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**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 205
RELATING TO: District Courts of Appeal
SPONSOR(S): Representative(s) Sorensen

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT YEAS 9 NAYS 1
 - (2) STATE ADMINISTRATION YEAS 4 NAYS 1
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 9 NAYS 1
 - (4)
 - (5)
-

I. SUMMARY:

The Florida Constitution provides for district courts of appeal. The district courts of appeal have jurisdiction to hear all appeals that are not directly appealable to the Supreme Court or to circuit courts. In most cases, the district courts of appeal are the courts of last review. General law divides the state into five appellate districts. At the trial court level, the state is divided into twenty judicial circuits, each of which is assigned to a single appellate district.

This bill requires that each district court of appeal consist of at least one judge from each judicial circuit within the district. The bill requires that when a district court of appeal judge retires, is removed from office, or is not reelected, that judge shall be replaced by a judge from a circuit that is not currently represented on the court if a district court of appeal does not have a judge from each circuit within the district. This requirement also applies if the Legislature creates additional judgeships on any of the district courts of appeal. If more than one circuit is not represented on the court, the replacement judge must be selected from the circuit with the lowest number. This bill does not require the removal of any current appellate court judge.

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

The bill takes effect upon becoming law.

There are some concerns regarding this bill. Please see "Constitutional Issues" and "Other Comments" section of this analysis for further details.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- 1. Less Government Yes No N/A
- 2. Lower Taxes Yes No N/A
- 3. Individual Freedom Yes No N/A
- 4. Personal Responsibility Yes No N/A
- 5. Family Empowerment Yes No N/A

For any principle that received a “no” above, please explain:

This bill creates a new requirement for the judicial nominating commissions and the Governor to consider when making nominations and appointments to the district courts of appeal.

B. PRESENT SITUATION:

Article V, s. 4, Fla. Const., creates the district courts of appeal in Florida. The district courts of appeal have jurisdiction to hear all appeals that are not directly appealable to the Supreme Court or to circuit courts. See Art. V, s. 4 (a), Fla. Const. The jurisdiction of the Supreme Court is limited so that the district courts of appeal are the courts of last review in most cases. See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980)(discussing the development of Article V of the Constitution and how it limited the jurisdiction of the Supreme Court to certain classes of cases and intended that the district courts of appeal be courts of final review). In general, each district court of appeal hears appeals from cases that arise from the circuit court in its appellate district.¹

Article V, s. 1, Fla. Const., requires the Legislature to divide the state into appellate districts following county lines. Article V, s. 4(a), Fla. Const., creates a district court of appeal for each appellate district. Section 35.01, F.S., creates five appellate districts in Florida. Sections 35.02-.043, F.S., place each of the twenty judicial circuits into an appellate district. Section 35.06, F.S., sets the number of judges on each district court of appeal. The geographical jurisdiction of each court and the number of judges are shown below.

Appellate District	Circuits Within the Appellate District	Number of Judges on the District Court of Appeal
1 st District	1 st , 2 nd , 3 rd , 4 th , 8 th , and 14 th Judicial Circuits	15
2 nd District	6 th , 10 th , 12 th , 13 th , and 20 th Judicial Circuits	14
3 rd District	11 th and 16 th Judicial Circuits	11
4 th District	15 th , 17 th , and 19 th Judicial Circuits	12
5 th District	5 th , 7 th , 9 th , and 18 th Judicial Circuits	10

¹ Article V, section 2, Fla. Const., gives the Legislature to power to set the court to review of administrative actions by general law.

Article V, s. 8, Fla. Const., sets eligibility requirements for judges on the district courts of appeal, as follows:

No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court... No person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless that person is, and has been for the preceding ten years, a member of the bar of Florida.

The Florida Constitution sets a more specific residency requirement for the justices of the Supreme Court:

Of the seven justices, each appellate district shall have at least one justice elected or appointed from the district to the supreme court who is a resident of the district at the time of the original appointment or election.

Art. V, s. 3(a), Fla. Const.

There is no requirement that judges on the district court of appeal reside in a certain judicial circuit within each appellate district. The residence of current district court judges when they were appointed to the bench is shown below.²

Court	Judicial Circuit	Number of Judges from the Judicial Circuit
First District Court of Appeal	1 st Circuit	2
	2 nd Circuit	10
	3 rd Circuit	1
	4 th Circuit	2
	8 th Circuit	0
	14 th Circuit	0
Second District Court of Appeal	6 th Circuit	2
	10 th Circuit	4
	12 th Circuit	2
	13 th Circuit	5
	20 th Circuit	1
Third District Court of Appeal	11 th Circuit	11
	16 th Circuit	0
Fourth District Court of Appeal	15 th Circuit	5
	17 th Circuit	7
	19 th Circuit	0
Fifth District Court of Appeal	5 th Circuit	2
	7 th Circuit	4
	9 th Circuit	2
	18 th Circuit	2

² Statistics provided by the Office of State Courts Administrator.

C. EFFECT OF PROPOSED CHANGES:

This bill requires that each district court of appeal consist of at least one judge from each judicial circuit within the district. When a district court of appeal judge retires, is removed from office, or is not reelected, that judge shall be replaced by a judge from a circuit that is not currently represented on the court if a district court of appeal does not have a judge from each circuit within the district. This requirement also applies if the Legislature creates additional judgeships on any of the district courts of appeal. If more than one circuit is not represented on the court, the replacement judge must be selected from the circuit with the lowest number.

For example, the First District currently has no judges from the 8th Circuit and no judges from the 14th Circuit. When a judge from the First District leaves office, that judge must be replaced by a judge from the 8th Circuit.³ However, since the Fifth District has more than one judge from each judicial circuit in its appellate district, when a judge leaves that court, the replacement can be from any circuit within the district.

The current members of the court are not affected by the bill so personnel changes are not necessary in district courts where all circuits are not currently represented, e.g. the First District, the Third District, and the Fourth District.

This bill requests that the Supreme Court and the judicial nominating commissions adopt uniform rules of procedure to implement the changes.

This bill will become effective upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

³ Since the 3rd Judicial Circuit only has 1 judge sitting on the First District Court of Appeal, if that judge leaves office, the replacement judge could come from that circuit as well.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

It can be argued that this bill imposes an additional eligibility requirement on appellate court judges that is not found in the Florida Constitution. This bill requires that each district court of appeal have at least one judge from each judicial circuit within an appellate district. The Florida Constitution requires that an appellate judge be an elector of the state, reside in the territorial jurisdiction of the court, and have been a member of the Florida Bar for the preceding ten years. If a court were to hold that placing a judge from each judicial circuit imposes an additional requirement for being an appellate judge, it may find the statute violates the Florida Constitution. In State ex rel. Askew v. Thomas, 293 So. 2d 40, 42 (Fla. 1974), the Florida Supreme Court explained:

We have consistently held that statutes imposing additional qualifications for office are unconstitutional where the basic document of the constitution itself has already undertaken to set forth those requirements.

In State v. Grassi, 532 So. 2d 1055 (Fla. 1988), the Florida Supreme Court held that a statute which required candidates for county commission to be a resident of the district from which he qualifies was unconstitutional. The court explained that the constitution only required that the candidate be a resident of the district at the time of election and not at the time of qualification. Grassi, 532 So. 2d at 1056. Accordingly, the court held the statute, which required residency at the time the candidate qualified, imposed an additional requirement and thus violated the state constitution.

Most recently, in Miller v. Mendez, No. SC00-2096 (Fla. December 20, 2001), the court held that a statutory requirement that a candidate for judicial office taking an oath swearing or affirming that the candidate is a resident of the judicial circuit when the candidate qualifies for office imposed an

additional requirement not found in the constitution and that judicial candidates need only meet the residency requirement before assuming office. In a concurring opinion, four of the justices indicated that the Legislature could “define” the residency requirement. It could be argued that this bill simply “defines” the residency requirement and does not impose an additional requirement.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

This bill’s requirement that each “district court of appeal shall consist of at least one judge from each judicial circuit within the district” can arguably require that a judge maintain residence in a different judicial circuit from that which the district court is located. If the language is interpreted in the above manner, it would require one judge on the First District Court of Appeal to live in the First Judicial Circuit, perhaps as far away as Pensacola, even though the court is located in Tallahassee.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

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