HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 111 w/CS Magistrates and Masters
SPONSOR(S): Mahon, Brutus, and others
TIED BILLS: none **IDEN./SIM. BILLS:** CS/CS/SB 192

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	15 Y, 0 N w/CS	Birtman	Havlicak
2) Judicial Appropriations Subcommittee	5 Y, 0 N	Davis	DeBeaugrine
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

The 1972 amendments to Article V of the State Constitution eliminated specialty courts, and redesignated the title and transferred judicial authority from magistrates to trial court judges. HB 111 reflects this change by substituting obsolete references to the term “magistrate” with the term “trial court judge.” The bill also redesignates the outmoded title of “master“ to “magistrate” in reference to officers appointed by the court to conduct judicial or administrative proceedings. The bill clarifies that county and circuit courts are trial courts.

This bill does not appear to have a fiscal impact on the state courts budget.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[X]
2. Lower taxes?	Yes[]	No[]	N/A[X]
3. Expand individual freedom?	Yes[]	No[]	N/A[X]
4. Increase personal responsibility?	Yes[]	No[]	N/A[X]
5. Empower families?	Yes[]	No[]	N/A[X]

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

B. EFFECT OF PROPOSED CHANGES:

JURISDICTION

Circuit courts have jurisdiction pursuant to Article V of the State Constitution and as enumerated in statute.[1] Similarly, county courts have jurisdiction pursuant to Article V of the State Constitution and as enumerated in statute.[2] This bill clarifies that both circuit and county courts are trial courts.

MAGISTRATES

The magistrate is generally regarded as a judicial officer with strictly limited jurisdiction and authority.[3] The United States adopted through common and statutory law the magistrate system which originated in the old English court system.

No formal Florida state magistrate system exists. Prior to 1972, depending on the county, the magistrate system was synonymous with small claims court, county court, justice of the peace court, court of record, or a civil court of record. There was, however, no uniformity in the existence of magistrate courts and the use of magistrates. The 1972 amendments to Article V of the Florida Constitution consolidated the various trial courts into Florida's two-tier trial court system consisting of county and circuit courts. The county courts and its judicial officers assumed the powers previously conferred on those courts including the small claims magistrate courts and magistrates' courts.[4] Although concurrent statutory changes were made then to harmonize the statutory provisions with the 1972 constitutional amendments, a number of statutory provisions still retain obsolete references to the

[1] *See* s. 26.012, F.S. Circuit courts generally have jurisdiction of appeals from county courts (with stated exceptions); and exclusive, original jurisdiction in all actions at law not cognizable by the county courts; of proceedings relating to the settlement of estates, granting of letters testamentary, guardianship, involuntary hospitalization, determination of incompetency, and other jurisdiction usually pertaining to probate; in all cases in equity including cases relating to juveniles (except traffic offenses); of all felonies and misdemeanors arising out of the same circumstances as a felony which is also charged; in all cases involving legality of any tax assessment; actions of ejectment; and in all actions involving the title and boundaries of real property.

[2] See s. 34.01, F.S. County courts generally have original jurisdiction in all misdemeanor cases not cognizable by the circuit courts; of all violations of municipal and county ordinances; of all actions at law in which the matter in controversy does not exceed the sum of $15,000; jurisdiction previously exercised by county judges' courts; simplified dissolution of marriage proceedings; jurisdiction previously exercised by county courts, claims court, small claims courts, small claims magistrates courts, magistrates courts, justice of the peace courts, municipal courts, and courts of chartered counties. County courts also have concurrent jurisdiction with circuit courts to consider landlord and tenant cases involving claims within its jurisdictional limitations. See s. 34.011, F.S.

[3] *See* Black's Law Dictionary, 7th ed., August 1999.

[4] *See* In re Transition Rules 2,3,4,5 and 6, 269 So.2d 665 (Fla. 1972); s. 34.01(2), F.S.

"committing magistrate" or "magistrate." In practice, either a county or circuit court judge can act as a committing magistrate.[5]

This bill conforms current law with the organizational structure contained in the 1972 amendments to Article V by substituting the term "magistrate" with the term "trial court judge" wherever it appears in the statutes.

MASTERS

In response to the increasing demands of judicial workload and the need to maximize judicial resources, the courts began to rely more heavily on "general or special masters."[6]

The judicial master system originated in common law as borrowed from the old English court system. The statutory reference to the judicial master system in Florida dates back to at least 1845 in which the court could appoint *masters in chancery* to serve in a ministerial capacity in chancery proceedings.[7] The *master in chancery* exercised limited judicial powers and functions delegated by the court, including those powers conferred on masters in chancery by the United States Supreme Court. They generally served for specific terms and were required to be members of the Florida Bar and to take a judicial oath. Subsequent legislation[8] whose language was used as the primary basis for the superseding court rules, was repealed in 1951.[9]

The title and primary powers of the historical *master in chancery* now reside with the courts rules governing *general masters* and *special masters*.[10] The general master must be a member of the Florida Bar, must take a judicial oath, may be required to provide a bond, and continues in office until removed by court order. The special master is distinguished from general masters in that they are appointed for task-specific service which may be judicial or administrative in nature. A special master is not required to take an oath or provide a bond unless required by the court.[11]

The use of the terms "master," "general master," and "special master" is not unique to the judiciary, but these terms are historically and primarily associated with the courts. A person, unconnected with the courts, may be appointed or selected to act as a "master" or "special master" and perform expressly defined duties within any legislative, executive or local governmental proceeding or function. Any prerequisite requirements of these persons are dependent within the context of the proceeding to which they have been appointed to conduct.

The appropriateness and public perception of the term "general master" or "special master" particularly as used in the courtroom received increased legal and judicial attention four years ago. The Family Law Section Executive Council and the Family Law Rules Committee passed resolutions at the annual Florida Bar meeting in June 1999, to recommend a title change in the family law rules for these court-appointed officers from "masters" to "magistrates."[12] In response, the Florida Supreme Court directed the Family Law Rules Committee to review the proposed change. In turn, the Committee filed an emergency petition with the Florida Supreme Court to amend the Florida Family Law Rules and Forms. The Supreme Court denied the petition on the grounds that the term "master" appears in other court

[5] *See* Black's Law Dictionary, 7th ed., August 1999. (*Inter alia*, a committing magistrate is said to be synonymous with "examining court.")
[6] General and special masters are just one category of non-constitutional judicial staffing alternatives used by the courts to discharge specific judicial responsibilities. The courts also appoint child support enforcement hearing officers (Fla.Fam.L.R.P. 12.491) and civil traffic infraction hearing officers (s. 1, art. V, Fla. Const., ss. 318.30-318.38, F.S., Fla. R. Traf.Ct. 6.630).
[7] Ch. 51, L.O.F. (1845).
[8] *See* ch. 14658, L.O.F., "The Chancery Act of 1931" and ss. 63.54-63.65, F.S. (1949).
[9] *See* ch. 26962, L.O.F..
[10] *See* Fla.R.Civ.P.1.490, Fla.Fam.L.R.P. 12.490 and 12.492, Fla.R.Juv.P. 8.255 and 8.625, and Fla.Prob.R. 5.697.
[11] *See* ch. 14658, L.O.F., Sec. 57: Special Master in Chancery.
[12] See The Florida Bar News, Vol. 26, No. 16, August 15, 1999.

rules and forms and throughout the Florida Statutes and that a term change made solely to the Florida Family Law rules would create "unnecessary confusion system-wide" at this time.[13]

This bill redesignates the title of the person serving as "general or special master" to the title of "general or special magistrate." There is no change in the authority or power of the general or special master.

MISCELLANEOUS CHANGES

This bill also makes the following miscellaneous changes:

- This bill corrects a statutory inconsistency within s. 394.467, F.S., which failed to redesignate the "hearing officer" as the administrative law judge in an administrative law proceeding. This change does not substantively change the role of the administrative law judge but only conforms current law to a legislative change in recent years in which "hearing officers" assigned by the Division of Administrative Hearings to conduct adjudicatory hearings were redesignated as administrative law judges.[14]

C. SECTION DIRECTORY:

Sections 1 and 4 amend ss. 26.012 and 34.01, F.S., to clarify that a county and circuit court are trial courts.

Sections 3-51 amend ss. 27.06, 29.004, 34.01, 48.20, 142.09, 316.635, 373.603, 381.0012, 450.121, 633.14, 648.44, 817.482, 832.05, 876.42, 893.12, 901.02, 901.07, 901.08, 901.09, 901.11, 901.12, 901.25, 902.15, 902.17, 902.20, 902.21, 903.03, 903.32, 903.34, 914.22, 923.01, 933.01, 933.06, 933.07, 933.10, 933.101, 933.13, 933.14, 939.02, 939.14, 941.13, 941.14, 941.15, 941.17, 941.18, 947.141, 948.06, 985.05, F.S., to change the term "magistrate" to "trial court judge" or a judicial officer with committing authority.

Sections 52 through 103 amend ss. 56.071, 56.29, 61.1826, 64.061, 65.061, 69.051, 70.51, 92.142, 112.41, 112.43, 112.47, 162.03, 162.06, 162.09, 173.09, 173.10, 173.11, 173.12, 194.013, 194.034, 194.035, 206.16, 207.016, 320.411, 393.11, 394.467, 397.311, 397.681, 447.207, 447.403, 447.405, 447.407, 447.409, 475.011, 489.127, 489.531, 496.420, 501.207, 501.618, 559.936, 582.23, 631.182, 631.331, 633.052, 744.369, 760.11, 837.011, 838.014, 839.17, 916.107, 938.30, 945.43, F.S., to change the term "special or general master," "examiner," or "master in chancery" to "special or general magistrate."

Section 77 amends s. 394.467, F.S., to change the term "master" to "magistrate" and also changes the term "hearing officer" to "administrative law judge."

Section 104 provides an effective date of October 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[13] See Order, In re Amendment to Florida Family Law Rule of Procedure 12.490, 758 So.2d 86 (Fla. 1999).
[14] *See* ch. 1996-159, L.O.F.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Office of the State Courts Administrator reports that these changes will not result in a fiscal impact to the state courts short of nominal costs associated with changing the title of judicial branch masters to "magistrate" on items like letterhead or nameplates, for example. Such costs will be absorbed within their budget.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Separation of Powers.

To the extent that this bill is construed to effectuate a change beyond a nonsubstantive or technical title redesignation, provisions of s.3, article II, of the *Florida Constitution*, governing separation of powers may be implicated since the authority to appoint and assign powers to judicially appointed general or special masters for use in the courtroom lie within the exclusive purview of the courts. It is within the Legislature's constitutional authority to create substantive law, but the Florida Supreme Court has sole and preemptive constitutional authority to promulgate court rules of practice and procedure. Therefore, the Legislature cannot enact law that amends or supersedes existing court rules although it can repeal them by a 2/3 vote.[15]

B. RULE-MAKING AUTHORITY:

It is probable that the courts will revise their rules to conform with the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[15] *See* Art. V, s.2(a), Fla. Const.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 21, 2004, the Judiciary Committee adopted an amendment that makes the following technical changes.

- The word “court” was inserted at line 852
- A drafting error was corrected at line 1587, changing the word ‘arose’ to ‘is situated’
- The proper historical reference at line 62 is to the State Constitution of 1885 as preserved by s.6(e), Art. VIII of the State Constitution of 1968
- A new section was added to amend s. 29.004(8), effective July 1, 2004, to substitute “magistrate” for “master” regarding the funding of the state courts system
- ‘Under this section’ (restoring current statutory language) at lines 1131 and 1136, was deleted to eliminate a possible unintended substantive limitation of relief under the Florida Land Use and Environmental Dispute Resolution Act
- The words ‘city or town’ at lines 174 and 1587-1623, were restored to eliminate a possible unintended substantive change in the statutes and to restore consistency within those chapters
- The word ‘from’ at lines 2260 and 2343, was restored to eliminate a possible unintended addition of time to foreclose on a lien
- The word ‘of’ at lines 2202, 2274, and 2285, was restored to eliminate a possible unintended expansion of time to file an appeal and request an administrative hearing in code enforcement actions
- The word “from” at line 441 was restored to eliminate a possible unintended expansion of time to examine a witness who does not give security
- The word ‘of’ at line 1690 was restored to eliminate a possible unintended expansion of time to file a decision of a value adjustment board

This analysis is drafted to the bill as amended.