

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 828

INTRODUCER: Senator Bradley

SUBJECT: Court System

DATE: March 10, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	<b>Pre-meeting</b>
2.	_____	_____	CA	_____
3.	_____	_____	RC	_____

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**I. Summary:**

SB 828 repeals or modifies court-related statutes that are unnecessary or outdated. Statutes that are a duplication of provisions in Article V of the State Constitution are repealed as unnecessary. Statutes that unconstitutionally create additional requirements for judicial office are repealed because they are likely to be determined to be in conflict with constitutional qualifications for office. Other statutes are amended or repealed to reflect current practices or eliminate outdated provisions.

One example of an unnecessary statute that is being repealed pertains to the Supreme Court Library acquisition program which states that books may be acquired by purchase or exchange. It is unclear why that directive ever needed to be included in the statutes.

Provisions requiring the Supreme Court to appoint a clerk and marshal, directives which are already covered in the State Constitution, are repealed as unnecessary.

Three existing statutes require certain judges to live in specified counties in a judicial circuit. This restricts eligibility for the office beyond the requirements of the State Constitution. Accordingly, these provisions are being repealed because they are most likely unconstitutional.

An example of an outdated statute that is being repealed addresses an evidentiary issue involving receipts of a receiver of the United States Land Office. The land grant office appears to have closed in 1933 and the last appellate case under the statute was decided 100 years ago in 1914.

**II. Present Situation:**

Article V of the State Constitution establishes and governs the Judiciary. The various sections set forth the authority, jurisdiction, and structure of the court system and provide qualifications for

justices and judges. Article V also establishes the Judicial Qualifications Commission, provides for funding of the judicial branch, the admission and discipline of attorneys, and contains provisions relating to clerks of circuit courts as well as state attorneys and public defenders.

Similarly, Title V of the Florida Statutes is devoted to the Judicial Branch of state government. Title V, which consists of chapters 25-44, contains laws governing the Supreme Court, circuit courts, state attorneys and public defenders, court system funding, district courts of appeal, general provisions regarding judges and courts, and other related provisions.

Over time, many of the judicial statutes found in Title V have become unnecessary duplications of provisions contained in the State Constitution. Other statutes have become outdated.

In an effort to update the statutes relating to the Judicial Branch, the House Civil Justice Subcommittee compiled a list of 19 duplicative statutes that are unnecessary. Those provisions comprise 13 of the 19 sections of this bill. The subcommittee determined that additional statutes needed to be amended and a new section created to deal with compensation issues. Those combined provisions are the subject of this bill.

The “Effect of Proposed Changes” provides additional information describing the present situation for each section of the bill.

### **III. Effect of Proposed Changes:**

This bill repeals or modifies court-related statutes that are unnecessary or outdated. Below is a section by section analysis of the changes proposed in this bill.

**Section 1.** Section 25.151, F.S., is a law passed in 1957 which prohibits a retired Supreme Court justice from engaging in the practice of law while drawing retirement compensation. The statute is not currently enforced and similar statutes have been found unconstitutional.<sup>1</sup> The bill repeals the statute.

**Section 2.** Sections 25.191 and 25.231, F.S., require the Supreme Court to appoint a clerk who must perform duties as directed by the court. Article V, s. 3(c), State Constitution, also requires the Supreme Court to appoint a clerk to “perform such duties as the court directs.” The bill repeals the statutory requirements, which will have not have an adverse effect, because the same requirements remain in the State Constitution.

**Sections 3 and 4.** Sections 25.241(1) and 25.281, F.S., provide that the clerk and marshal of the Supreme Court are to be paid a salary. Similarly, Article V, s. 3(c) of the State Constitution requires that the Clerk and Marshall of the Supreme Court be paid by general law. Section 3 repeals a subsection in s. 25.241, F.S., relating to compensation of the Clerk of the Supreme Court and section 4 repeals s. 25.281, F.S., relating to compensation of the Marshal of the Supreme Court. The bill repeals the statutory requirement, which will have no effect, because the

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<sup>1</sup> See *In re The Florida Bar-Code of Judicial Conduct*, 281 So. 2d 21 (Fla. 1973); see also, Article V, s. 15, FLA. CONST. (Supreme Court’s exclusive jurisdiction over the practice of law).

State Constitution requires payment of the salaries and because state employees are paid for performing their duties. See also s. 29.23, F.S., created by this bill in section 11.

**Section 5.** Section 25.351, F.S., provides that books for the Supreme Court library may be acquired by purchase or exchange with other libraries. It is unclear why this needs to be in statute. The bill repeals the statutory language regarding books, which is unlikely to have any practical effect.

**Section 6.** Section 26.01, F.S., provides that there will be 20 judicial circuits in the state. Article V, s. 1 of the State Constitution requires that the state be divided into judicial circuits that follow county lines. Section 26.021, F.S. provides which counties are in each circuit. The bill repeals s. 26.01, F.S., merging its contents into s. 26.021, F.S., for simplicity.

**Section 7.** Section 26.021, F.S., divides the state into judicial circuits as required by the State Constitution. The statute lists the number of the judicial circuit and which counties are in each circuit. Three of the 20 judicial circuits, the Fifth, Seventh, and Sixteenth circuits, have special statutory residency requirements stating that judges must live in a particular county in the circuit. Article V, s. 8 of the State Constitution establishes the constitutional requirements for eligibility to serve as a justice or judge. The courts have ruled that no additional requirement for judicial office may be created by statute.<sup>2</sup> The bill adds the language from s. 26.01, F.S., and repeals the special residential requirements for certain judicial offices at the circuit court level.

**Section 8.** Section 26.51, F.S., requires that the salaries of circuit court judges be paid “in equal monthly installments.” The language first appeared in a 1925 statute setting the salaries of a number of state officials.<sup>3</sup> At the time, salaries were in the general statutes. The practice since 1969 has been for the salaries of these state officials to be a part of the General Appropriations Act rather than in the compiled Florida Statutes. All of the other state officials, including county judges, appellate judges, and Supreme Court justices, are paid monthly without statutory direction. It is unclear why this clause, only applicable to one class of state officials, circuit judges, has remained in statute. The bill repeals the statutory requirement that circuit judges be paid in equal monthly installments. The repeal should have no impact on judicial salaries or when they are paid.

**Section 9.** Section 26.55, F.S., created the Conference of Circuit Judges of Florida. The bill amends the section at the request of the Conference to:

- Specify that a retired judge who is actively engaged in the practice of law is excluded from automatic membership.
- Delete a provision declaring it to be an official function of each circuit judge to attend meetings of the conference and participate in committee activities.
- Require the Conference to operate according to the Rules of Judicial Administration adopted by the Supreme Court.

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<sup>2</sup> See *Miller v. Mendez*, 804 So. 2d 1243, 1246 (Fla. 2001). A statute cannot require residency within a circuit at the time of qualifying when the constitution only requires residency at the time of taking office; *Levey v. Dijols*, 990 So. 2d 688, 692 (Fla. 4th DCA 2008), rev. denied, 994 So. 2d 304. (“Any statute that restricts eligibility beyond the requirements of the Florida Constitution is invalid.”),

<sup>3</sup> Chapter 11335, L.O.F., s. 1 (1925).

- Eliminate the requirement that the chair of the conference submit an “annual” report to the President of the Senate and the Speaker of the House.
- Make grammatical and technical changes.

**Section 10.** This section repeals s. 27.50 and 27.55, F.S., relating to the qualifications for office of public defender and to the compensation and expenses of a public defender in a newly created judicial circuit.

While s. 27.50, F.S., provides the qualifications for office of a public defender, Article V, s. 18 of the State Constitution also provides the same qualifications for office. The bill repeals the statutory qualifications, which will have no adverse effect, because the State Constitution contains the same requirements.<sup>4</sup>

Section 27.55, F.S., provides for the compensation of a public defender and the payment of expenses of a public defender should the state create a new judicial circuit. There are no current known plans for creation of a new judicial circuit, and, if there were, the payment of salaries and expenses relating to such creation would normally be a part of the law creating such circuit or would be in the General Appropriations Act for that legislative session. The bill repeals the statute regarding such expenses, which should have no impact.

**Section 11.** This section creates s. 29.23, F.S., relating to the salaries of certain positions in the judicial branch.

The State Constitution requires that certain employees of the court system are to be paid an annual salary. The requirement related to some of those employees is repeated in various statutes repealed by this bill. The practice since 1969 has been for the salaries of constitutional state officials, including those in the judicial branch, to be a part of the General Appropriations Act rather than in the compiled Florida Statutes. This bill creates s. 29.23, F.S., to consolidate all of the constitutional salary provisions into one statute reflecting current practices. The section provides that salaries of justices and judges must be part of the General Appropriations Act, and salaries of appellate marshals and clerks are determined in accordance with s. 25.382, F.S., current law regarding court system budgeting. The newly created statute reflects long-standing policies.

**Section 12.** This section repeals ss. 35.12, 35.13, 35.19, and 35.21, F.S., relating to district courts of appeal.

Article V, s. 2(c), State Constitution, provides for selection of a chief judge in each district court of appeal. Section 35.12, F.S., also provides for selection of a chief judge in each district court of appeal. The bill repeals the statutory provision, which repeal would have no practical effect.

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<sup>4</sup> If the statute had different or additional requirements, it perhaps would be found invalid. See *Miller v. Mendez*, 804 So. 2d 1243 (Fla. 2001). A statute cannot require residency within a circuit at the time of qualifying when the constitution only requires residency at the time of taking office; *Levey v. Dijols*, 990 So. 2d 688, 692 (Fla. 4th DCA 2008), rev. denied, 994 So.2d 304. (“Any statute that restricts eligibility beyond the requirements of the Florida Constitution is invalid.”)

Article V, s. 4(a), State Constitution, requires that three judges hear a case before a district court of appeal, and that the “concurrence of two” is required for a decision. Section 35.13, F.S., requires the same. The bill repeals the statutory provision, which will have no adverse effect, because the same provision remains in the State Constitution.

Article V, s. 14(a), State Constitution, provides that the salaries of justices and judges are to be set by general law. Section 35.19, F.S., provides that the salaries of judges of the district courts of appeal are to be set by law. The bill repeals the statutory provision, which repeal will have no detrimental effect, because the same provision remains in the State Constitution. See also s. 29.23, F.S., created by this bill in section 11.

Article V, s. 4(c), State Constitution, requires each district court of appeal to appoint a clerk to serve at the pleasure of the court. Section 35.21, F.S., also requires each district court of appeal to appoint a clerk to serve at the pleasure of the court. The bill repeals the statutory provision, which will have no adverse effect, as the same provision remains in the State Constitution.

**Section 13.** This section amends s. 35.22, F.S., relating to the salary of the clerk of a district court of appeal. Article V, s. 4(c) of the State Constitution provides that the salary of a clerk of a district court of appeal is to be set by general law. Section 35.22(1), F.S., provides that the compensation of the clerk of a district court of appeal is to be set by law. The bill repeals the statutory provision, which will have no adverse effect, because the same provision remains in the State Constitution. See also s. 29.23, F.S., created by this bill in section 11.

**Section 14.** Sections 35.25 and 35.27, F.S., relate to the duties of the clerk of a district court of appeal and the compensation of the marshal of a district court of appeal. Section 35.25, F.S., provides that the duties of the clerk of a district court of appeal “shall be as prescribed by the rules of the court.” No rules have been promulgated to prescribe the specific duties of a clerk of a district court of appeal. Article V, s. 4(c), State Constitution, requires the clerk to “perform such duties as the court directs.” Because a clerk of a district court of appeal serves at the pleasure of the court, formal rulemaking is unnecessary. The adoption of internal operating procedures, both formal and informal, is sufficient to govern the conduct of a clerk or any other employee who serves at the pleasure of an appointing body. The bill repeals the statute, which is anticipated to have no effect on appellate court clerks or their operation.

Article V, s. 4(c), State Constitution, provides that the salary of a marshal of a district court of appeal is to be set by general law. Section 35.27, F.S., provides that the compensation of the marshal of a district court of appeal is to be set by law. The bill repeals the statutory provision, which will have no detrimental effect, because the same provision remains in the State Constitution. See also s. 29.23, F.S., created by this bill in section 11.

**Section 15.** This section repeals s. 38.13, F.S., relating to the appointment of a judge ad litem in a circuit or county court.

Section 38.13, F.S., provides for the appointment of a judge ad litem in a particular civil case. The law, first enacted in 1887, provides that, where the trial judge is disqualified, the parties to the action may agree on an attorney at law to act as the judge for that particular case. The statute was helpful at a time when most rural judicial circuits had only one judge, but it is outdated

today. The need for the statute has been superseded by Article V, s. 2(b), of the State Constitution, which allows the Chief Justice to appoint a judge to another court, Fla. R. Jud. Admin. 2.215(b)(4), and the concept of arbitration found in s. 44.104, F.S. The bill repeals the statute allowing the appointment of a judge ad litem.

**Section 16.** Section 43.20, F.S., relating to the Judicial Qualifications Commission, is amended. The Judicial Qualifications Commission is created by Article V, s. 12, State Constitution. The commission is authorized to investigate and recommend to the Supreme Court the removal of a justice or judge whose conduct demonstrates unfitness to hold office and to recommend appropriate disciplinary action. Section 43.20, F.S., implements the Judicial Qualifications Commission by statute. A 1996 constitutional amendment increased the membership of the commission to 15 from 13 members. This bill amends s. 43.20, F.S., to conform to the change to 15 from 13 members.

**Section 17.** This section repeals s. 57.101, F.S., relating to costs in the Supreme Court. Section 57.101, F.S., provides that a party to an appeal before the Supreme Court cannot be made to pay for copies made by the Clerk of the Supreme Court which the party did not order. It is unclear how or why copies would be made by the Clerk except where actually ordered by a party, and thus the statute has no apparent meaning. The bill repeals the statute.

**Section 18.** Section 92.15, F.S., relating to federal land office receipts, is repealed.

Section 92.15, F.S., provides that a receipt of a receiver of a United States Land Office shall in all cases be prima facie evidence that the title to the land covered by the receipt has passed from the United States to the person named in the receipt as having paid for the land. Federal law in the 1800's recognized that certain settlers of land who paid a nominal registration fee would be given a receipt that was evidence of the payment of the fee giving the settlor the right to possess the land. That receipt was not a title document like a deed, and so "the statute was passed with a view to obviating the inconvenience that ensued from the delays so frequently occurring in the issuance from Washington of the letters patent, and in recognition of the fact that the full equitable title had passed from the government to the [settlor]."<sup>5</sup> The last appellate case under the statute was decided in 1914,<sup>6</sup> and the records of the Florida land grant office show that it closed in 1933.<sup>7</sup> All land grant properties should have had numerous recorded title transactions since then and reference to such receipts appears outdated and unnecessary. See generally, ch. 712, F.S. (the Marketable Record Title Act). The bill repeals the statute.

**Section 19.** This section provides an effective date of July 1, 2014.

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<sup>5</sup> *Boley v. Wynn*, 67 So. 117 (Fla. 1914). See also, generally, *Yellow River R. Co. v. Harris*, 17 So. 568 (Fla. 1895).

<sup>6</sup> *Boley v. Wynn*, 67 So. 117 (Fla. 1914).

<sup>7</sup> National Archives, *Records of the Bureau of Land Management [BLM], 49.9.7 Florida Land Offices*, <http://www.archives.gov/research/guide-fed-records/groups/049.html>, (last visited March 6, 2014).

**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:

None.

## C. Government Sector Impact:

The Office of the State Courts Administrator does not expect the bill to have a fiscal impact on the state courts system.<sup>8</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 26.021, 26.55, 35.22, and 43.20.

This bill creates section 29.23 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 25.151, 25.191, 25.231, 25.241(1), 25.281, 25.351, 26.01, 26.51, 27.50, 27.55, 35.12, 35.13, 35.19, 35.21, 35.25, 35.27, 38.13, 57.101, and 92.15.

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<sup>8</sup> Office of the State Courts Administrator, *Judicial Impact Statement for SB 828*, (March 1, 2014) (on file with the Senate Committee on Judiciary).

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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