

**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 328

INTRODUCER: Senator Brandes

SUBJECT: Courts

DATE: January 30, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	<b>Pre-meeting</b>
2.	_____	_____	IS	_____
3.	_____	_____	ACJ	_____
4.	_____	_____	AP	_____

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**I. Summary:**

SB 328 amends or creates multiple substantive provisions relating to the court system. The bill: (1) amends multiple provisions affecting the jurisdiction of the county and circuit courts; (2) limits when the \$1 mediation/arbitration fee may be collected by the court clerks; (3) creates a substantive provision permitting a remote office and travel expenses for individual Supreme Court justices; (4) clarifies decision-making authority regarding security in county courthouses; and (5) requires the refund of filing fees to judicial candidates running unopposed.

(1) *Jurisdiction*—The bill raises the county courts’ maximum jurisdictional amount for civil cases demanding money and filed on or after January 1, 2020, as follows:

- From \$15,000 to \$50,000 for all cases except insurance cases.
- From \$15,000 to \$25,000 for insurance cases.

The bill also requires that these jurisdictional amounts be adjusted for inflation or deflation every 10 years after January 1, 2020, and rounded to the nearest \$5,000.

The bill effectively raises the circuit courts’ original jurisdiction to amounts exceeding the county court’s new jurisdictional amounts. The bill also explicitly clarifies that the circuit courts have appellate jurisdiction over county court decisions involving the county court’s new jurisdictional amounts.

Additionally, the bill requires the State Courts Administrator to submit recommendations for adjustments resulting from the changes to the jurisdictional amounts by March 1, 2021.

(2) *Mediation/Arbitration Fee*—The bill provides that the \$1 filing fee levied on all county and civil court cases to fund mediation and arbitration may not be levied on appeals from the county to the circuit court for claims exceeding \$15,000.

(3) *Remote Office for Supreme Court Justices*—The bill creates s. 25.025, F.S., which provides that the Chief Justice of the Florida Supreme Court shall, at the request of a justice:

- Coordinate and designate a courthouse or other appropriate facility in the justice’s district as his or her official headquarters and private chambers; and
- Reimburse the justice for travel and subsistence while in Tallahassee to the extent funding is available.

(4) *Court Security*—The bill clarifies the decision-making authority for courthouse security and provides that:

- The sheriff, county commissioners, and chief judge of the circuit must develop a comprehensive plan for courthouse security.
- The sheriff retains operational control in accord with the comprehensive security plan.
- The chief judge retains decision-making authority to protect due process rights in accord with the comprehensive plan.

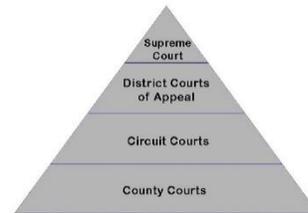
(5) *Candidate Filing Fee Refunds*—The bill requires the refund of filing fees to judicial candidates running unopposed within 20 days after the close of the qualifying period.

**II. Present Situation:**

**Florida’s Court System**

The Florida Constitution vests all judicial power in:

- The supreme court;
- The district courts of appeal;
- The circuit courts; and
- The county courts.<sup>1</sup>



The Constitution provides that “[n]o other courts may be established by the state, any political subdivision or any municipality.”<sup>2</sup> Additionally, the Constitution vests the Florida Supreme Court with broad authority to administer the state courts system and establish court rules of procedure.<sup>3</sup>

**Legislative Powers Concerning Court Jurisdiction**

The Constitution confers some authority over the jurisdiction of the courts to the Legislature. Although the territorial and subject matter jurisdiction of the Florida Supreme Court is primarily defined by the Constitution, the Legislature has constitutional authority to provide for the territorial jurisdiction and the subject matter jurisdiction of the courts.<sup>4</sup>

<sup>1</sup> FLA. CONST. art. V., s. 1.

<sup>2</sup> *Id.* (although the Constitution permits the Legislature to establish quasi-judicial, administrative courts and a civil traffic infraction hearing officer system).

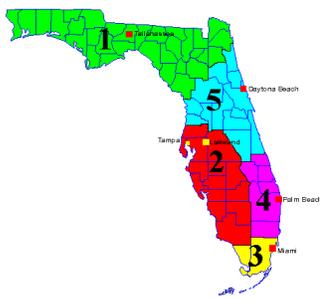
<sup>3</sup> FLA. CONST. art. V, s. 2.

<sup>4</sup> “Jurisdiction” is defined as “[a] government’s general power to exercise authority over all persons and things within its territory; esp., a state’s power to create interests that will be recognized under common-law principles as valid in other states <New Jersey’s jurisdiction>.” BLACK’S LAW DICTIONARY (10th ed. 2014). For courts, jurisdiction is defined as “[a] court’s power to decide a case or issue a decree <the constitutional grant of federal-question jurisdiction>.” *Id.* Additionally,

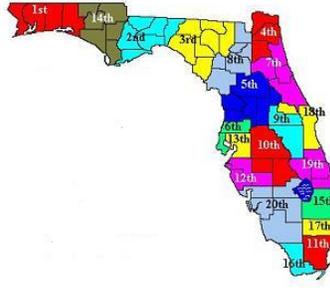
***Territorial Jurisdiction***

The Legislature is constitutionally required to establish the territorial or geographic jurisdiction of the appellate court districts and the judicial circuits “following county lines.”<sup>5</sup> Currently, there are five district courts of appeal,<sup>6</sup> 20 judicial circuits,<sup>7</sup> and 67 county courts, one in each of Florida’s 67 counties<sup>8</sup> as constitutionally required.<sup>8</sup>

The following maps illustrate the territorial jurisdictions of these courts:<sup>9</sup>



Five District Courts of Appeal



Twenty Judicial Circuits



Sixty-Seven Counties

***Subject Matter Jurisdiction***

The Legislature’s authority over the subject matter jurisdiction of the Florida Supreme Court and district courts of appeal is fairly limited. With a few exceptions,<sup>10</sup> the Constitution sets out the subject matter jurisdiction of the Supreme Court and the appellate courts.

jurisdiction is defined geographically: “A geographic area within which political or judicial authority may be exercised <the accused fled to another jurisdiction>.” *Id.*

<sup>5</sup> FLA. CONST. art. V, s. 1.

<sup>6</sup> Florida Courts, *Court System Organization & Structure*, <http://www.flcourts.org/florida-courts/> (last visited Jan. 29, 2019). The First District sits in Tallahassee; the Second District sits in Lakeland; the Third District sits in Miami; the Fourth District sits in West Palm Beach; and the Fifth District sits in Daytona Beach. Florida Courts, *District Courts of Appeal*, <https://www.flcourts.org/Florida-Courts/District-Courts-of-Appeal> (last visited Jan. 29, 2019).

<sup>7</sup> Florida Courts, *Court System Organization & Structure*, <http://www.flcourts.org/florida-courts/> (last visited Jan. 29, 2019).

<sup>8</sup> FLA. CONST. art. V, s. 6(a) (“There shall be a county court in each county.”).

<sup>9</sup> Ron DeSantis, 46<sup>th</sup> Governor of Florida, Judicial and Judicial Nominating Commission Information, *The Florida Court System*, <https://www.flgov.com/judicial-and-judicial-nominating-commission-information/> (last visited Jan. 29, 2019).

<sup>10</sup> See Art. V, s. 3(b)(2), FLA. CONST. (“When provided by *general law*, [the supreme court] shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.”) (emphasis added); FLA. CONST. art. V, s. 4(b)(2) (“District courts of appeal shall have the power of direct review of administrative action, *as prescribed by general law*.”) (emphasis added).

On the other hand, under the Constitution, the Legislature is granted broad authority to define the jurisdiction<sup>11</sup> of the county courts: “The county courts shall exercise the jurisdiction *prescribed by general law*. Such jurisdiction shall be uniform throughout the state.”<sup>12</sup>

Because the jurisdiction of the circuit court is limited by the jurisdiction of the county courts under the Constitution, the Legislature’s authority to define the jurisdiction of the circuit courts is also fairly broad:

The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals *when provided by general law*. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action *prescribed by general law*.<sup>13</sup>

### ***County Court Jurisdiction***

As provided by the Legislature in s. 34.01, F.S., the county court is a trial court that has jurisdiction over the following types of cases within its jurisdictional (monetary) amount of \$15,000:

- All criminal misdemeanor cases not cognizable by the circuit courts;
- All violations of municipal and county ordinances;
- All actions at law involving damages up to \$15,000, not including interest, costs, and attorney’s fees, unless the cause of action is within the exclusive jurisdiction of the circuit courts;
- Concurrent jurisdiction with the circuit courts over disputes between homeowners’ associations and parcel owners;
- Concurrent jurisdiction with circuit courts to hear uncontested dissolution of marriage petitions under the simplified dissolution procedures;
- Any subject matter jurisdiction previously exercised by the county courts prior to the adoption of the 1968 Constitution, including that of the small claims courts; and
- Any matter in equity (such as an eviction)<sup>14</sup> that is within the jurisdictional amount of the county court.

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<sup>11</sup>See *Alexdex Corp. v. Nachon Enterprises, Inc.*, 641 So. 2d 858, 861 (Fla. 1994) (“The jurisdiction of the courts of the state is broadly defined by our State Constitution; however, the legislature may further define a court’s jurisdiction so long as the jurisdiction, as redefined, is not in conflict with the Constitution. . . . Absent a constitutional prohibition or restriction, the legislature is free to vest courts with exclusive, concurrent, original, appellate, or final jurisdiction.”) (citing *State v. Sullivan*, 95 Fla. 191, 116 So. 255 (1928)).

<sup>12</sup> FLA. CONST. art. V, s. 6(b) (emphasis added). Additionally, the Legislature establishes the number of judges to serve in each county. *Id.* at s. 6(a).

<sup>13</sup> FLA. CONST. art. V, s. 5(b) (emphasis added).

<sup>14</sup> Section 34.011, F.S. (providing that county and circuit courts generally have concurrent jurisdiction over landlord tenant cases, although county court will have exclusive jurisdiction over proceedings relating to the right of possession so long as matter is under \$15,000.).

The effective date of the last increase to the monetary limit on the jurisdiction of the county courts was July 1, 1992.<sup>15</sup> If adjusted for inflation, the \$15,000 jurisdictional limit would be \$26,822.03 in today's dollars (as of December 2018).<sup>16</sup>

The county court is also the small claims court. Small claims courts are not separate, constitutionally recognized courts;<sup>17</sup> rather, they are the county courts functioning under the Florida Small Claims Rules of procedure adopted by Supreme Court.<sup>18</sup> The goal of the Small Claims Rules is to “reach a ‘simple, speedy, and inexpensive’ resolution of [small claims] cases” in which the parties often represent themselves.<sup>19</sup> The court rules apply to civil actions in county courts where money is demanded,<sup>20</sup> and set the jurisdictional limit of small claims demands at \$5,000,<sup>21</sup> where it has remained since January 1, 1997.<sup>22</sup> If adjusted for inflation to December 2018, the jurisdictional limit of the Small Claims Rules would be \$7,895.44.<sup>23</sup>

### ***Circuit Court Jurisdiction***

Because the circuit courts have exclusive jurisdiction over “all actions at law not cognizable by the county courts,” the circuit court’s current jurisdictional amount is \$15,000 or above for cases demanding money judgments.<sup>24</sup>

Additionally, with two exceptions, the circuit court has appellate jurisdiction over county court cases. Under the two exceptions, the district court of appeal has appellate jurisdiction when a county court either (1) declares a statute or constitutional provision invalid or (2) certifies a question of great public importance.<sup>25</sup> Additionally, if the law applied by the circuit court sitting in its appellate capacity is in question, a party may seek review by the appropriate district court of appeal by filing a petition for writ of certiorari.<sup>26</sup>

<sup>15</sup> Chapter 90-269, Laws of Fla.

<sup>16</sup> The inflation adjusted figure was determined by the Bureau of Labor Statistics, United States Department of Labor, CPI Inflation Calculator, which is available at [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm).

<sup>17</sup> *LaSalla v. Pools by George of Pinellas County, Inc.*, 125 So. 3d 1016, 1016 (Fla. 2d DCA 2013) (“[F]or purposes of the concept of subject matter jurisdiction, a county court that applies the Florida Small Claims Rules in a particular proceeding is not a separate court from a county court that applies the Florida Rules of Civil Procedure. This is true even if a county court has elected to create a ‘small claims division’ to handle cases under the Florida Small Claims Rules. To the extent that *Tax Certificate Redemption’s, Inc. v. Meitz*, 705 So. 2d 64 (Fla. 4th DCA 1997), discusses the ‘jurisdiction’ of a small claims court as distinct from the jurisdiction of county court, we believe that discussion is incorrect.”).

<sup>18</sup> *Id.* at 1017 (The Small Claims Rules “do not create a ‘small claims court.’ They simply create rules of procedure for use in county court when the amount in controversy is small.”). When the amount in controversy exceeds the jurisdictional limits of the Small Claims Rules, the more complex requirements of the Rules of Civil Procedure apply. *See Hilton v. Florio*, 317 So. 2d 83 (Fla. 3d DCA 1975).

<sup>19</sup> *In re Amendments to Florida Small Claims Rule 7.090*, 64 So. 3d 1196 (Fla. 2011); Fla. Sm. Cl. R. 7.010(a).

<sup>20</sup> *In re Amendments to Florida Small Claims Rules*, 123 So. 3d 41, 43 (Fla. 2013) (amending Fla. Sm. Cl. R. 7.010).

<sup>21</sup> Fla. Sm. Cl. R. 7.010(b).

<sup>22</sup> *In re Amendments to the Florida Small Claims Rules*, 682 So. 2d 1075, 1076 (Fla. 1996) (raising amount from \$2,500 to \$5,000).

<sup>23</sup> The inflation adjusted figure was determined by the Bureau of Labor Statistics, United States Department of Labor, CPI Inflation Calculator, which is available at [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm).

<sup>24</sup> Section 26.012(2)(a), F.S.

<sup>25</sup> Section 26.012(1), F.S.

<sup>26</sup> FLA. CONST. art. V, s. 4(b)(3) (authorizing district courts of appeal to issue writs of certiorari among others). Philip J. Padovano, *Appellate Practice*, 2 Fla. Prac., § 30:5 (2017 ed.) (“A party may file a petition for writ of certiorari to review . . . an appellate decision of a lower court[.]”). On petition for writ of certiorari, the district court reviews for whether the circuit

Notably, foreclosure cases, which are cases in equity, are not one of the subject areas statutorily defined as being within the exclusive jurisdiction of the circuit court.<sup>27</sup> Rather, in resolving a conflict between the statutes setting forth the county court’s and the circuit court’s equity jurisdiction in foreclosure cases, the Florida Supreme court concluded in *Alexdex Corp. v. Nachon Enterprises, Inc.* that “the legislature intended to provide concurrent equity jurisdiction in circuit and county courts, except that equity cases filed in county courts must fall within the county court’s monetary jurisdiction, as set by statute.”<sup>28</sup>

**Filing Fees**

Filing fees are constitutionally required to fund the clerks of the circuit and county courts,<sup>29</sup> and vary depending on the court. In **county court**, the filing fee for civil actions at law demanding money judgments vary based on the amount:

- For all claims less than \$100..... \$50.
- For all claims of \$100 or more but not more than \$500..... \$75.
- For all claims of more than \$500 but not more than \$2,500..... \$170.
- For all claims of more than \$2,500..... \$295.<sup>30</sup>

The clerk of court also collects an additional \$4 filing fee.<sup>31</sup>

When the clerk of court collects the \$295 filing fee, the fee is allocated as follows:

- The first \$15 of the filing fee is deposited in the State Courts Revenue Trust Fund.
- \$3.50 is transferred to the Department of Revenue (DOR) for deposit in the Court Education Trust Fund.
- Another \$0.50 is transferred to the DOR for deposit into the Administrative Trust Fund within the Department of Financial Services to fund clerk education provided by the Florida Clerks of Court Operations Corporation.<sup>32</sup>

Additionally, when any portion of the fees for court functions collected in the prior month exceeds one-twelfth of the clerk’s total budget, the overage is transferred to the DOR for deposit into the Clerks of the Court Trust Fund.<sup>33</sup>

In **circuit court**, the filing fee for civil actions at law demanding money judgments vary based on the type of action filed<sup>34</sup> and the number of defendants, but is generally \$395 for the first five

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court departed from the essential requirements of the law; or, put another way, whether the circuit court “(1) afforded the parties due process of law[,] and (2) applied the correct law.” *Id.*

<sup>27</sup> Section 26.012(2), F.S.

<sup>28</sup> 641 So. 2d 858, 862 (Fla. 1994).

<sup>29</sup> FLA. CONST. art. V, s. 14(b) (requiring that all funding for clerks of circuit and county courts come from adequate filing fees).

<sup>30</sup> Section 34.041(1)(a), F.S.

<sup>31</sup> Section 34.041(1)(b), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Section 28.241(1)(a)1.a., F.S. The filing fee is only \$295 for civil suits filed under chapters 39 (dependency), 61 (family law), 741 (domestic violence), 742 (determination of parentage), 747 (conservatorship), 752 (grandparental visitation rights), or 753 (supervised visitation). Section 28.241(1)(a)1.b., F.S. Additionally, there are graduated filing fees for real property and mortgage foreclosure cases which can reach as high as \$1,900 for claims valued at \$250,000 and higher. Section 28.241(1)(a)2, F.S.

defendants.<sup>35</sup> Additionally, there are graduated filing fees for real property and mortgage foreclosure cases which can reach as high as \$1,900 for claims valued at \$250,000 and higher.<sup>36</sup>

The filing fee collected by the clerk of court is allocated as follows:

- Of the first \$200 in filing fees, \$195 must be remitted to the DOR for deposit into the State Courts Revenue Trust Fund.
- \$4 must be remitted to the DOR for deposit into the Administrative Trust Fund within the Department of Financial Services and used to fund the contract with the Florida Clerks of Court Operations Corporation.
- \$1 must be remitted to the DOR for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of individual clerks' court-related expenditures conducted by the Department of Financial Services.<sup>37</sup>

Additionally, as in county court, when any portion of the circuit court fees collected in the prior month exceeds one-twelfth of the clerk's total budget, the overage is transferred to the DOR for deposit into the Clerks of the Court Trust Fund.<sup>38</sup>

The clerk of court also collects an additional \$4 fee. Of that \$4 fee, \$3.50 is transferred to the DOR for deposit into the Court Education Trust Fund. The other \$0.50 is also transferred to the DOR for deposit into the Administrative Trust Fund within the Department of Financial Services to fund clerk education provided by the Florida Clerks of Court Operations Corporation.<sup>39</sup>

Effective January 1, 2019, \$50 of the \$100 fee collected by the clerk of the circuit court from each attorney appearing *pro hac vice* (an attorney licensed in another state permitted to specially appear in a case by court order) will be deposited into the State Courts Revenue Trust Fund.<sup>40</sup>

Additionally, the clerks of court collect a \$1 filing fee in all proceedings, whether filed in circuit or county court, to fund **mediation and arbitration services**. The fee is deposited in the State Courts Revenue Trust Fund<sup>41</sup> to be used to provide access to mediation and arbitration for all parties "regardless of financial status."<sup>42</sup> This fee goes toward the state-funded mediation program, which is available to parties in county civil cases (under \$15,000) for free or reduced costs but not circuit civil cases.<sup>43</sup> This fee is not levied in appellate proceedings filed in the District Courts of Appeal or the Florida Supreme Court.

For **appeals from the county to the circuit court**, the clerk of the circuit court may collect up to \$280.<sup>44</sup>

<sup>35</sup> *Id.* It is \$2.50 per defendant in excess of five. *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Section 28.241(1)(a)1.a., F.S.

<sup>38</sup> *Id.*

<sup>39</sup> Section 28.241(1)(a)1.c., F.S.

<sup>40</sup> Section 28.241(6), F.S. All \$100 was deposited into the general revenue fund prior to January 1, 2019. *Id.*

<sup>41</sup> Section 44.108(1), F.S.

<sup>42</sup> *Id.*; *see also* Fla. Att'y Gen. Op. 2002-09 (2002) ("Funds generated from filing fees designated solely for mediation or alternative dispute resolutions may be used only for those purposes").

<sup>43</sup> Section 44.108(1), F.S.; Office of the State Courts Administrator, *Senate Bill 328 Judicial Impact Statement* (Jan. 31, 2019)(on filed with the Senate Judiciary Committee).

<sup>44</sup> Section 28.241(2), F.S.

For appeals to the **district court of appeal**, the circuit court charges a \$100 fee for filing a notice of appeal,<sup>45</sup> and the clerk of the district court of appeal collects a filing fee of \$300 for civil cases.<sup>46</sup> Of the district court filing fee, \$50 is deposited into the State Courts Revenue Trust Fund and the remainder is deposited into the State Treasury to be credited to the General Revenue Fund.<sup>47</sup>

### **Supreme Court Headquarters**

Article II, section 2 of the Florida Constitution designates Tallahassee as the seat of state government “where the *offices* of the governor, lieutenant governor, cabinet members and *the supreme court shall be maintained* and the sessions of the legislature shall be held[.]”<sup>48</sup> Article V, section 3 of the Florida Constitution provides that the Supreme Court will consist of seven justices, and that each of the five appellate districts “shall have at least one justice elected or appointed from the district at the time of the original appointment or election.” The chambers of all seven justices are on the fourth floor of the Florida Supreme Court building,<sup>49</sup> and all official Supreme Court business is conducted in Tallahassee.<sup>50</sup>

### **Headquarters for Purposes of Travel Reimbursement**

Section 112.061, F.S., concerns the reimbursement of travel expenses to public employees and officers. To that end, s. 112.061(4), F.S. provides that while “[t]he official headquarters of an officer or employee assigned to an office shall be the city or town in which the office is located,” there are some exceptions:

- (a) The official headquarters of a person located in the field shall be the city or town nearest to the area where the majority of the person’s work is performed, or such other city, town, or area as may be designated by the agency head provided that in all cases such

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<sup>45</sup> *Id.*

<sup>46</sup> Section 35.22(2)(a), F.S.

<sup>47</sup> Section 35.22(5), F.S. The clerk of the district court of appeal also collects \$295 for cross-appeals or additional parties, and this fee is remitted entirely to the DOR for deposit into the General Revenue fund. Section 35.255(2)(b), F.S.

<sup>48</sup> FLA. CONST. art. II, s. 2 (emphasis added).

<sup>49</sup> Florida Supreme Court, Manual of Internal Operating Procedures, *Section 1. Court Structure*, p. 1 (Rev. Sept. 21, 2016), [http://www.floridasupremecourt.org/pub\\_info/documents/IOPs.pdf](http://www.floridasupremecourt.org/pub_info/documents/IOPs.pdf) (last visited Jan. 31, 2019). *But see In re: Designation of Official Headquarters*, AOSC18-37 (Fla. July 2, 2018) (administrative order issued by Florida Supreme Court designating remote headquarters pursuant to Ch. 18-10, s. 46, Laws of Fla., the 2018 appropriations law), available at <https://www.floridasupremecourt.org/content/download/421872/4557988/AOSC18-37.pdf>.

<sup>50</sup> “[T]he Florida Supreme Court, comprised of its Justices, has only one “office” — the Supreme Court Building, located in the Northern District.” *Castro v. Labarga*, 16-22297-CIV, 2016 WL 6565946, at \*5 (S.D. Fla. Nov. 3, 2016) (citing FLA. CONST. art. II, s. 2). “In my view, the mere fact that a Florida Supreme Court justice may periodically travel outside of the Northern District of Florida to attend bar functions or educational seminars and obtains travel reimbursements does not translate the trip into an ‘official duty’ trip sufficient to generate venue in the other districts.” *Id.* “If the Florida Supreme Court maintained major offices, courtrooms or staff in other districts, then the result about venue and venue discovery might be different. But those significant facts, which Castro relies on when citing other cases, are absent here.” *Id.* (holding the proper venue of a disgruntled bar candidate suing the Florida Supreme Court is the northern district of Florida). *See also Uberoi v. Labarga*, 8:16-CV-1821-T-33JSS, 2016 WL 5914922, at \*2 (M.D. Fla. Oct. 11, 2016) (transferring another disgruntled bar candidate’s case to the Northern District based a motion to dismiss filed by Justice Labarga noting that official acts by the Florida Supreme Court concerning the candidate’s admission to the bar are done in Tallahassee; citing FLA. CONST. art. II, s. 2, noting that Tallahassee “is where the offices of the Florida Supreme Court shall be maintained.”).

- designation must be in the best interests of the agency and not for the convenience of the person.
- (b) When any state employee is stationed in any city or town for a period of over 30 continuous workdays, such city or town shall be deemed to be the employee's official headquarters, and he or she shall not be allowed per diem or subsistence, as provided in this section, after the said period of 30 continuous workdays has elapsed, unless this period of time is extended by the express approval of the agency head or his or her designee.
- (c) A traveler may leave his or her assigned post to return home overnight, over a weekend, or during a holiday, but any time lost from regular duties shall be taken as annual leave and authorized in the usual manner. The traveler shall not be reimbursed for travel expenses in excess of the established rate for per diem allowable had he or she remained at his or her assigned post. However, when a traveler has been temporarily assigned away from his or her official headquarters for an approved period extending beyond 30 days, he or she shall be entitled to reimbursement for travel expenses at the established rate of one round trip for each 30-day period actually taken to his or her home in addition to pay and allowances otherwise provided.<sup>51</sup>

Additionally, s. 112.061(1)(b)1., F.S., seems to assert a legislative policy that exceptions to the restrictions on reimbursements of travel and subsistence expenses should be limited, and that any such exception or exemption should be explicitly acknowledged:

To preserve the standardization established by this law . . . The provisions of this section shall prevail over any conflicting provisions in a general law, present or future, to the extent of the conflict; but if any such general law contains a specific exemption from this section, including a specific reference to this section, such general law shall prevail, but only to the extent of the exemption.

Section 112.061, F.S. applies to the court system. In particular, a district court of appeal—the headquarters of which is defined by the Legislature, not the Constitution<sup>52</sup>—is authorized by the current version of s. 35.05(2), F.S. to “designate other locations within its district as branch headquarters for the conduct of the business of the court and as the official headquarters of its officers or employees pursuant to s. 112.061.”<sup>53</sup> However, a prior version of s. 35.05, F.S., contained no such authorization and, similar to the Florida Supreme Court’s constitutionally designated headquarters in Tallahassee, designated one city as the headquarters for each district court of appeal.<sup>54</sup> On the other hand, prior versions of s. 112.061(4), in particular the 1973 version, is substantially similar if not identical to the current version of the statute.<sup>55</sup>

The reason the prior versions of these two statutes matter is that the 1973 version of s. 112.061(4) was interpreted by the Attorney General’s office to mean that a district court of

<sup>51</sup> Section 112.061(4)(a)-(c), F.S.

<sup>52</sup> Section 35.05(1), F.S. (designating the city in which the headquarters for each appellate district must be located).

<sup>53</sup> Section 35.05(2), F.S.

<sup>54</sup> See s. 35.05, F.S., <http://fall.law.fsu.edu/FlStatutes/docs/1973/1973TVC35.pdf> (last visited Jan. 31, 2019).

<sup>55</sup> See s. 112.061, F.S., <http://fall.law.fsu.edu/FlStatutes/docs/1973/1973TXC112.pdf> (last visited Jan. 31, 2019).

appeal judge could *not* designate the city of his or her residence as his or her official headquarters for purposes of travel expenses.<sup>56</sup> Notably, the AG Opinion relied on the fact that s. 35.05, F.S., designated the official headquarters of each district court of appeal in specific cities.<sup>57</sup> While s. 35.05, F.S., has since been amended to permit a district court of appeal to “designate other locations within its district as branch headquarters for the conduct of the business of the court and as the official headquarters of its officers or employees pursuant to s. 112.061,”<sup>58</sup> Article II, section 2 of the Florida Constitution has not been amended to permit the Florida Supreme Court to designate any city outside Tallahassee as a location where it may maintain its offices.<sup>59</sup>

However, in 2018, the general appropriations act authorized the funding of travel and subsistence expenses to justices residing outside Tallahassee/Leon County who elected to designate a remote “headquarters” to use as their private chambers.<sup>60</sup> This funding expires on July 1, 2019.<sup>61</sup> Prior to 2018, neither the justices of the Florida Supreme Court nor the judges for the district courts of appeal residing outside the city where their respective courts are headquartered received travel and subsistence reimbursement.<sup>62</sup>

### **Qualifying for Judicial Elections; Fees**

A person seeking to become a candidate for a judicial office must qualify with the Division of Elections of the Department of State between noon of the 120th day and noon of the 116th day before the primary election.<sup>63</sup> To qualify as a candidate, the person must file the required paperwork<sup>64</sup> and submit a check for the qualifying fee. This fee consists of a filing fee in the amount of 3 percent of the annual salary for the office sought and an election assessment in the amount of 1 percent of the annual salary for the office sought. The qualifying fees are deposited into the Elections Commission Trust Fund which are used by the Florida Elections Commission

<sup>56</sup> Op. Att’y Gen. Fla. 74-132 (1974).

<sup>57</sup> *Id.* (“Section 112.061, F.S., has been uniformly interpreted by this office as authorizing reimbursement for travel expense only from the official headquarters of the public officer or employee; and, as defined in subsection 112.061(4), the official headquarters “of an officer or employee assigned to an office shall be the city or town in which the office is located . . . .” (The provisions of paragraphs (4)(a), (b), and (c), relating to public officers or employees “located in the field” or “stationed” in another city or town, are not applicable her for obvious reasons.) The official headquarters of each district court of appeal is designated by statute, s. 35.05, F.S., and that is where the majority of the work of the court is performed.”).

<sup>58</sup> Section 35.05(2), F.S. Currently, it appears that only the Second District Court of Appeal has designated a second branch office, in Tampa on the Stetson University campus. However, the Second District’s clerk’s office is at the official headquarters in Lakeland. *See* Florida Second District Court of Appeal, <http://www.2dca.org/Directions/tampa.shtml> (last visited Jan. 31, 2019).

<sup>59</sup> FLA. CONST. art. II, s. 2.

<sup>60</sup> *See* Ch. 18-10, s. 46, Laws of Fla; *In re: Designation of Official Headquarters*, Fla. Admin. Order. No. AOSC18-37 (July 2, 2018) (administrative order issued by Florida Supreme Court designating remote headquarters), available at <https://www.floridasupremecourt.org/content/download/421872/4557988/AOSC18-37.pdf>.

<sup>61</sup> *Id.*

<sup>62</sup> SB 2506 (2015 Reg. Session) (proposing creation of s. 25.025, F.S.; died on calendar).

<sup>63</sup> Section 105.031, F.S.

<sup>64</sup> The required paperwork includes: the candidate’s oath, which states that the candidate meets the constitutional and statutory requirements for the judicial office and that he or she will support the Constitution of the United States and the Constitution of the State of Florida; a loyalty oath; forms related to the appointment of a campaign treasurer and the designation of a campaign depository, including a statement that the candidate has read and understands the Florida Code of Judicial Conduct; and a full and public disclosure of financial interests.

to investigate violations of the Election Code and campaign financing laws,<sup>65</sup> as required by the Florida Constitution.<sup>66</sup>

### **County Responsibilities for Funding Court-Related Functions**

Under Article V, s. 14 of the Florida Constitution, the state is responsible for most of the costs of the state courts system. However, the Constitution requires counties to:

[F]und the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions.

The constitutional responsibility for counties to fund court-related functions is implemented in s. 29.008, F.S., which also defines many of the key terms from the constitutional provision above.

A recent appellate court opinion relied on the definitions of "facility" and "security" in s. 29.008, F.S., as the basis for allowing the chief judge of a circuit court to order the sheriff to secure a building used by the court.<sup>67</sup> This building did not include courtrooms. The Sheriff objected to the amount of control that the chief judge exerted over the Sheriff and potential funding issues caused by the security requirements in the judge's order.

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

**Raised Jurisdictional Amounts of the County and Circuit Courts:** Effective January 1, 2020, Section 2 and Section 5 of the bill raise the maximum jurisdictional amount of the county court as follows:

- From \$15,000 to \$50,000 in all cases demanding money judgments, *except* insurance cases relating to coverage for damages and losses.
- From \$15,000 to \$25,000 in insurance cases demanding money judgements relating to coverage for damages and losses.

Section 5 also requires that the jurisdictional amount be adjusted for inflation or deflation based on the Consumer Price Index every 10 years after January 1, 2020, rounded to the nearest \$5,000. The bill also directs the Office of State Court Administrator (OSCA) to make recommendations regarding the need for additional adjustments by March 1, 2021. OSCA must

<sup>65</sup> Sections 106.24(6) and 106.25(1), F.S.

<sup>66</sup> FLA. CONST. art. II, ss. 8(f), ("There shall be an independent commission to conduct investigations and made public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission."); (i)(3) ("The independent commission provided for in subsection (f) shall mean the Florida Commission on Ethics.").

<sup>67</sup> *Knight v. Chief Judge of Florida's Twelfth Judicial Circuit*, 235 So. 3d 996 (Fla. 2d DCA 2017) (denying the sheriff's writ for petition of certiorari for failure to meet the burden of showing the chief judge had exceeded his authority by issuing an administrative order directing the sheriff to provide security in portions of the court facilities where no court proceedings are held).

also report the fiscal impact to the state caused by the increased county court jurisdiction and how the increase in the county court jurisdiction impacted the court system.

Because the circuit courts have exclusive jurisdiction over “all actions at law not cognizable by the county courts,” the bill also effectively raises the jurisdictional amount of the circuit courts to cases demanding money judgments over \$50,000, except in insurances cases demanding money judgments over \$25,000. However, section 1 of the bill expressly notes the change of the circuit court’s appellate jurisdiction over county court decisions based on the county court’s adjusted jurisdictional amounts.

**Mediation and Arbitration Fee:** Section 6 of the bill amends s. 44.108, F.S., to limit the \$1 filing fee levied and collected by the clerk of court in all county and civil proceedings. The bill provides that the \$1 filing fee will not be levied on appeals in cases involving \$15,000 or more from the county court to circuit court. This limitation appears to make appellate filing fees in the circuit court consistent with those of the district courts of appeal and the Florida Supreme Court, neither of which levy the \$1 fee on appellate filings.

**Headquarters of Supreme Court Justices:** Section 1 of the bill creates s. 25.025, F.S., requiring that, upon the request of any justice residing outside of Leon County, the Chief Justice of the Florida Supreme Court shall:

- Coordinate and designate a district court of appeal courthouse, a county courthouse, or other appropriate facility in the justice’s district as his or her official headquarters to serve as the justice’s private chambers; and
- Reimburse the justice for travel and subsistence while in Tallahassee on court business, to the extent funding is available.

The Supreme Court and a county courthouse may enter into an agreement to establish private chambers at the county courthouse for a justice, but the courthouse is under no obligation to provide space for the justice. Additionally, the Supreme Court may *not* use state funds to lease space in a county courthouse for use as a private chamber.

**Funding of Court-Related Functions by Counties:** Section 3 of the bill provides that the definitions of the terms used in s. 29.008, F.S., which are used to implement and define county responsibilities for funding court-related functions, do not apply in other contexts. The definitions “may not be construed to enhance, limit, or define the authority of any court.”

Counties under the Florida Constitution are required to fund the costs of security for courts. Section 4 of the bill amends s. 30.15, F.S. to require that the sheriff, county commissioners, and chief judge of the circuit court develop a comprehensive security plan. Section 4 clarifies that sheriffs are responsible for providing security for trial court facilities in accordance with the plan, but the sheriff remains in operational control over the manner in which security is provided. It also clarifies that the chief judge retains decisionmaking authority as it concerns the protection of due process rights and the conduct of trials and other court proceedings.

**Refunds of Qualifying Fees of Unopposed Judicial Candidates:** Section 7 of the bill provides that the qualifying fees of unopposed candidates for judicial office must be refunded to them

within 20 days after the close of the qualifying period for the election. This section takes effect upon becoming a law.

**Effective Date:** Section 8 provides that it is effective upon becoming a law, and, unless stated otherwise, all other sections are effective October 1, 2019. Section 2 provides that the jurisdictional amounts will be raised effective January 1, 2020, and Section 5 notes this date. Section 7 provides that the refund of unopposed judicial candidate filing fees will be effective upon becoming a law.

#### IV. **Constitutional Issues:**

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. State Tax or Fee Increases:

None.

##### E. Other Constitutional Issues:

#### **Headquarters of the Florida Supreme Court Justices**

It does not appear that the Legislature can require the Chief Justice of the Florida Supreme Court to establish “headquarters” under s. 112.061, F.S., for any justice outside of Tallahassee, even if it is within the justice’s district.

Article II, s. 2 of the Florida Constitution designates Tallahassee as the seat of state government “where the *offices* of the governor, lieutenant governor, cabinet members and *the supreme court shall be maintained* and the sessions of the legislature shall be held[.]”<sup>68</sup> Under the rule of construction, “*expressio unius est exclusio alterius*” (the expression of one thing is the exclusion of the other), it appears by excluding the word “offices” for the legislature and only requiring that session be held in Tallahassee, the drafters of Art. II, s. 2 understood that legislators must have offices within their districts around the state. However, the word “offices” is specifically used in reference to the governor, lieutenant governor, cabinet members, and the Florida Supreme Court in Article II, s. 2, and specifically requires that those offices be located at the seat of government in Tallahassee.

<sup>68</sup> FLA. CONST. art. II, s. 2 (emphasis added).

While permitting a justice to work remotely or establish a private chamber in another courthouse in the state does not appear to be problematic, it appears that designating another “headquarters” outside of Tallahassee for purposes of reimbursing the justices for travel and subsistence may be constitutionally problematic.

### **Refund of Unopposed Judicial Candidate Qualifying Fees**

The refund of qualifying fees to judicial candidates running unopposed may be constitutionally problematic if it effectively defunds the Florida Ethics Commission.<sup>69</sup> The Florida Ethics Commission is the commission constitutionally required to investigate public reports of ethical violations and breaches of the public trust,<sup>70</sup> and it is funded largely by qualifying fees.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

The bill will likely result in an increase in the jurisdictional limit of the Small Claims Courts, which will permit more cases to be expeditiously resolved in the county courts under the simplified Small Claims Rules. Based on a similar proposed bill last session, the Florida Supreme Court formed the Work Group on County Court Jurisdiction and directed the Work Group to study and make recommendations on, among other issues, how the Small Claims jurisdictional amount should be adjusted.<sup>71</sup> The Work Group recommended that the jurisdiction of the Small Claims Court be raised from \$5,000 to \$8,000, assuming the jurisdiction of the county court was raised to \$25,000.<sup>72</sup>

The Florida Supreme Court supports the Work Group’s recommendation.<sup>73</sup>

<sup>69</sup> See, V. Fiscal Impact Statement, C. Government Sector Impact, *Elections Commission Trust Fund*, *infra*.

<sup>70</sup> FLA. CONST. art. II, s. 2

<sup>71</sup> *In re: Work Group on County Court Jurisdiction*, Fla. Admin. Order No. AOSC18-39 (Aug. 1, 2018), available at <https://www.floridasupremecourt.org/content/download/421915/4558246/AOSC18-39.pdf>. See also *In re: Certification of Need for Additional Judges*, 44 Fla. L. Weekly S53 (Fla. Dec. 28, 2018) (noting Legislature’s interest in increasing county court jurisdiction may be a factor in determining the need for additional judges)(citing AOSC18-39). , 44 Fla. L. Weekly S53 (Fla. Dec. 28, 2018).

<sup>72</sup> Florida Supreme Court, *Recommendations from the Judicial Management Council’s Work Group on County Court Jurisdictions*, pp. 4-6, 18-21 (Interim Report)(Nov. 30, 2019) (updated to reflect Supreme Court actions in December 2018)(on file with the Senate Judiciary Committee).

<sup>73</sup> *Id.*

## C. Government Sector Impact:

### **County and Circuit Court Jurisdictional Adjustments**

Based on proposed legislation in 2018,<sup>74</sup> the Florida Supreme Court created the Work Group on County Court Jurisdiction to evaluate the impact of raising the jurisdictional amount of the county courts.<sup>75</sup> The full impacts could not be determined but the Work Group noted that the distribution of filing fees could result in a loss of funding for the judiciary, while positively impacting the clerk's offices.<sup>76</sup>

The Office of the State Court Administrator (OSCA) reports that, if the jurisdictional limits for the county court are raised but the filing fees are not adjusted, the clerks of courts will receive an approximate increase of \$1,080,665, but losses will be sustained by the State Courts Revenue Trust Fund (-\$2,179,510), DFS Administrative Trust Fund (-\$60,085), and General Revenue (-\$82,250). To eliminate this fiscal impact, OSCA proposes that filing fees for cases between \$15,000 and \$50,000 remain the same. In other words, although the cases will be filed in county court if the bill becomes law, the statute currently governing circuit civil filing fees and their distribution should still govern cases demanding money amounts between \$15,000 and \$50,000. OSCA also proposes that the appellate filing fees collected by the district courts of appeals remain the same for appeals from these cases, notwithstanding that these appeals will now be heard by the circuit courts.<sup>77</sup>

### **Travel and Subsistence Costs**

OSCA reports that \$209,930 was appropriated to support travel and subsistence for those justices residing outside of Tallahassee as part of the 2018 General Appropriates Act. However, OSCA reports the fiscal impact of enacting a permanent authorization for travel and subsistence costs to justices for traveling to Tallahassee cannot be determined given the adjustments associated with raising the jurisdictional amount of the county courts.

The precedent of permitting the Florida Supreme Court justices to live outside the seat of government in Tallahassee and receive travel and subsistence costs when traveling to Tallahassee may encourage requests of such funding from other officials residing outside of but traveling to Tallahassee for commission meetings. Additionally, district court of appeal judges authorized to reside outside the location of the primary district court headquarters do not currently receive travel and subsistence expenses and may also seek such funding.

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<sup>74</sup> See SB 1384, SB 1396.

<sup>75</sup> See n. 71, *supra*.

<sup>76</sup> See n. 72, *supra*.

<sup>77</sup> Office of the State Courts Administrator, *Senate Bill 328 Judicial Impact Statement* (Jan. 31. 2019)(on filed with the Senate Judiciary Committee). See also "Filing Fees" discussion and citations, *supra*.

### **Elections Commission Trust Fund**

The operations of the Florida Elections Commission are funded by the Elections Commission Trust Fund, which is funded by qualifying fees (see sections 99.092, 99.093, and 105.031, F.S.) The commission's revenue streams mirror the election cycle; in off years, revenue is relatively low, but the overall trust fund balance is maintained by the increased revenue generated during election years. The agency is self-sustaining—the trust fund covers the commission's approximately \$1.5 million appropriation (15 FTEs) each fiscal year and the commission deposits fines into the General Revenue Fund.

According to the Florida Elections Commission, in 2018, 170 circuit and 89 county judicial candidates ran unopposed. The filing fee for circuit judges was \$5,843.20 and for county judges was \$5,520.80. The Commission notes that had this bill been enacted in 2018, the resulting loss in revenue, less the 8% General Revenue surcharge, would have been \$1,365,919. The Commission notes that if there are similar proportions of unopposed judicial elections in the future, the refunds of qualifying fees required by the bill will make the funds in the Elections Commission Trust Fund insufficient for the Elections Commission to conduct its work.<sup>78</sup>

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 26.012, 29.008, 30.15, 34.01, 44.108, and 105.031.

The bill creates section 25.025, Florida Statutes.

#### **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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<sup>78</sup> Email from Timothy Vaccaro, Executive Director, Florida Elections Commission on January 30, 2019.