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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-388, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
FINAL ANALYSIS**

BILL #: HB 45-E
RELATING TO: Circuit Judges/Numbers Increased
SPONSOR(S): Representative Goodlette
TIED BILL(S): none

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

- (1) JUDICIAL OVERSIGHT
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This act creates 18 new circuit court judges in the state courts system. Half of the judges filling the new offices created by this act are to be locally elected and take office for a term beginning on January 7, 2003; and the other half of the judges filling the new offices created by this act are to be appointed by the Governor and take office for a term beginning on May 1, 2003.

This bill adds 39 FTE's and requires an appropriation for FY 2002-03 in the amount of \$1,713,145, and recurring appropriations thereafter of \$2,574,117 annually. This fiscal impact on local governments is indeterminate.

On May 3, 2002, SB 32-E, 1st Engrossed, was substituted for HB 45-E, which was laid on the table. SB 32-E, 1st Engrossed, became law on May 24, 2002, as Chapter 2002-388, Laws of Florida (the "act"). The effective date of the act is July 1, 2002. This analysis, with certain exceptions, is of Chapter 2002-388, Laws of Florida. The exceptions are those sections that address the House bill, which are clearly identified.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

This bill increases the number of judges, which, together with support staff, increases the number of state employees.

B. PRESENT SITUATION:

Article V, s. 9, Fla.Const., provides:

SECTION 9. 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. A decrease in the number of judges shall be effective only after the expiration of a term. If the supreme court fails to make findings as provided above when need exists, the legislature may by concurrent resolution request the court to certify its findings and recommendations and upon the failure of the court to certify its findings for nine consecutive months, the legislature may, upon a finding of two-thirds of the membership of both houses of the legislature that a need exists, increase or decrease the number of judges or increase, decrease or redefine appellate districts and judicial circuits.

This provision vests the Supreme Court of Florida with the responsibility for determining the need for increasing or decreasing the number of judges in state courts other than the Supreme Court. The Constitution also provides that 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, that such a need exists." This language has been interpreted by the Supreme Court to mean that the judicial certification order established the outer limits of what the Legislature may

approve in the absence of a two-thirds majority.¹ In other words, the Legislature, by a simple majority vote, may approve fewer than the number of judges recommended by the court. The two-thirds requirement would only apply if the Legislature wished to create judgeships in addition to those recommended by the court.

The State Courts System consists of 858 total justices and judges, as follows:

Supreme Court justices	7
District Courts of Appeal judges	62
Circuit court judges	509
County court judges	280

The Supreme Court entered a Certification Order on January 3, 2002. The order certified the need for a total of 49 new judges: 2 district court of appeal judges, 34 circuit judges, and 13 county judges.²

In 1999 and prior years, the Supreme Court used unweighted case filings per circuit judge as a guide in determining the need for additional judges.³ In 1997, the Legislature directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review the efficiency of the method used by the Supreme Court to certify the need for additional judges. In March 1998, OPPAGA issued its report noting that the process used by the Supreme Court to establish the need for additional judges might not accurately identify where and when judges are needed. The report recommended that the Supreme Court adopt a weighted caseload system for assessing judicial workload and certifying the need for additional judges.⁴

Chapter 98-422, L.O.F., appropriated \$75,000 to the judicial branch to contract for the development of a Delphi-based⁵ caseload weighting system to determine optimal caseloads for circuit and county judges; and, in conjunction with other factors, to determine the need for additional circuit and county court judges. The judicial branch was instructed to consult with OPPAGA on defining the scope of the work, selection of a consultant, and choosing a methodology for developing case weights and determining available judge time. The Supreme Court established the Delphi Policy Committee (DPC) to direct the study. The Committee consisted of 41 circuit and county judges. The Office of State Courts Administrator contracted with the National Center for State Courts to develop and validate a Delphi-based weighted caseload system.⁶ The DPC worked with chief judges, trial court judges, and OPPAGA⁷.

The Delphi system assigns weights in minutes to different case types based on an assessment of the average amount of judicial time required for each type of case. Judicial time that must be spent on each case differs depending on case type and often increases as the law becomes more complex. An accurate measure of judicial workload must include an assessment of judge time required in individual cases and must differentiate between types of cases. The DPC estimated

¹ *In re Advisory Opinion to the Governor*, 374 So. 2nd 959 (Fla. 1979).

² *In re: Certification of Need for Additional Judges (Corrected Opinion)*, Case No. SC01-2703 (Fla., January 3, 2002).

³ See Fla.R.Jud.Admin. 2.035; *In re Certification of the Need for Additional Judges*, No. 94,890 at 6 (Fla. Feb. 18, 1999).

⁴ OPPAGA Report No. 97-67, Information Brief on Weighted Caseload Methods of Assessing Judicial Workload and Certifying the Need for Additional Judges.

⁵ The Delphi process is defined as weighing caseloads by “[identifying] a selected group representative of all judges and possibly administrators that will estimate the time required for different case types through an interactive process than moves the estimates toward a ‘norm’ or ‘consensus’ time that should closely track measured time.” Designing a Judgeship Needs Process for Florida, Gryphon Consulting Services, LLC, February 1998.

⁶ The study, entitled Florida Delphi-based Weighted Caseload Project Final Report, was completed in January 2000.

⁷ Over 200 judges participated in the process.

case times, recoded a sample of actual case times, and reconciled the differences between estimated and recorded times to establish reasonable case weights. Reasonable case weights were adopted and used to determine optimum caseload.

The Supreme Court generally agreed with the findings of the DPC and in 2000 used the recommended reasonable caseload standards as the primary basis for the certification of need for additional judges, with the exception of the weight for the circuit case categories of drugs and dissolution, and the county case categories of evictions and civil traffic⁸. OPPAGA reviewed the new certification system used by the Supreme Court and concluded that it provides an improvement over previous certification practices and will generate more accurate estimates of the number of judge needed.⁹ The Supreme Court has used the Delphi method in certifying the need for additional judges every year since its development.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 26.031, F.S., to create 18 new circuit court judge positions, half appointed and half elected. The new circuit judges to be elected will take office for a term beginning on January 7, 2003; and the new circuit judges to be appointed will take office for a term beginning on May 1, 2003. The circuits, and the method of filling the office, are as follows:

<u>Judicial Circuit</u>	<u>Increase</u>
Fifth	2 appointed
Sixth	1 elected
Seventh	1 elected
Eighth	1 elected
Ninth	1 appointed, 1 elected
Tenth	1 appointed, 1 elected
Eleventh	2 appointed
Twelfth	1 elected
Thirteenth	1 elected
Fifteenth	1 elected
Seventeenth	1 appointed, 1 elected
Eighteenth	1 appointed
Twentieth	1 appointed

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁸ *In re: Certification of the Need for Additional Judges*, 755 So. 2d 79, 81 (Fla. 2000). The court's modifications of the weights resulted in the certification of the need for fewer judges.

⁹ OPPAGA Report No. 99-38, Courts Improve Caseload System; Need to Address Supplemental Resources.

2. Expenditures:

Non-recurring:		<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>
General Revenue	Expenses	\$119,379		
	OCO	94,500		
	Total	<u>\$213,879</u>		
Recurring:				
General Revenue	39 FTEs	\$1,202,260	\$2,277,111	\$2,277,111
	Expenses	267,306	267,306	267,306
	FL Cases	29,700	29,700	29,700
	Total	<u>\$1,499,266</u>	<u>\$2,574,117</u>	<u>\$2,574,117</u>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The fiscal impact on counties is indeterminate.

Although the salaries and benefits of the 39 positions created by this bill are paid by the state, counties may incur increased expenditures as a result of the increase in the number of judges. Section 29.007(3), F.S., requires counties to pay for "the cost of construction or lease, maintenance, utilities, and security of facilities for the circuit courts and county courts" Increasing the number of county and circuit court judges may result in additional required office and courtroom space that counties must construct and maintain.

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

When creating a new judicial position, the legislature may choose whether the position is to be initially filled by election or by appointment. *Hoy v. Firestone*, 453 So.2d 814 (Fla. 1984) (approving an act creating both appointed and elected positions).

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The floor amendments to SB 32-E maintained the same number of judges in each of the circuits, the amendments changing which positions were to be filled by appointment or by election.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

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