increasing, decreasing, or redefining the appellate districts. The last time a new appellate district (DCA) was created was in 1979 when the Fifth District Court of Appeal was established in Daytona Beach.

As required by Rule 2.241 of the Florida Rules of Judicial Administration, the Chief Justice is tasked with appointing a committee at least once every eight years to analyze the state's courts and prepare a final report and recommendation. On May 6, 2021, Chief Justice Canady issued an administrative order creating the District Court of Appeal Workload and Jurisdiction Assessment Committee ("Committee"). The Committee directed its evaluation based on five factors: effectiveness, efficiency, access to appellate review, professionalism, and public trust and confidence. Ultimately, the majority of the Committee recommended creating a sixth appellate district and provided recommendations for how to realign the current circuits to accommodate the addition of the new district.

On November 24, 2021, in response to the Committee's recommendations, the Florida Supreme Court certified the need for the creation of a sixth DCA, the addition of six new appellate judges, and a realignment of the current DCAs and appellate judges. On December 22, 2021, the Court issued a supplemental opinion certifying the need for an additional appellate judge, for a total of seven new appellate judges.

CS/HB 7027 creates a sixth appellate district court of appeal, which will have its headquarters in Pinellas County, Florida. The bill realigns the judicial circuits within the existing First, Second, and Fifth districts and creates a sixth district composed of the Sixth, Twelfth, and Thirteenth 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 9; the Fifth DCA will increase from 11 appellate judges to 12; and the Sixth DCA will have 15 appellate judges. The bill ultimately adds a total of seven new appellate judgeships overall, in accordance with the Supreme Court's certification. No sitting appellate judge will lose his or her appellate judgeship or be required to move residences as a result of the bill. The creation of the Sixth DCA and the realignment of existing districts is effective January 1, 2023.

The bill makes conforming changes to statute to account for the creation of the sixth district and provides for the addition of a sixth office for the appellate public defender and specifies which judicial circuits constitute the five Criminal Conflict and Civil Regional Counsel districts. The bill recognizes the addition of a judicial nominating commission for the sixth district, effective January 1, 2023. The bill also makes conforming changes to the Florida Gaming Commission and Office of the Judges of Compensation Claims, to account for the addition of a sixth appellate district.

The bill adds one additional county court judgeship in Lake County, Florida, as recommended in the Supreme Court's certification.

The bill will have a significant fiscal impact on state government expenditures. See *Fiscal Analysis & Economic Impact Statement*.

The bill is effective upon becoming law, unless otherwise expressly provided in the act.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Court System Structure

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/2019-20-Annual-Report>.

³ Art. V, s. 6(a), Fla. Const.

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

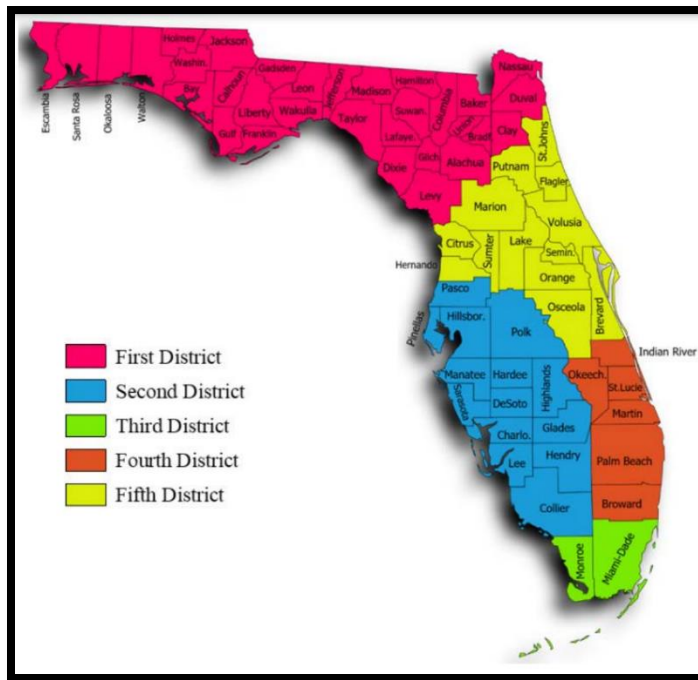
⁵ See Art. V, s. 5(b), Fla. Const.; s. 26.012, F.S.

⁶ S. 35.065, F.S.

⁷ S. 35.065, F.S.

⁸ Ch. V, s. 3(b), Fla. Const.

⁹ See ss. 35.01-35.043, F.S.



Current DCA Structure¹⁰

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, s. 35.05(2), F.S., provides that a DCA may designate other locations within the district as branch headquarters. Under s. 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.¹¹

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.¹² However, no county is required to provide space to a DCA judge for his or her personal headquarters.¹³ The DCA may contract with a county regarding the use of courthouse space, but state funds shall not be used to lease the space.¹⁴

¹⁰ *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. 4.

¹¹ S. 35.051(1), F.S.

¹² S. 35.051(1)(a), F.S.

¹³ S. 35.051(3)(a), F.S.

¹⁴ S. 35.051(3)(b), F.S.

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.¹⁵

Supreme Court Certification Process

Currently, Florida's DCAs are divided into five appellate districts and employ 64 appellate judges throughout the state.¹⁶ 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.¹⁷

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.^{18 19}

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 years²⁰ 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 should make with respect to the certification process.²¹ The last time a committee conducted a DCA jurisdictional assessment was in 2006.²²

On May 6, 2021, Chief Justice Canady issued an administrative order creating the District Court of Appeal Workload and Jurisdiction Assessment Committee ("the Committee").²³ 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.²⁴

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,

¹⁵ Art. V, s. 11(a), Fla. Const.

¹⁶ See s. 35.01, F.S.

¹⁷ Art. V, s. 9, Fla. Const.

¹⁸ Ch. 79-413, Laws of Fla.

¹⁹ 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.")

²⁰ Rule 2.241, Fla. R. Jud. Admin.

²¹ 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.

²² *Final Report and Recommendations*, supra note 10. At 3.

²³ *In Re: District Court of Appeal Workload and Assessment Committee*, Fla. Admin. Order No. AOSC21-13 (May 6, 2021).

²⁴ 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 February 7, 2022).

the primary rationale for the creation of a sixth appellate district is that the creation of such would promote public trust and confidence.²⁵ Specifically, according to the Florida Supreme Court and the 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.²⁶ 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.²⁷

On December 22, 2021, the Supreme Court issued a supplemental opinion, in which it certified the need for one more appellate judgeship, for a total of seven new appellate judgeships overall.²⁸ The Court left unchanged its previous certifications with respect to the district and circuit realignments.²⁹

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.³⁰ 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.³¹

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.³²

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.³³ Each regional counsel is appointed by the Governor to a 4-year term.³⁴

Judicial Nominating Commissions

Judicial Nominating Commissions (JNCs) select nominees to fill judicial vacancies within the Florida court system.³⁵ There are twenty-seven separate JNCs: one for the Florida Supreme Court; one for each of the five appellate districts;³⁶ one for each of Florida’s twenty judicial circuits; and one Statewide Commission for Judges of Compensation Claims.³⁷ The JNCs are required to operate in accordance with the Uniform Rules of Procedure applicable to each level of JNC.³⁸ JNC members serve four-year terms, except when an appointment is made to fill a vacant, unexpired term.^{39 40}

²⁵ *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).

²⁶ *Id.* Citing to Assessment Committee Report at 3-4.

²⁷ *In Re: Redefinition of Appellate Districts and Certification of Need for Additional Appellate Judges*, Supreme Court of Florida No. SC21-1543 (Nov. 24, 2021).

²⁸ *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).

²⁹ *Id.*

³⁰ S. 27.511, F.S.

³¹ S. 27.511(5), F.S.

³² S. 27.511(6)(a), F.S.

³³ S. 27.511(4), F.S.

³⁴ S. 27.511(3)(a), F.S.

³⁵ Executive Office of the Governor (Florida), *Judicial and Judicial Nominating Commission Information*, <https://www.flgov.com/judicial-and-judicial-nominating-commission-information/> (last visited February 7, 2022).

³⁶ S. 43.291, F.S.

³⁷ Executive Office of the Governor (Florida), *supra* note 35.

³⁸ *Id.*

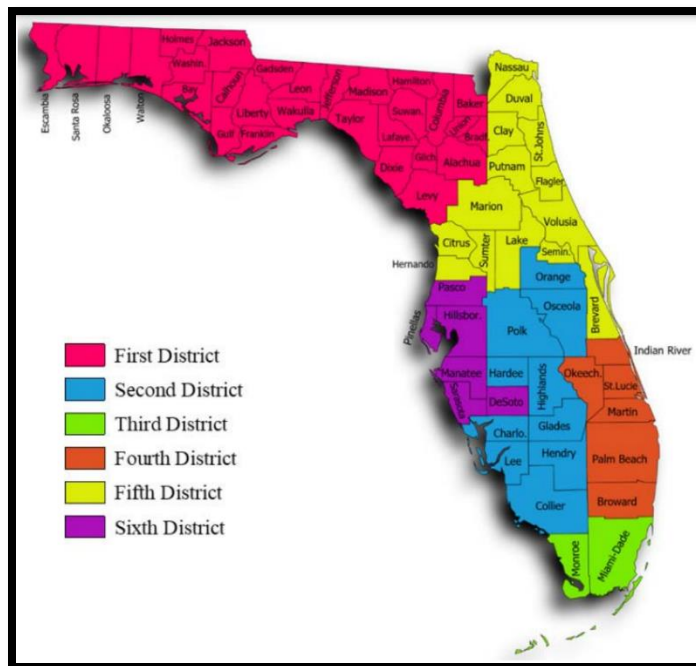
³⁹ *Id.*

Effect of Proposed Changes

Creation of a Sixth Appellate District

The bill creates a sixth appellate district which will be composed of the Sixth, Twelfth, and Thirteenth circuits. The bill further realigns the First, Second, and Fifth appellate districts, but the Third and Fourth appellate districts remain unchanged. The bill provides that the headquarters for the new Sixth DCA will be located in Pinellas County. The creation of the Sixth DCA and realignments of the existing districts is effective January 1, 2023. The following chart shows the current and proposed district alignments:

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	9, 10, 20
Third DCA	11, 16	11, 16 (no change)
Fourth DCA	15, 17, 19	15, 17, 19 (no change)
Fifth DCA	5, 7, 9, 18	4, 5, 7, 18
Sixth DCA	N/A	6, 12, 13



Proposed DCA Structure⁴¹

Realignment of Current Appellate Districts and Judges

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 9;
- 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 15 appellate judges.⁴²

⁴⁰ See Art. V, ss. 11 and 20, Fla. Const.

⁴¹ *Final Report and Recommendations*, supra note 10, at 4.

⁴² Email from Eric Maclure re DCA Judgeships (January 16, 2022), on file with the House Judiciary Committee.

As noted above, due to the reorganization of the sitting appellate judges, only seven new appellate judges are needed. Each currently sitting DCA judge will serve the particular district court within whose district he or she resides after the bill's realignment takes effect. As such, no sitting DCA judge will be required to move to a different residence. Based on the realignment, the two First District judges residing in Duval County would be judges of the Fifth District; the four Second District judges residing in Pinellas County, two residing in Manatee County, and nine residing in Hillsborough County would be judges of the Sixth District; and the five Fifth District judges residing in Orange County would be judges of the Second District (which would include Orange County).⁴³ The bill provides that no vacancy in office shall occur by reason of the realignment of the DCAs.

The bill provides that the headquarters of the Sixth Appellate District may be located within the Thirteenth Judicial Circuit, Hillsborough County, until the district occupies the courthouse currently under construction within the Sixth Judicial Circuit, Pinellas County.

The bill also amends s. 34.022(34), F.S., to add one county court judge in Lake County, for a total four county court judges for Lake County.

The Office of Criminal Conflict and Civil Regional Counsel, Appellate Public Defender, and JNC

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 establishes the Sixth Appellate Public Defender office within office of the public defender in the sixth judicial circuit. Additionally, the bill specifies which judicial circuits constitute the five criminal conflict and regional counsel offices. The bill also recognizes a sixth JNC within the sixth appellate district effective January 1, 2023. Each JNC is required to interview and nominate any new DCA judgeships authorized in the Fiscal Year 2022-23 General appropriations Act by November 3, 2022.

The bill also makes conforming changes to the Florida Gaming Commission and Office of the Judges of Compensation Claims, to account for the addition of a sixth appellate district.

The bill is effective upon becoming law, unless otherwise expressly provided in the act.

B. SECTION DIRECTORY:

Section 1: Amends s. 16.71, F.S., related to the Florida Gaming Control Commission.

Section 2: Amends s. 27.51, F.S., relating to duties of the public defender.

Section 3: Amends s. 27.511, F.S., relating to the offices of the criminal conflict and civil regional.

Section 4: Amends s. 34.022, F.S., relating to the number of county court judges for each county.

Section 5: Amends s. 35.01, F.S., relating to the district courts of appeal.

Section 6: Amends s. 35.02, F.S., relating to the First Appellate District.

Section 7: Amends s. 35.03, F.S., relating to the Second Appellate District.

Section 8: Amends s. 35.043, F.S., relating to the Fifth Appellate District.

Section 9: Creates s. 35.044, F.S., relating to the Sixth Appellate District.

Section 10: Amends s. 35.05, F.S., relating to headquarters.

Section 11: Amends s. 35.06, F.S., relating to the organization of the district courts of appeal.

Section 12: Amends s. 440.45, F.S., related to the Office of the Judges of Compensation Claims.

Section 13: Provides clarification for currently seated appellate judges under the realignment.

Section 14: Provides clarification regarding the designated headquarters of the Sixth Appellate District.

Section 15: Provides clarification for Judicial Nominating Commissions in districts under realignment.

Section 16: Provides that the bill is effective upon becoming law, unless otherwise expressly provided in the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁴³ *Id.*

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will have a significant fiscal impact on state expenditures by creating a sixth appellate district and providing seven new district court of appeals judgeships and one new county court judgeship.

Consistent with the Florida Supreme Court certification of need, the bill adds one new county court judgeship in Lake County. HB 5001, the House of Representatives' General Appropriations Act for Fiscal Year 2022-2023 provides \$331,765 in recurring funds and \$6,600 in nonrecurring funds from the General Revenue Fund and two FTE positions with associated salary rate to establish the new county court judgeship in Lake County.

Also consistent with the Florida Supreme Court's certification of need, the bill creates a sixth appellate district and adds seven district court of appeal judges. According to Office of the State Courts Administrator, the creation of a sixth appellate district would require the appointment of a clerk and marshal for the new DCA as well as other administrative support staff for the new court. As outlined in the Florida Supreme Court's certification of need impact statement, a realigned Second District will require an interim facility in which to operate while a more permanent facility is considered. HB 5001, the House of Representatives' General Appropriations Act for Fiscal Year 2022-2023 provides \$9.8 million in recurring funds and \$174,900 in nonrecurring funds from the General Revenue Fund and 53 FTE positions with associated salary rate for seven additional DCA Judgeships, support staff, and operational expenses, including building rent.

The bill would also have a significant, yet indeterminate fiscal impact to general revenue expenditures by requiring the Public Defender's Office for the Sixth Judicial Circuit to handle appeals for the public defender offices within the new 6th District Court of Appeal to serve the new Sixth District Court of Appeal. The approximate amount of funding and staffing needs for the newly required Public Defender Appellate division has not yet been determined.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact to counties within the newly created sixth appellate district relating to costs for office space, communications and other information technology services provided to public defenders offices performing court-related functions.⁴⁴

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁴⁴ Art. V, s. 14(c), Fla. Const.
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DATE: 2/9/2022

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 9, 2022, the House Appropriations Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Provided an effective date of January 1, 2023 for the creation of the sixth district, for the realignment of the existing appellate districts, and for the adjustments to the Judicial Nominating Commission.
- Removed language creating an office in the Criminal Conflict and Civil Regional Counsel in the Sixth Appellate District.
- Made conforming changes to the Florida Gaming Commission and Office of the Judges of Compensation Claims, to account for the addition of a sixth appellate district.
- Required each JNC to interview and nominate any new DCA judgeships authorized in the Fiscal Year 2022-23 General appropriations Act by November 3, 2022.
- Changed the effective date of the bill to be effective upon becoming law, unless otherwise expressly provided in the act.

This analysis is drafted to the committee substitute as passed by the House Appropriations Committee.