

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS  
FINAL BILL ANALYSIS**

**BILL #:** HB 5011 PCB APC 19-06 Courts  
**SPONSOR(S):** Appropriations Committee, Renner and others  
**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee	20 Y, 4 N	Gusky	Pridgeon
<b>FINAL HOUSE FLOOR ACTION:</b> 108 Y's 2 N's			
<b>GOVERNOR'S ACTION:</b> Approved			

**SUMMARY ANALYSIS**

HB 5011 passed the House on April 4, 2019. The bill was amended in the Senate on May 2, 2019, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on May 2, 2019. Part of the bill also passed the House and Senate in SB 2502 on May 4, 2019.

The Supreme Court issued Order No. SC18-1970, dated December 28, 2018, certifying the need for four new circuit judges (one each in the First and Fourteenth judicial circuits and two in the Ninth Judicial Circuit), four new county court judges (all four in Hillsborough County), and the decertification of three existing county court judgeships (one in Pasco County and two in Brevard County).

Article V of the Florida Constitution states the Legislature may reject the recommendation or accept the recommendation in whole or in part, decreasing or increasing the number of judges by more or less than the judicial recommendation upon a two thirds finding of need by both chambers of the legislature.

HB 5011 increases the number of circuit court judges, adding one circuit court judge in the Ninth Judicial Circuit (Orange and Osceola counties) and one circuit court judge in the Twelfth Judicial Circuit (Manatee, DeSoto and Sarasota counties). The bill also establishes two new county court judges, one in Citrus County and one in Flagler County.

The bill also allows a Supreme Court justice to maintain a headquarters outside Leon County and receive subsistence and reimbursement for travel expenses. Specifically, upon the request of any justice residing outside Leon County, the Chief Justice of the Florida Supreme Court:

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

The Supreme Court and a county may agree to establish private chambers at a county courthouse for a justice, but the county is not obligated to provide space. The Supreme Court may not use state funds to lease space in a district court of appeal courthouse, county courthouse, or other facility for a justice's private chambers.

The General Appropriations Act for Fiscal Year 2019-2020 includes 10 full-time equivalent (FTE) positions and \$1,439,940 of general revenue funds to establish the additional circuit and county judgeships. See Fiscal Impact.

The bill was approved by the Governor on June 7, 2019 as ch. 2019-95, L.O.F., and will become effective July 1, 2019.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h5011z1.APC.DOCX

**DATE:** 7/1/2019

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### 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>1</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 in the Florida Supreme Court building,<sup>2</sup> and all official Supreme Court business is conducted in Tallahassee.<sup>3</sup>

#### Headquarters for Purposes of Travel Reimbursement

Section 112.061, F.S., governs the reimbursement of per diem and travel expenses to public employees and officers. Section 112.061(4), F.S., provides that “[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,” with the following exceptions:

- The official headquarters of a person located in the field is 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 designated by the agency head provided that the designation is in the best interests of the agency and not for the convenience of the employee.
- When any state employee is stationed in a city or town for a period of over 30 continuous workdays, that city or town is the employee’s official headquarters, and he or she is not allowed per diem or subsistence, after the 30 continuous workdays have elapsed, unless that time period is extended by the agency head or his or her designee.
- An employee may leave his or her assigned post to return home overnight, over a weekend, or during a holiday, but time lost from work must be taken as annual leave. The employee cannot be reimbursed for travel expenses other than per diem allowable had he or she remained at the temporary post. However, when an employee is temporarily assigned away from his or her official headquarters for more than 30 days, he or she can receive reimbursement for travel expenses for one round trip for each 30-day period actually taken to his or her home.<sup>4</sup>

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<sup>1</sup> FLA. CONST. art. II, s. 2.

<sup>2</sup> Florida Supreme Court, Manual of Internal Operating Procedures, *Section 1. Court Structure*, p. 1 (Rev. Sept. 21, 2016), [https://www.floridasupremecourt.org/pub\\_info/documents/IOPs.pdf](https://www.floridasupremecourt.org/pub_info/documents/IOPs.pdf) (last visited May 6, 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>, (last visited May 6, 2019).

<sup>3</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.”).

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

Additionally, s. 112.061(1)(b)1., F.S., establishes a legislative policy that exceptions to the restrictions on reimbursements of travel and subsistence expenses should be standardized and exceptions or exemptions must explicitly reference s. 112.061, F.S.

The provisions of s. 112.061, F.S., also apply to the court system. Each district court of appeal – the headquarters for which is defined by the Legislature, not the Constitution<sup>5</sup> – is authorized 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>6</sup>

In 2018, HB 5003, the Implementing Bill for the Fiscal Year 2018-2019 General Appropriations Act, authorized the payment of travel and subsistence expenses for Supreme Court justices residing outside Leon County who elected to designate a remote “headquarters” to use as their private chambers to the extent appropriated funds are available. In the Fiscal Year 2018-2019 General Appropriations Act, \$209,930 of recurring general revenue funds were specifically provided to the Supreme Court to cover these reimbursements.

### **Certification of Need for Additional Judges**

Article V, Section 9 of the State Constitution states:

“Determination of number of judges.—The supreme court shall establish by rule uniform criteria for the determination of the need for additional judges except supreme court justices, the necessity for decreasing the number of judges and for increasing, decreasing or redefining appellate districts and judicial circuits. If the supreme court finds that a need exists for increasing or decreasing the number of judges or increasing, decreasing or redefining appellate districts and judicial circuits, it shall, prior to the next regular session of the legislature, certify to the legislature its findings and recommendations concerning such need. Upon receipt of such certificate, the legislature, at the next regular session, shall consider the findings and recommendations and may reject the recommendations or by law implement the recommendations in whole or in part; provided the legislature may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses of the legislature, that such a need exists.”

To determine a need for trial court judgeships, the Office of State Courts Administrator (OSCA) relies on an analysis of weighted caseload filings per judge. In 1999, at the request of the Florida Legislature, OSCA contracted with the National Center for State Courts (NCSC) to develop and validate a Delphi-based Weighted Caseload System.<sup>7</sup>

The weighted caseload system assigns a time value to cases by their case type, based on the various kinds and complexity of the cases that are filed. The case type time value, or case weight, establishes an approximate workload value per case filing by case type, which is used to determine the number of judges required to handle these cases. The weighted caseload system is revised periodically to account for changes in procedure and case complexity. The system was updated by OSCA and NCSC in 2007 and most recently in 2016.

The Supreme Court issued Order No. SC18-1970, dated December 28, 2018, in regard to the

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<sup>5</sup> Section 35.05(1), F.S. (designating the city in which the headquarters for each appellate district must be located).

<sup>6</sup> Section 35.05(2), F.S.

<sup>7</sup> National Center for State Courts, *Florida Judicial Workload Assessment Final Report*, Office of the State Courts Administrator (May 16, 2016), <http://www.flcourts.org/core/fileparse.php/558/urlt/Final-Florida-Judicial-Workload-Assessment-Final-report.pdf>.

Certification of Need for Additional Judges.<sup>8</sup> In the certification, the court recommended four new circuit judges (one each in the First and Fourteenth judicial circuits and two in the Ninth Judicial Circuit), four new county court judges (all four in Hillsborough County), and the decertification of three existing county court judgeships (one in Pasco County and two in Brevard County).

Article V, Section 11 of the State Constitution requires the Governor to fill judicial office vacancies by appointment from a list of candidates nominated by a judicial nominating commission<sup>9</sup>, for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment.

There have been no additional circuit or county judges authorized by the Legislature since 2006.<sup>10</sup>

### **Effect of the Bill**

HB 5011 increases the number of circuit court judges, adding one circuit court judge in the Ninth Judicial Circuit (Orange and Osceola counties) and one circuit court judge in the Twelfth Judicial Circuit (Manatee, DeSoto and Sarasota counties). The bill also establishes two new county court judges, one in Citrus County and one in Flagler County.

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The bill is effective July 1, 2019.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

In 2018, HB 5003, the Implementing Bill for the Fiscal Year 2018-2019 General Appropriations Act, authorized the payment of travel and subsistence expenses for Supreme Court justices residing

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<sup>8</sup> *Certification of Need for Additional Judges*, SC18-1970 (Fla. SC 2018)

<sup>9</sup> Article V, Section 20, Subsection (5) of the State Constitution states that each judicial nominating commission shall be composed of nine members: three members appointed by the Board of Governors of The Florida Bar from among The Florida Bar members who are actively engaged in the practice of law with offices within the territorial jurisdiction of the affected court, district or circuit; three electors who reside in the territorial jurisdiction of the court or circuit appointed by the governor; and three electors who reside in the territorial jurisdiction of the court or circuit that are not members of the bar of Florida, selected and appointed by a majority vote of the other six members of the commission.

<sup>10</sup> Ch. 2006-166, Laws of Florida.

outside Leon County who elected to designate a remote “headquarters” to use as their private chambers, to the extent appropriated funds are available. In the Fiscal Year 2018-2019 General Appropriations Act, \$209,930 of recurring general revenue funds were specifically provided to the Supreme Court to cover these reimbursements.

The General Appropriations Act for Fiscal Year 2019-2020 (SB 2500) includes 10 full-time equivalent (FTE) positions and \$1,439,940 of general revenue funds to establish the additional circuit and county judgeships (two circuit court judges, each with a judicial assistant and a law clerk; and two county court judges, each with a judicial assistant).

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The cost of county judges, circuit judges, judicial assistants and law clerks are paid for by the state. Under s. 29.008, F.S., counties are responsible for facilities, security, communications and information technology costs for county courts. For counties receiving additional judges and associated staff, this bill could result in additional costs in these areas.

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

None.

**D. FISCAL COMMENTS:**

None.