

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: HB 5011

INTRODUCER: Appropriations Committee and Representative Renner

SUBJECT: County Court Judges

DATE: April 10, 2019

REVISED: 4/12/19 _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Dale	Kynoch	AP	Fav/1 amendment

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

HB 5011, as amended by the Senate strike-all amendment, Barcode #963756, creates section 25.025, Florida Statutes, 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.

The Senate strike-all amendment increases the number of circuit judges, adding one circuit court judgeship in the Ninth Judicial Circuit Court, which includes Orange and Osceola Counties, and one circuit court judgeship in the Twelfth Judicial Circuit Court, which includes Manatee, DeSoto and Sarasota Counties.

HB 5011 and the Senate strike-all amendment also increase the number of county judgeships, adding one in Citrus County and one in Flagler County.

The estimated fiscal impact of the additional circuit and county judgeships is 10 full-time equivalent (FTE) positions at a cost of \$1,463,748, including nonrecurring costs of \$40,262. A recurring appropriation from general revenue was provided in the Fiscal Year 2018-2019 General Appropriations Act for Supreme Court justices with official headquarters in justices' districts of residence. See Section V.

The bill provides an effective date of July 1, 2019.

II. Present Situation:

Supreme Court Headquarters

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[.]”¹ 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,² and all official Supreme Court business is conducted in Tallahassee.³

Headquarters for Purposes of Travel Reimbursement

Section 112.061, F.S., governs 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 exceptions:

- The official headquarters of a person located in the field is in 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 and. 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

¹ FLA. CONST. art. II, s. 2.

² 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 (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> (last visited April 10, 2019)..

³ “[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.”).

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.⁴

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.

Section 112.061, F.S. applies to the court system. Each district court of appeal—the headquarters for which is defined by the Legislature, not the Constitution⁵—now 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.”⁶

Prior to district courts of appeal being authorized to establish branch headquarters, the Attorney General opined for travel and reimbursement purposes that a district court of appeal judge could *not* designate the city of his or her residence as his or her official headquarters for purposes of travel expenses.⁷ Notably, the opinion relied on the fact that, at that time, s. 35.05, F.S., designated the official headquarters of each district court of appeal in specific cities.⁸ Subsequently, the law was amended to permit a district court of appeal to “designate branch headquarters within its district for purposes of s. 112.061,”⁹

In 2018, the Implementing Bill authorized the payment of travel and subsistence expenses for 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.¹⁰ A recurring appropriation for this expense was provided to the Supreme Court in the Fiscal Year 2018-2019 General Appropriations Act.

Certification of Need for Additional Judges

Article V, s. 9 of the Florida Constitution requires the Florida Supreme Court to submit recommendations to the Legislature when there is a need to increase or decrease the number of

⁴ Section 112.061(4)(a)-(c), F.S.

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

⁶ Section 35.05(2), F.S.

⁷ Op. Att’y Gen. Fla. 74-132 (1974).

⁸ *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.”).

⁹ 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 April 10, 2019).

¹⁰ 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> (last visited April 10, 2019).

judges.¹¹ This provision directs the Court to base its recommendations on uniform criteria adopted by court rule.

The Court's rule setting forth criteria for assessing judicial need at the trial court level is based primarily upon the application of case weights to circuit and county court caseload statistics.¹² These weights are a quantified measure of judicial time spent on case-related activity. The judicial workload is then based on judicial caseloads adjusted in the relative complexity of various case types.

In addition to the statistical information, the Court, in weighing the need for trial court judges, considers the factors below which primarily relate to the resources available to a judicial circuit:

- (i) The availability and use of county court judges in circuit court.
- (ii) The availability and use of senior judges to serve on a particular court.
- (iii) The availability and use of magistrates and hearing officers.
- (iv) The extent of use of alternative dispute resolution.
- (v) The number of jury trials.
- (vi) Foreign language interpretations.
- (vii) The geographic size of a circuit, including travel times between courthouses in a particular jurisdiction.
- (viii) Law enforcement activities in the court's jurisdiction, including any substantial commitment of additional resources for state attorneys, public defenders, and local law enforcement.
- (ix) The availability and use of case-related support staff and case management policies and practices.
- (x) Caseload trends.¹³

In addition to the weighted caseload statistics, the Court considers the time to perform other judicial activities, such as reviewing appellate decisions, reviewing petitions and motions for post-conviction relief, hearing and disposing motions, and participating in meetings with those

¹¹ Article V, s. 9 of the Florida 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. 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.

¹² Fla. R. Jud. Adm. 2.240(b)(1)(A).

¹³ Fla. R. Jud. Admin. 2.240(b)(1)(B).

involved in the justice system.¹⁴ Finally, the Court considers any request for an increase or decrease in the number of judges that the chief judge of the circuit feels are required.¹⁵

Following its criteria for determining the need for judges, the Florida Supreme Court issued Order No. SC18-1970, dated December 28, 2018, regarding the Certification of Need for Additional Judges.¹⁶ In the certification, the court recommended four new circuit judgeships (one each in the First and Fourteenth judicial circuits and two in the Ninth Judicial Circuit) and four new county judgeships in Hillsborough County. The opinion also recommended the decertification of three existing county court judgeships (one in Pasco County and two in Brevard County).

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.¹⁷

Art. V, s. 11(b), of the Florida Constitution requires the Governor to fill judicial office vacancies by appointment from a list of candidates nominated by a judicial nominating commission, 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.¹⁸

The Legislature has not authorized additional county or circuit judgeships since 2006.¹⁹

III. Effect of Proposed Changes:

Headquarters of Supreme Court Justices

Section 1 of the Senate strike-all amendment 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 may enter into an agreement to establish private chambers at the county courthouse for a justice, but a county is not required to provide space for a justice. Additionally, the Supreme Court may *not* use state funds to lease space in a district court of appeal courthouse, county courthouse, or other facility for use as private chambers.

¹⁴ Fla. R. Jud. Admin. 2.240(c).

¹⁵ Fla. R. Jud. Admin. 2.240(d).

¹⁶ *In Re: Certification of Need for Additional Judges*, S.Ct. No. SC18-1970.

¹⁷ Article V, s. 9 of the Florida Constitution.

¹⁸ Article V, s. 9 of the Florida Constitution.

¹⁹ Ch 2006-166, Laws of Fla.

Additional Judgeships

The Senate strike-all amendment amends s. 26.031, F.S., to add one circuit court judgeship to the Ninth Judicial Circuit Court, which includes Orange and Osceola Counties, and one circuit court judgeship to the Twelfth Judicial Circuit Court, which includes Manatee, Desoto and Sarasota Counties. The newly created judgeships will be filled by the Governor from nominees by the appropriate judicial nominating commission.²⁰

HB 5011 and the Senate strike-all amendment also establish two new county court judgeships, one in Citrus County and one in Flagler County.

The bill, as amended by the Senate strike-all amendment, takes effect July 1, 2019.

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:

Article V, s. 9 of the Florida Constitution provides that if the Supreme Court finds that a need exists for increasing or decreasing the number of judges, the court must, prior to the next regular session of the Legislature, certify to the Legislature its findings and recommendations concerning that need. The Supreme Court issued its most recent certification opinion on December 28, 2018.²¹

Upon receipt of the certificate, the Legislature, at the next regular session, must consider the findings and recommendations. The Legislature 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.

²⁰ Florida Constitution, Article V, section 11.

²¹ *Supra* note 16

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Travel and Subsistence Costs

The cost of travel reimbursement for justices who have private chambers outside Leon County in his or her district of residence may be paid only to the extent appropriated funds are available. The Fiscal Year 2019-2020 General Appropriations Act appropriated \$209,930 of recurring general revenue for expenses to the Supreme Court for this purpose. SB 2500, First Engrossed, the Senate’s proposed 2019-2020 General Appropriations Bill, continues the funding for this purpose as does the House proposed 2019-2020 General Appropriations Bill.

Additional Judgeships

New Circuit Court Judgeships

SB 2500, First Engrossed, the Senate’s proposed 2019-2020 General Appropriations Bill includes six full-time equivalent positions to fund the circuit judgeships. The recurring costs also include the salary and benefits of a judicial assistant and a law clerk. The courts use a methodology of one law clerk for every three circuit judges to determine their need for law clerks. The proposed appropriation for creating the additional circuit judgeships is based on the following:

Salaries and Benefits	\$794,782
Expenses	\$30,666 (Nonrecurring)
HR Outsourcing	\$1,218
Total:	\$826,666 (\$30,666 Nonrecurring)

New County Court Judgeships

The House’s proposed 2019-2020 General Appropriation Bill, includes four full-time equivalent positions (two judgeships and two judicial assistants) and total appropriations in the amount of \$613,274 for the county court judgeships. However, this amount does not include the customary appropriations for expenses and legal research associated with the creation of new judgeships.²² The proposed appropriation for the additional county

²² Appendix E.6 provides the Trial Courts Modified Expense Package <http://floridafiscalportal.state.fl.us/Document.aspx?ID=17945&DocType=PDF> (last visited April 10, 2019).

judgeships is based on the following:

Salaries and Benefits	\$612,465
Expenses	\$22,624 (\$9,596 Nonrecurring)
Florida Cases Southern 2 nd Reporter	\$1,184
HR Outsourcing	\$809
Total:	\$637,082 (\$9,596 Nonrecurring)

Grand Total County/Circuit Judgeships = \$1,463,748 (40,262 Nonrecurring)

Under s. 29.008, F.S., counties are responsible for facilities, security, communications and information technology costs for courts. For courts receiving additional judges and associated staff, this bill will result in some additional costs in these areas.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 26.031 and 34.022.

This bill creates section 25.025 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Barcode 963756 by Appropriations on April 11, 2019:

The provisions include:

- Creates section 25.025, Florida Statutes, 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.
- Revises the number of circuit court judges by adding one circuit court judgeship in the Ninth Judicial Circuit Court, which includes Orange and Osceola Counties, and one circuit court judgeship in the Twelfth Judicial Circuit Court, which includes Manatee, DeSoto and Sarasota Counties;

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
