

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 Judiciary Committee

BILL: CS/SB 130

INTRODUCER: Judiciary Committee and Senator Altman

SUBJECT: Judicial Proceedings in Civil Cases

DATE: March 11, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	Fav/CS
2.	_____	_____	JA	_____
3.	_____	_____	WPSC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill provides for the development of a program, subject to the discretion of the circuit chief judge and subject to approval of the Chief Justice of the Supreme Court, to use retired judges and justices (also known as “senior judges”) to preside over motion hearings and trials in civil actions. Upon the written request of one party, the chief judge of the circuit may appoint a senior judge to hear nondispositive motions pending in a civil action, provided that the trial judge assigned to the case cannot accommodate the hearing within two weeks after the request for appointment. Upon the request of the parties, the chief judge of the circuit may appoint a senior judge to preside over dispositive motions and trials if all parties agree to the appointment and sufficient court resources are available to accommodate the request.

The bill requires prepayment of the senior judge’s services by the parties, which will be calculated at a per diem cost for the services. In cases where all parties agreed to the appointment of the senior judge, the costs will be assessed against a nonprevailing party or parties and deposited into the Operating Trust Fund within the state courts system.

The bill also establishes a right to a jury trial in voluntary trial resolution proceedings if there has been a request for a jury trial by at least one party. The bill specifies that the trial resolution

judge must preside over the trial, with the jury trial conducted according to the law governing civil jury trials.

This bill substantially amends sections 25.073 and 44.104, Florida Statutes.

II. Present Situation:

The Florida Constitution grants the Chief Justice of the Supreme Court the power to assign consenting retired justices or judges to temporary judicial duty in any court for which the judge is qualified to serve.¹ The Chief Justice may delegate to a chief judge of a judicial circuit the power to assign judges for temporary duty in that circuit.

The Legislature defined the terms “retired justice” or “retired judge” as any former justice or judge who “[h]as not been defeated in seeking reelection to, or has not failed to be retained in seeking retention in, his or her last judicial office” and who “[i]s not engaged in the practice of law.”² Retired judges or justices who serve in this capacity are commonly referred to as “senior judges.”³

Use of Senior Judges

In 1992, the Florida Supreme Court summarized the justification for using senior judges:

Florida trial courts have continued to address workload pressures by relying heavily on the temporary assignment of senior judges. A total of 4,582 days of service was provided by senior judges in fiscal year 1990-91. This is the equivalent of approximately 19.2 judge years. Were it not for the availability of this resource, the delays in scheduling hearings and trials outlined previously would be much greater. We expect demand for senior judge service to continue to grow since no new judgeships were authorized for the [1991-1992] fiscal year. . . . The use of senior judges is the most cost-effective and flexible program we have to address scheduling problems and emergencies as they arise.⁴

In the 2008 Florida Supreme Court’s certification of need opinion, the court directed the Commission on Trial Court Performance and Accountability (Commission) to study the use of senior judges and implications for using senior judge availability when evaluating judicial workload.⁵ In its final report on this subject, the Commission noted that senior judges:

- Are a critical supplemental component of Florida’s judicial workforce;

¹ FLA. CONST. art. V, s. 2.

² Section 25.073(1), F.S. However, Florida Rule of Judicial Administration 2.205(3)(B) states, “For the purpose of judicial administration, a ‘retired judge’ is defined as a judge not engaged in the practice of law who has been a judicial officer of this state. A retired judge shall comply with all requirements that the Supreme Court deems necessary relating to the recall of retired judges.”

³ Fla. R. Jud. Admin 2.205(a)(3)(D).

⁴ *In re Certification of Judicial Manpower*, 592 So. 2d 241, 246 (Fla. 1992).

⁵ *In re Amended Certification of Need for Additional Judges*, 980 So. 2d 1045 (Fla. 2008).

- Fill in for absent judges, particularly those who have extended and/or unanticipated absences;
- Either individually or in teams, work on extended calendars of trial courts to alleviate backlogs of pending cases;
- Temporarily work regular court calendars to meet caseload needs that would otherwise be unmet by the available judges;
- Preside over trials, including complex, lengthy trials that make significant demands on judicial time; and
- Carry dockets for other judges who are presiding over lengthy trials.⁶

The report also notes that, anecdotally, the use of senior judges varies considerably in each judicial circuit.⁷

The Office of the State Courts Administrator (OSCA) has compiled data reported by court administration in each judicial circuit regarding the number of hours worked by senior judges in categories of cases.⁸ The following figure reflects those hours worked by senior judges:

Fiscal Year	Criminal	Civil	Probate	Family	Juvenile	County Court	Other	Total
06-07	20,815.75	10,271.50	578.50	5,682.00	5,878.00	9,045.25	593.00	52,864.00
07-08	17,049.50	10,551.25	366.00	5,486.50	5,003.00	5,268.75	385.50	44,110.50
08-09	12,372.75	10,749.25	363.00	4,805.25	3,875.50	7,640.50	655.00	40,461.25

Although the total number of hours worked by senior judges has slightly decreased, the number of hours worked in civil court has actually increased. The OSCA believes this trend may be attributed to the backlog of foreclosure cases pending in each judicial circuit.⁹ Overall, the decrease in hours worked is likely attributable to the reduction in appropriations for senior judges in the budget.

Compensation of Senior Judges

Under existing law, any retired justice or judge assigned to temporary duty in any of Florida's courts, pursuant to Art. V of the Florida Constitution, must be compensated as follows:

⁶ Office of the State Courts Administrator, *Recommendations on Senior Judge Resources in the Judicial Weighted Workload Model* (2008), available at http://www.flcourts.org/gen_public/pubs/bin/JudgeResourceReport.pdf (last visited March 3, 2010).

⁷ *Id.* at 9.

⁸ These hours are self reported hours worked by the senior judge. In some instances, if a senior judge works less than eight hours, a full eight hours may be reported because the senior judge is compensated for a full eight hours regardless of the amount of hours worked.

⁹ E-mail from Kristine Slayden, Office of the State Courts Administrator, to Committee on Judiciary staff (March 5, 2010).

- No less than \$200 for each day or portion of a day that the senior judge is assigned to temporary duty; however, no senior judge may serve for more than 60 days in any year without approval from the Chief Justice; and
- Necessary travel expenses incident to the performance of duties required by the assignment.¹⁰

The Office of the State Courts Administrator reports that the Trial Court Budget Commission has set the daily compensation rate for senior judges at \$350.¹¹ The senior judge is reimbursed at this rate regardless of whether he or she works one hour or eight hours during a particular day. The senior judge is treated as an OPS employee with no additional benefits other than reimbursement of necessary travel expenses. Reimbursements made to senior judges under these provisions originate from moneys appropriated for this purpose.¹² In fiscal years 2006-07 through 2008-09, the following amounts for senior judges were appropriated and expended:¹³

	FY 2006-07	FY 2007-08	FY 2008-09
Appropriation	\$ 2,664,927	\$ 2,466,243	\$ 2,130,834
Expenditures	\$ 2,498,670	\$ 2,131,461	\$ 2,043,725

For FY 2009-2010, the Legislature appropriated \$2,182,084 from the State Courts Revenue Trust Fund and the Grants and Donations Trust Fund to the judiciary for compensation to retired judges.¹⁴

Voluntary Trial Resolution

Voluntary trial resolution is another alternative dispute resolution mechanism available to litigants. In lieu of mediation or arbitration of a dispute, opposing parties in a civil action may agree in writing to submit a dispute to voluntary trial resolution in lieu of litigating the matter in county or circuit court, provided no constitutional issues are involved in the dispute.¹⁵ If the parties have reached such an agreement for the appointment of a member of The Florida Bar in good standing for more than five years to preside over the voluntary trial, the court will proceed with appointment of that person.¹⁶ If the parties have failed to reach an agreement, the court will appoint the trial resolution judge. The parties are responsible for the compensation of the voluntary trial judge.¹⁷

¹⁰ Section 25.073(2), F.S. The travel expense provision cross-references s. 112.061, F.S., which establishes the procedures for reimbursement, as well as which travel expenses may be reimbursed. For example, if a judge is required to travel out of town, he or she may receive compensation in the amount of \$80 per diem or, if actual expenses exceed \$80, he or she will receive actual expenses for lodging at a single-occupancy rate in addition to \$6 for breakfast, \$11 for lunch, and \$19 for dinner.

¹¹ Conversation with Charlotte Jerrett, Director of Administrative Services, Office of the State Courts Administrator (Mar. 3, 2010).

¹² Section 25.073(3), F.S.

¹³ Data provided by the Office of the State Courts Administrator. The entire appropriation may not be expended in certain circuits for fear of budget cuts, as well as preservation of some hours as a reserve to accommodate any emergency needs.

¹⁴ Chapter 2009-81, Laws of Fla., s. 7, appropriation 3141.

¹⁵ Section 44.104(1), F.S. The request can be submitted before or after a civil suit has been initiated in court. *Id.*

¹⁶ Section 44.104(2), F.S.

¹⁷ Section 44.104(3), F.S.

The trial resolution judge conducts the hearing, determines any questions of law or fact, and renders a final decision.¹⁸ The trial resolution judge may administer oaths or affirmations and conduct the proceedings under the applicable rules of court, and the Florida Evidence Code applies to these proceedings.¹⁹ Any party may enforce a final decision rendered in a voluntary trial by filing a petition for final judgment in the circuit court in the circuit in which the voluntary trial took place. Upon entry of a final judgment by the circuit court, any party may appeal to the appropriate appellate court, but factual determinations during the voluntary trial are not subject to appeal.²⁰

III. Effect of Proposed Changes:

Senior Judge Program

The bill authorizes the chief judge of any judicial circuit, upon approval of the Chief Justice of the Supreme Court, to establish a program for the use of retired justices or judges (also known as “senior judges”) to preside over motions and trials in civil actions.

Nondispositive Motion Hearings

Upon the written request of any party, the chief judge of the circuit may appoint a senior judge to hear nondispositive motions pending in a civil action. A party may unilaterally seek appointment of the senior judge to hear more than one motion in a particular case. The chief judge may not appoint a senior judge to hear a motion or motions if the trial judge assigned to the civil action can accommodate the hearing on the motion or motions within the following two weeks after the party requests the appointment of the retired judge.

The bill does not specify whether the written request must be in the form of a motion filed with the court to be included in the case record, or whether it is simply contemplated that a party provide written correspondence to the court requesting that a senior judge preside over the motion.

Dispositive Motion Hearings and Trials

The chief judge of the circuit may appoint a senior judge to preside over one or more nondispositive motions or a trial, including a trial by special setting, if all parties jointly request and agree to the appointment, and sufficient court resources are available to accommodate the request.

¹⁸ Section 44.104(8), F.S.

¹⁹ Section 44.104(7) and (9), F.S. The trial resolution judge may also issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and may apply to the court for orders compelling attendance and production.

²⁰ Section 44.104(11), F.S.

Grounds for Appointment of Senior Judge

The bill requires the party or parties requesting the appointment of the senior judge to submit the request in writing to the chief judge of the circuit describing the reasons for the request.

Acceptable reasons for the use of a senior judge include:

- Unavailability of a hearing time;
- Scheduling difficulties;
- Difficulties with the availability of witnesses; and
- Need to expedite the case.

The chief judge of the circuit must consider the reasons included in the request and grant or deny the request in writing within five days. The bill requires chief judges to deny the request if it is apparent that a party is seeking the appointment of the chief judge for the sole purpose of avoiding the assigned trial judge.

Qualifications and Compensation

Under the created program, the bill specifies that only retired justice or judges who are on the Supreme Court approved senior judge list are eligible for appointment. Assignment of the senior judge must be made in compliance with the current judge assignment procedures established in each judicial circuit. A party is precluded from requesting the appointment of a particular retired justice or judge.

After a request has been granted, the chief judge of the circuit must estimate the number of days required of the senior judge to complete the hearings or trial and inform the requesting parties of the cost.²¹ Thereafter, the party or parties who requested the appointment of a senior judge must prepay the per diem compensation rate, in effect at that time, prior to the hearing or trial.²² The bill specifies that the minimum charge for assignment of the senior judge is the per diem rate for one day, and any required time over one day will be charged in one-day increments for any additional days at the per diem rate. The bill provides that a judge may only be paid one day per diem for one day of service, even if multiple hearings are conducted during that day. The chief judge must set a payment deadline prior to the date of the hearing or trial so that the appointment can be timely cancelled if prepayment is not received at least one business day prior to the hearing or the trial.

Payments made by a party are to be deposited into the Operating Trust Fund within the state courts system.²³ Once a hearing or trial is scheduled and prepayment is made, and the state is required to pay the senior judge, there will be no refunds to the parties. A refund may only be authorized if the assigned senior judge becomes unavailable for reasons unrelated to the conduct

²¹ The bill specifies that the appointment will be for the hearing time requested, but that the senior judge may hold multiple related or unrelated hearings in one day.

²² “Per diem rate” is defined in the bill as “the cost to the state of 1 day of service by a retired justice or judge and shall be calculated by adding the regular daily rate set by the Chief Justice for retired justices or judges, plus the employer’s share of required federal taxes, and plus, if applicable, the justice’s or judge’s travel and other costs reimbursable under s. 112.061.”

²³ The Operating Trust Fund is established for use as a depository of fees and related revenue for the purpose of supporting the program operations of the judicial branch and for other appropriate purposes. Section 25.3844, F.S.

of the parties. In addition, the bill provides that indigent persons relieved of any initial prepayment requirements may not be relieved of the requirement to prepay costs associated with the use of a senior judge.

If the party remitting the prepayment prevails in the matter, the costs related to the use of the senior judge cannot be taxed against a nonprevailing party. However, if all parties requested the appointment of the senior judge, the amounts paid for the use of the senior judge by a prevailing party will be taxable against a nonprevailing party or nonprevailing parties as provided in ch. 57, F.S., and the Florida Rules of Civil Procedure.²⁴

The bill does not identify who is responsible for the payment of the per diem costs in the event that the parties reach a settlement prior to completion of the event over which the retired judge or justice is presiding. It may be difficult to determine a “prevailing” or “nonprevailing” party if settlement occurs or if the judge grants relief to both parties. For example, a plaintiff may receive a judgment in his or her favor at trial, with the defendant simultaneously receiving a judgment in his or her favor on a counterclaim filed against the plaintiff.

Other Senior Judge Assignments

The bill provides that the use of senior judges under this program may not diminish or otherwise affect the power and authority of the Chief Justice to assign justices or judges, including consenting retired justices or judges, to temporary duty in any court for which the justice or judge is qualified or to delegate to a chief judge of a judicial circuit the power to assign justices or judges for duty in that circuit.

Voluntary Trial Resolution

The bill amends the current voluntary trial resolution process by allowing the use of a jury in those voluntary trials involving a civil dispute with a right to a jury trial and if at least one party requests a jury trial. The bill specifies that the trial resolution judge must preside over the jury trial, and that it must be conducted according to the laws applicable to civil jury trials.

It is unclear under the bill how jurors are to be selected for service in the voluntary trial resolution proceeding or who is responsible for assembling the jury pool. The bill also does not address who is responsible for compensating those jurors selected to serve, or who is responsible for costs associated with securing a location for the jury trial and other incidental costs of administering a jury trial.

Effective Date

The bill provides that the act will take effect upon becoming a law.

²⁴ Section 57.041(1), F.S., provides that the “party recovering judgment shall recover all his or her legal costs and charges which shall be included in the judgment.” The prevailing party may recover these costs by executing on the judgment or order assessing those costs. Section 57.041(2), F.S. The Florida Rules of Civil Procedure require parties seeking a judgment taxing costs to serve a motion, no later than 30 days after filing of the judgment. Fla. R. Civ. P. 1.525.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Parties to civil actions who elect to use a senior judge to preside over a hearing or trial will be required to prepay the regular per diem rate for the appointment of the senior judge. If all parties agree to the use of the senior judge for a trial, the prepaid amount of those costs may be recoverable if the party is determined to be a “prevailing party.”

C. Government Sector Impact:

The bill requires a requesting party or parties to prepay compensation and expenses for a senior judge appointed to hear a motion or trial in a civil action. Therefore, the state revenues generated from these payments should equal the expenditures for the payment of compensation to the appointed senior judge. However, if the number of trials and hearings increases as a result of the use of senior judges, the state could incur expenses related to juror compensation, maintenance of courtrooms, security costs, as well as other incidental expenditures.

The Office of the State Courts Administrator (OSCA) reports that the potential reduction in circuit judicial workload attributed to the assignment of senior judges or voluntary trial resolutions judges cannot be quantified.²⁵ Similarly, OSCA reports that workloads for the circuit chief judge and court staff associated with the increased use of senior judges cannot be quantified because there is no data to indicate the number of hearings and trials that will be conducted by senior judges as a result of a party request under the bill. However, OSCA notes that this workload could be significant, affecting both local court administration offices and OSCA.

²⁵ Office of the State Courts Administrator, *Judicial Impact Statement: SB 130* (Nov. 16, 2009).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Judiciary on March 9, 2010:

The committee substitute:

- Provides that all parties must agree to the use of a senior judge to hear dispositive motions (under the bill one party could unilaterally request the use of a senior judge to hear any motion);
- Removes the provision in the bill allowing senior judges to be appointed to hear multiple motions in multiple cases;
- Removes the provision in the bill allowing a lawyer or law firm to seek appointment of a senior judge to hear motions in multiple cases;
- Specifies that a senior judge may be appointed to hear a nondispositive motion if the motion cannot be heard by the trial judge within two weeks *of the request for appointment by the party*;
- Provides that a party in default will be deemed to have consented to the appointment of a senior judge to hear a dispositive motion or conduct a trial;
- Clarifies that a senior judge may only be paid one day per diem for one day of service even if the senior judge conducts multiple hearings on one day;
- Clarifies that, when all parties consent to the use of a senior judge, costs associated with the use of the senior judge will be taxed against a nonprevailing party *or nonprevailing parties* to account for cases with multiple parties; and
- Makes multiple technical changes to the bill.

B. Amendments:

None.