



155140

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/09/2010	.	
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The Committee on Judiciary (Fasano) recommended the following:

**Senate Amendment**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (3) of section 25.073, Florida  
Statutes, is amended, and subsection (4) is added to that  
section, to read:

25.073 Retired justices or judges assigned to temporary  
duty; additional compensation; appropriation.-

(3) Payments required under subsection (2) ~~this section~~  
shall be made from moneys to be appropriated for this purpose.

(4) In addition to subsections (1)-(3), the chief judge of  
a judicial circuit may, subject to approval by the Chief



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14 Justice, establish a program for the optional use of retired  
15 justices or judges to preside over civil cases and trials  
16 pursuant to this subsection. The program shall be developed and  
17 operated so as to ensure that one or more parties to the lawsuit  
18 shall pay the cost of the retired justice or judge. The use of  
19 this program shall in no way diminish or otherwise affect the  
20 power and authority of the Chief Justice to assign justices or  
21 judges, including consenting retired justices or judges, to  
22 temporary duty in any court for which the justice or judge is  
23 qualified or to delegate to a chief judge of a circuit the power  
24 to assign justices or judges for duty in that circuit. At a  
25 minimum, the program developed under this subsection shall be  
26 operated as follows:

27 (a)1. Any party to the action may request a retired justice  
28 or judge to hear one or more nondispositive motions. The party  
29 may seek appointment of a retired justice or judge to hear more  
30 than one nondispositive motion in that case. The chief judge of  
31 the circuit shall not appoint a retired justice or judge if the  
32 trial judge assigned to the case can accommodate the hearing or  
33 hearings within 2 weeks after the request for appointment of a  
34 retired justice or judge.

35 2. All parties to an action may jointly request a retired  
36 justice or judge to hear one or more dispositive motions or to  
37 conduct the trial of the action, including a trial by special  
38 setting. The chief judge of the circuit shall not appoint a  
39 retired justice or judge unless all parties agree to the request  
40 and sufficient court resources are available to accommodate the  
41 request. A party in default shall be deemed to have consented to  
42 the appointment of a retired justice or judge under this



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43 subparagraph.

44 (b)1. A party or parties seeking to use a retired justice  
45 or judge shall submit a written request to the chief judge,  
46 stating the reasons for the request.

47 2. Allowable grounds for use of a retired justice or judge  
48 include the unavailability of a hearing time, scheduling  
49 difficulties, difficulties with the availability of witnesses,  
50 or the need to expedite the case. A request shall not be granted  
51 if it is apparent that a party is seeking an appointment only in  
52 order to avoid the assigned trial judge.

53 3. The chief judge shall consider the reasons for the  
54 request and shall grant or deny the request in writing within 5  
55 days.

56 4. Only retired justices or judges who are on the list that  
57 is approved by the Chief Justice are eligible for appointment in  
58 this program. Assignment of such retired justices or judges  
59 shall be made in accordance with current judge assignment  
60 procedures in each judicial circuit. A party may not request  
61 that a particular retired justice or judge be appointed.

62 5. An appointment shall be for the hearing time requested.  
63 However, the chief judge may appoint a retired justice or judge  
64 to conduct multiple hearings in 1 day involving related or  
65 unrelated cases.

66 (c)1. Upon granting a request, the chief judge of the  
67 circuit shall estimate the number of days required of the  
68 retired justice or judge to complete the hearings or trial and  
69 shall inform the requesting party or parties of the cost.

70 2. The party or parties who requested the appointment of a  
71 retired justice or judge shall prepay the per diem rate of the



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72 retired justice or judge before the hearing or trial based on  
73 the per diem rate then in effect. The minimum charge for  
74 assignment of a retired justice or judge under this subsection  
75 shall be the per diem rate for 1 day, and any required time over  
76 1 day shall be charged in 1-day increments for any additional  
77 days at the per diem rate. The chief judge shall set a payment  
78 deadline sufficiently prior to the date of the hearing or trial  
79 so that the appointment may be timely canceled if prepayment is  
80 not received at least 1 business day before the scheduled  
81 hearing or trial.

82 3. For purposes of this subsection, the term "per diem  
83 rate" means the cost to the state of 1 day of service by a  
84 retired justice or judge and shall be calculated by adding the  
85 regular daily rate set by the Chief Justice for retired justices  
86 or judges, plus the employer's share of required federal taxes,  
87 and plus, if applicable, the justice's or judge's travel and  
88 other costs reimbursable under s. 112.061.

89 4. The per diem paid to a retired justice or judge under  
90 this subsection for 1 day of service for all trials or hearings  
91 conducted on that one day shall not exceed the standard per diem  
92 rate for 1 day of service established by the chief justice.

93 5. Payments made by a party or parties under this program  
94 shall be deposited into the Operating Trust Fund within the  
95 state courts system under s. 25.3844.

96 6. Once a hearing or trial is scheduled, prepayment is made  
97 as required under this subsection, and the state is required to  
98 make payment to the retired justice or judge, there shall be no  
99 refund. A refund is authorized only if the assigned retired  
100 justice or judge becomes unavailable for reasons unrelated to



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101 the conduct of the parties.

102 7. A person who has been relieved of the requirement to  
103 prepay costs in an action may not be relieved of the requirement  
104 under this subsection to prepay the costs of a retired justice  
105 or judge prior to a request being granted.

106 (d)1. If a party seeks appointment of a retired justice or  
107 judge to hear one or more motions, the cost of the retired  
108 justice or judge shall not be taxable against a nonprevailing  
109 party.

110 2. If all parties sought the appointment of a retired  
111 justice or judge to hear motions or conduct the trial, the  
112 amounts paid for the retired justice or judge by a prevailing  
113 party shall be taxable against a nonprevailing party or the  
114 nonprevailing parties, as provided in chapter 57 and in the  
115 Florida Rules of Civil Procedure.

116 Section 2. Present subsections (3) through (14) of section  
117 44.104, Florida Statutes, are redesignated as subsections (4)  
118 through (15), respectively, and a new subsection (3) is added to  
119 that section, to read:

120 44.104 Voluntary binding arbitration and voluntary trial  
121 resolution.—

122 (3) Voluntary trial resolution may include a jury trial if  
123 there is a right to a jury trial in the civil dispute and if  
124 there has been a request for a jury trial by at least one party.  
125 The trial resolution judge shall preside over the jury trial.  
126 The jury trial conducted as part of the voluntary trial  
127 resolution shall be conducted according to the laws applicable  
128 to civil jury trials.

129 Section 3. This act shall take effect upon becoming a law.