

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4055 Supreme Court  
**SPONSOR(S):** Metz  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 4 N	Cary	Bond
2) Judiciary Committee	13 Y, 4 N	Cary	Havlicak

### SUMMARY ANALYSIS

This bill repeals statutes relating to the Florida Supreme Court that prohibit justices of the Supreme Court drawing retirement compensation from engaging in the practice of law, require the Supreme Court to appoint a Clerk of the Supreme Court, require the Clerk to have an office in the Supreme Court Building, require the clerk to perform duties as directed by the Court, and provide that when rules and statutes conflict, the rule supersedes the statute.

This bill does not appear to have a fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Retired Justices**

This bill repeals s. 25.151, F.S., a 1957 law that prohibits a retired justice from engaging in the practice of law.<sup>1</sup> This statute is likely unconstitutional as it encroaches on the judiciary's exclusive directive to regulate attorneys.<sup>2</sup> In 1973, the Florida Supreme Court found unconstitutional a substantially similar provision in the Florida Retirement System statutes.<sup>3</sup> Repealing this obsolete law removes a provision from the statutes that is likely unconstitutional and not presently enforced.

##### **Clerk of the Supreme Court**

This bill repeals ss. 25.191, 25.211, and 25.231, F.S. These 1957 statutes require the appointment of a Clerk of the Supreme Court, require the clerk have an office in the Supreme Court Building, and require that the clerk perform duties as directed by the court.<sup>4</sup> However, the subsequently-adopted Florida Constitution directs the Supreme Court to appoint a clerk who is to perform duties as the court directs<sup>5</sup>, making the statutes redundant. The only substantive change to the law after repealing these three sections is that the clerk would no longer be required to have an office in the Supreme Court Building.

##### **Rules of the Court**

This bill repeals s. 25.371, F.S. This 1957 statute provides that a rule of the Supreme Court concerning practice and procedure supersedes a contrary statutory provision.<sup>6</sup> Art. V, s. 2(a), Fla. Const., provides, “[t]he Supreme Court shall adopt rules for the practice and procedure in all courts.” The Supreme Court of Florida has held that where the court has promulgated rules relating to practice and procedure, contrary statutes are unconstitutional to the extent of the conflict.<sup>7</sup> Repeal of this statutory provision will not remove the ability of the Supreme Court’s power to promulgate rules of practice and procedure, as this power is a constitutional power under Art. V, s. 2(a). The Court has never cited to this statute; rather, it cites to the Constitutional provisions when deciding cases where a court rule contradicts a statute.<sup>8</sup>

#### B. SECTION DIRECTORY:

Section 1 repeals s. 25.151, F.S., relating to a retired justice practicing law.

Section 2 repeals s. 25.191, F.S., relating to Clerk of the Supreme Court.

Section 3 repeals s. 25.211, F.S., relating to the clerk’s office.

Section 4 repeals s. 25.231, F.S., relating to the clerk’s duties.

Section 5 repeals s. 25.371, F.S., relating to the court’s rulemaking power.

Section 6 provides an effective date of July 1, 2012.

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<sup>1</sup> L.O.F. 57-274, Sec. 1.

<sup>2</sup> ART. V, SEC. 15, FLA. CONST.

<sup>3</sup> *In re The Florida Bar-Code of Judicial Conduct*, 281 So.2d 21 (Fla. 1973).

<sup>4</sup> L.O.F. 57-274, Sec. 1.

<sup>5</sup> ART. V, SEC. 3, FLA. CONST.

<sup>6</sup> L.O.F. 57-274, Sec. 1.

<sup>7</sup> *See e.g., Massey v. David*, 976 So.2d 931, 937 (Fla. 2008).

<sup>8</sup> *See e.g., Massey* (Fla. 2008).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

n/a

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.