Civil Justice & Claims Subcommittee

Thursday, February 9, 2017
9:00 AM
404 HOB

Meeting Packet

Richard Corcoran
Speaker

Heather Fitzenhagen
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice & Claims Subcommittee

Start Date and Time:	Thursday, February 09, 2017 09:00 am
End Date and Time:	Thursday, February 09, 2017 11:00 am
Location:	Sumner Hall (404 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HJR 1 Judicial Term Limits by Sullivan
HB 301 Supreme Court Reporting Requirements by White
HB 6011 Tobacco Settlement Agreements by Burgess
PCS for HB 19 -- Liability for Termination of Pregnancies
PCS for HB 175 -- Florida Court Educational Council

NOTICE FINALIZED on 02/02/2017 4:13PM by Bowen.Erika

HJR 1

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1 Judicial Term Limits
SPONSOR(S): Sullivan
TIED BILLS: None **IDEN./SIM. BILLS:** SJR 482

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Bond	Bond
2) Judiciary Committee			

SUMMARY ANALYSIS

Justices of the Florida Supreme Court and judges of the Florida district courts of appeal are appointed to office by the Governor. There are no limits on the number of terms of office that a justice or judge may serve, although each justice or judge is subject to removal pursuant to the merit retention process and is subject to a mandatory retirement age.

Merit retention is the system of retaining appellate court justices and judges established by a 1976 state constitutional amendment. Newly appointed justices or judges face their first merit retention vote in the next general election that occurs more than one year after their appointment. If retained in office by a majority of voters, the justice or judge serves a full six-year term. Thereafter, the justice or judge is subject to a merit retention election every six years. No Florida justice or judge has ever lost a merit retention election.

The joint resolution provides that a justice or district court of appeal judge may not appear on a ballot for retention if he or she has served more than 12 years in the same office. The joint resolution applies to justices and district court of appeal judges currently in office, but the 12-year limit does not include time served in office prior to January 9, 2019.

The joint resolution also prohibits reappointment of a term-limited justice or district court of appeal judge to the same court he or she left for one year.

The joint resolution appears to require a nonrecurring expense by the Department of State of $107,685 payable from the General Revenue Fund in FY 2018-19 for the publication of the proposed constitutional amendment in newspapers of general circulation in each county. The joint resolution has no current fiscal impact on the State Courts System. The joint resolution does not appear to have a fiscal impact on local governments.

The proposed joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 6, 2018. If adopted at the 2018 general election, the effective date of this resolution is January 9, 2019.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature to appear on the next general election ballot. If on the ballot, the constitution requires 60 percent voter approval for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Appointment of Justices and District Court of Appeal Judges
Where there is a judicial vacancy in the Florida Supreme Court or a Florida district court of appeal, the Governor must appoint a replacement justice or judge from a list of nominees provided by a Judicial Nominating Commission (JNC).[1] There are separate JNC's for the Supreme Court and for the 5 district courts of appeal. When an office becomes vacant, candidates submit an application to the JNC for that court. The JNC sends a list of three to six nominees to the Governor and the Governor fills the vacancy by selecting from that list.[2] At the next general election occurring at least a year after appointment, the newly appointed justice or district court judge sits for a retention election. If a majority of voters choose to retain the justice or judge, the justice or judge is retained for a six year term.[3] Thereafter, the justice or judge will sit for a retention election every six years.

Past Retention Election Results
Supreme Court justices have appeared on the ballot for retention 45 times between 1980 and 2016. In all 45 instances they were retained by a majority of the voters. For the general elections from 2004 through 2016, all 153 district court of appeal judges that appeared on the ballot were retained.

Mandatory Retirement Age
The Florida Constitution establishes a mandatory retirement age for justices and judges. The exact date of retirement depends upon when the 70th birthday occurs. If it occurs during the first half of a six-year term, then the mandatory retirement age is the same as the birthday. If the 70th birthday occurs in the second half of a six-year term, then the justice or judge can remain on the bench until the full term expires.[4]

Term Limits
While the state has term limits applicable to the Governor, cabinet members, and legislators, no term limit applies to justices or judges. A justice or judge can serve an unlimited number of terms of office, limited only by a failure to be retained or achieving the mandatory retirement age.

Effect of the Joint Resolution

The joint resolution provides that a Supreme Court justice or a judge of a district court of appeal may not appear on the ballot for retention if, by the end of the current term of office, the justice or judge will have served in that office for 12 consecutive years.

A justice ineligible for retention or a justice who resigns is ineligible for reappointment to the Supreme Court for one year. Similarly, a district court of appeal judge ineligible for retention or a judge who resigns is ineligible for reappointment to any district court of appeal for one year.

The term limits created by this joint resolution apply only to the office in which a justice or district court of appeal judge is serving. For instance, a district court of appeal judge promoted to the Supreme Court starts a new term limit.

The joint resolution applies to justices and district court of appeal judges currently in office, but the 12-year limit does not include time served in office prior to January 9, 2019.

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[1] art. V, s.11, Fla. Const.
[2] art. V, s. 11(a), Fla. Const.
[3] art. V, s. 10, Fla. Const.
[4] art. V, s. 8, Fla. Const.

If approved by the electorate, the joint resolution takes effect January 9, 2019.

B. SECTION DIRECTORY:

n/a

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The joint resolution does not appear to have any impact on state revenues.

2. Expenditures:

Publication Requirement

Article XI, s. 5(d) of the state constitution requires publication of a proposed amendment in a newspaper of general circulation in each county.

The Division of Elections is required to advertise the full text of proposed constitutional amendments twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments. The cost to advertise constitutional amendments for the 2016 general election was $117.56 per word.[5]

The joint resolution has 916 words, thus requiring an estimated $107,685 for publication. These funds must be spent regardless of whether the amendment passes, and are payable from the General Revenue Fund in FY18-19.

Fiscal Impact on the State Courts System

The Office of State Courts Administrator indicated that the "fiscal impact of this legislation cannot be accurately determined due to the unavailability of data ...."[6]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have any impact on local government revenues.

2. Expenditures:

The joint resolution does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The joint resolution does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

While unable to determine a specific fiscal impact to this legislation, the Office of State Courts Administrator speculates that this joint resolution may increase costs to the judicial system due to increased judicial turnover, which will lead to more frequent gaps in service, increased use of senior

[5] E-mail correspondence from the Department of State dated January 26, 2017, on file with the Civil Justice & Claims Subcommittee.
[6] Office of the State Courts Administrator, 2017 Judicial Impact Statement for HJR 1, dated February 2, 2017. On file with the Civil Justice & Claims Subcommittee.

judges during gaps in service, increased staff turnover, and increased training costs.[7] Because of the prospective nature of the joint resolution, the potential fiscal impacts to the court system would not occur until FY 2031-32 at the earliest.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This section does not apply to a proposed constitutional amendment.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The joint resolution does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution, along with the requirements for election and approval or rejection of a proposal. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.[8] Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.[9] If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.[10]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[7] Office of the State Courts Administrator, *2017 Judicial Impact Statement for HJR 1*, dated February 2, 2017. On file with the Civil Justice & Claims Subcommittee.
[8] art. XI, s. 1, Fla. Const.
[9] art. XI, s. 5(a), Fla. Const.
[10] art. XI, s. 5(e), Fla. Const.

House Joint Resolution

A joint resolution proposing an amendment to Section 10 of Article V and creation of a new section in Article XII of the State Constitution to create term limits for Supreme Court justices and judges of the district courts of appeal; providing an effective date; providing applicability.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 10 of Article V and the creation of a new section in Article XII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V

JUDICIARY

SECTION 10. Retention; election and terms.—

(a) Any justice or judge may qualify for retention by a vote of the electors in the general election next preceding the expiration of the justice's or judge's term in the manner prescribed by law. If a justice or judge is ineligible or fails to qualify for retention, a vacancy shall exist in that office upon the expiration of the term being served by the justice or

judge. When a justice or judge so qualifies, the ballot shall read substantially as follows: "Shall Justice (or Judge) ...(name of justice or judge)... of the ...(name of the court)... be retained in office?" If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to retain, the justice or judge shall be retained for a term of six years. The term of the justice or judge retained shall commence on the first Tuesday after the first Monday in January following the general election. If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to not retain, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.

(b)(1) The election of circuit judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that circuit approves a local option to select circuit judges by merit selection and retention rather than by election. The election of circuit judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(2) The election of county court judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that county approves a local option to select county judges by merit selection and retention rather than by election. The election of

county court judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(3)a. A vote to exercise a local option to select circuit court judges and county court judges by merit selection and retention rather than by election shall be held in each circuit and county at the general election in the year 2000. If a vote to exercise this local option fails in a vote of the electors, such option shall not again be put to a vote of the electors of that jurisdiction until the expiration of at least two years.

b. After the year 2000, a circuit may initiate the local option for merit selection and retention or the election of circuit judges, whichever is applicable, by filing with the custodian of state records a petition signed by the number of electors equal to at least ten percent of the votes cast in the circuit in the last preceding election in which presidential electors were chosen.

c. After the year 2000, a county may initiate the local option for merit selection and retention or the election of county court judges, whichever is applicable, by filing with the supervisor of elections a petition signed by the number of electors equal to at least ten percent of the votes cast in the county in the last preceding election in which presidential electors were chosen. The terms of circuit judges and judges of county courts shall be for six years.

(c) The name of a justice of the supreme court or judge of

a district court of appeal may not appear on the ballot for retention if, by the end of his or her current term of office, the justice or judge will have served in that office for twelve consecutive years. A justice who is ineligible for retention under this subsection or who resigns from office may not be appointed to fill a vacancy on the supreme court for at least one year following the last date the justice served on the supreme court. A judge who is ineligible for retention under this subsection or who resigns from office may not be appointed to fill a vacancy on any district court of appeal for at least one year following the last date the judge served on the district court.

ARTICLE XII

SCHEDULE

Applicability of limitations on the terms of justices and judges.— The amendment to Section 10 of Article V takes effect on January 9, 2019, and applies to each justice and district court judge in office on that date and to each justice and district court judge who assumes office thereafter. When determining whether a justice or district court judge in office on January 9, 2019, may appear on the ballot for retention, time served by the justice or district court judge in that office prior to January 9, 2019, shall not be included in the calculation of the total number of consecutive years served in that office.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTION 10

ARTICLE XII

TERM LIMITS FOR JUSTICES AND JUDGES.—Proposing an amendment to the State Constitution to prohibit the name of a supreme court justice or district court of appeal judge from appearing on a ballot for retention if he or she has served more than 12 consecutive years in the same office and prohibit reappointment of a justice or judge for one year after leaving office. The term limit applies to justices and judges in office on January 9, 2019, and future appointees.

PCS for HB 19

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 19 Liability for Termination of Pregnancies
SPONSOR(S): Civil Justice & Claims Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice & Claims Subcommittee		Stranburg	Bond

SUMMARY ANALYSIS

There is no cause of action in common law or current statutory law that is specific to termination of pregnancy. There are, however, causes of action for wrongful acts that may occur during an abortion. For instance, common law allows a claimant to sue for battery or intentional infliction of emotional distress; and statutory law allows actions for medical malpractice and wrongful death. In most tort actions, an injured person may recover damages, but not attorney's fees. In medical malpractice tort actions, regardless of the legal theory, claimants must go through presuit investigation and informal discovery, and may be subject to court ordered arbitration before being allowed to file suit.

The bill creates a statutory civil cause of action for a woman injured as a result of an abortion, or who suffers emotional distress as a result of the physician's failure to obtain informed consent prior to an abortion. The signing of an informed consent form by the woman does not bar a cause of action pursuant to this section. The cause of action is not a claim for medical malpractice and the requirements of medical malpractice claims do not apply to this cause of action. This cause of action does not bar any other applicable cause of action regarding abortion procedures. A prevailing plaintiff is entitled to reasonable attorney's fees and costs. Damages available to this cause of action include all special and general damages recoverable in intentional tort, negligence, survival, or wrongful death claims.

The statute of limitations for a common law tort action is 4 years. The general limitation on personal injury or wrongful death arising from medical negligence is 2 years from the incident giving rise to the action or discovery of the incident. The limitations period for the cause of action created by this bill is 4 years from the injury or 4 years from the time the woman knew or should have known of the injury. A suit pursuant to this cause of action may not be commenced later than 10 years after the time of the incident giving rise to the injury. The limitations periods are tolled while a woman is a minor.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Tort Actions Related to a Termination of Pregnancy

There is no statutory or common law cause of action specific to termination of pregnancy. There are, however, statutory and common law causes of action whereby an injured person may sue for damages resulting from a termination of pregnancy. Statutory law creates civil causes of action for medical malpractice[1] and wrongful death.[2] Common law creates causes of action such as negligence,[3] assault,[4] battery,[5] and intentional infliction of emotional distress.[6] In any tort claim, the basic elements necessary are a legal duty, breach of that duty, causation between the breach of the duty and the injury, and actual damage.[7] In each of these actions, the injured party may recover economic and non-economic damages, but not attorney's fees.

In Florida, "an intentional tort is one in which [a person] exhibits a deliberate intent to injure or engages in conduct which is substantially certain to result in injury or death."[8] A defendant will be held liable for an intentional tort if the plaintiff's injuries were the natural and probable consequence of the defendant's intended actions.[9] In addition to being liable for economic and non-economic damages, a defendant who commits an intentional tort may be liable for punitive damages.[10]

Any action for personal injury or wrongful death arising from medical negligence is subject to the requirements of ch. 766, F.S.[11] Any such action is subject to a statute of limitations of 2 years from the time of the incident or 2 years from the time the incident is discovered.[12] An action may not be brought more than 4 years after the date of the incident, except for an action brought on behalf of a minor on or before the child's eighth birthday.[13] Assault, battery, and other intentional torts are subject to a four year statute of limitations.[14] The statute of limitations for a cause of action may be tolled in limited circumstances while a person entitled to sue is under the age of 18, but in no case will the tolling extend a statute of limitations beyond 7 years.[15]

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[1] ch. 766, F.S.
[2] The Florida Wrongful Death Act is at ss. 768.16-.26, F.S.
[3] *Mascheck, Inc. v. Mausner*, 264 So. 2d 859, 861 (Fla. 3d DCA 1972) ("Negligence is the failure to use that degree of care, diligence and skill that is one's legal duty to use in order to protect another person from injury.")
[4] *Lay v. Kremer*, 411 So. 2d 1347, 1349 (Fla. 1st DCA 1982) ("Assault is defined as an intentional, unlawful offer of corporal injury to another by force, or force unlawfully directed toward another under such circumstances as to create a fear of imminent peril, coupled with the apparent present ability to effectuate the attempt.")
[5] *Paul v. Holbrook*, 696 So. 2d 1311, 1312 (Fla. 5th DCA 1997) ("A battery consists of the infliction of a harmful or offensive contact upon another with the intent to cause such contact or the apprehension that such contact is imminent.").
[6] *Gallogly v. Rodriguez*, 970 So. 2d 470 (Fla. 2d DCA 2007); *see Johnson v. Thigpen*, 788 So. 2d 410, 412 (Fla. 1st DCA 2001) (In order to state a cause of action for intentional infliction of emotional distress, the plaintiff must demonstrate that: 1) the wrongdoer acted recklessly or intentionally; 2) the conduct was extreme and outrageous; 3) the conduct caused the plaintiff's emotional distress; and 4) plaintiff's emotional distress was severe.).
[7] 55 Fla. Jur 2d Torts § 2 (2015).
[8] *Boza v. Carter*, 993 So. 2s 561, 562 (Fla. 1st DCA 2008) (quoting *D'Amario v. Ford Motor Co.*, 806 So. 2d 424, 438 (Fla. 2001)).
[9] 55 Fla. Jur 2d Torts § 6 (2015).
[10] s. 768.72, F.S.
[11] s. 766.104, F.S.
[12] s. 95.11(4)(b), F.S.
[13] *Id.*
[14] s. 95.11(3)(o), F.S.
[15] s. 95.051(1)(i), F.S.

Florida Medical Malpractice

In general, a person has a common law cause of action against another for personal injury caused by the other's negligence. The term "medical malpractice" refers to any personal injury or wrongful death tort action, regardless of legal theory, arising from negligence committed by medical professionals.[16] Negligence actions in general are governed by ch. 768, F.S.; medical malpractice actions are also governed by ch. 766, F.S.

Medical malpractice lawsuits have a number of differences from other negligence lawsuits. A claimant (prospective medical malpractice plaintiff) must investigate whether there are any reasonable grounds to believe that a health care provider was negligent in the care and treatment of the claimant and whether such treatment resulted in injury to the claimant.[17] After completion of the presuit investigation, a claimant must send a presuit notice to each prospective defendant.[18] This notice includes lists of healthcare providers seen before and after the alleged act of negligence and the medical records relied upon by the corroborating expert in the presuit investigation.[19] Once the presuit notice is received, all parties must make discoverable information available for a period of informal discovery.[20]

At any time in an action for recovery of damages for medical malpractice, the court may require, upon motion by either party, that the claim be submitted to nonbinding arbitration.[21] Upon selection of the arbitrators, the hearing must be scheduled within 60 days after the date of selection, provided there has been at least 20 days notice to the parties.[22] The decision of the panel is nonbinding.[23] If the parties accept the decision, the decision is be deemed to be a settlement of the case and the case is dismissed with prejudice.[24] After the arbitration award is rendered, any party may demand a trial de novo in circuit court.[25]

The Florida Patient's Compensation Fund may pay a portion of a medical malpractice claim.[26] Hospitals are required to join the fund and other health care providers may choose to join the Fund.[27] The Fund covers up to a limit selected by the member for actual damages in a suit.[28] The Fund does not cover punitive damages from a medical malpractice suit.[29]

Medical malpractice actions are subject to a general 2 year statute of limitations from the time of the incident giving rise to the action or discovery of the incident, whichever is later.[30] If fraud, concealment, or intentional misrepresentation of fact concealed the injury, the period of limitations is extended forward 2 years from the time the injury is discovered or should have been discovered, but not to exceed 7 years from the date of the incident giving rise to the injury.[31]

Effect of Proposed Changes

The bill creates s. 390.035, F.S., relating to the termination of pregnancies. The bill creates a cause of action for a woman who suffers injury or death as a result of an abortion or emotional distress based on the physician's failure to obtain the woman's informed consent before the abortion. The bill provides

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[16] s. 766.104(1), F.S.
[17] s. 766.203(2), F.S.
[18] s. 766.106(2)(a), F.S.
[19] *Id.*
[20] s. 766.106(6), F.S.
[21] s. 766.107(1), F.S.
[22] s. 766.107(3), F.S.
[23] s. 766.107(4), F.S.
[24] *Id.*
[25] *Id.*
[26] s. 766.105(3), F.S.
[27] s. 766.105(2), F.S.
[28] *Id.*
[29] s. 766.105(2)(b), F.S.
[30] s. 95.11(4)(b), F.S.
[31] *Id.*

that the signing of an informed consent does not bar the woman from bringing a claim pursuant to this section.

The bill provides that this claim is not a claim for medical malpractice and ch. 766, F.S., does not apply. The presuit investigation and notice, informal discovery, and court ordered arbitration required by ch. 766, F.S., therefore, do not apply to these claims. The Florida Patient's Compensation Fund will not cover any part of damages awarded in claims filed pursuant to this section.

The cause of action created by the bill does not bar any other statutory or common law cause of action otherwise available regarding an injury from abortion procedures or diminish the nature or extent of those causes of action, including medical malpractice. Therefore, the cause of action created in the bill is in addition to any other statutory or common law cause of action.

The bill provides a 4 year statute of limitations from the time of the injury or from the time the woman discovered or should have discovered the injury, whichever is longer. In no case will the limitations period extend beyond 10 years from the time of the incident. The limitations periods in the bill are tolled while the woman is a minor.

A prevailing plaintiff in an action pursuant to this bill is entitled to reasonable attorney's fees and costs.

The cause of action created by the bill provides that damages includes all special and general damages recoverable in an intentional tort, negligence, survival, or wrongful death claim, including actual and punitive damages.

B. SECTION DIRECTORY:

Section 1 creates s. 390.035, F.S., relating to liability for acts related to a termination of pregnancy

Section 2 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local revenues.

2. Expenditures:

   The bill does not appear to have any impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates a cause of action that may financially benefit women who have been harmed by an abortion procedure, and correspondingly cause providers to pay the judgment. The Florida Patient's Compensation Fund will not pay these claims. Depending upon the terms of an insurance contract, medical malpractice insurance might not pay these claims.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Florida's constitutional right to privacy is "clearly implicated" in a woman's decision whether to terminate her pregnancy.[32] The Florida Supreme Court has repeatedly held that burdens on abortion must meet the compelling state interest standard in order to comply with the Florida Constitution.[33]

Roe v. Wade established the fundamental right to abortion under the U.S. Constitution.[34] After the U.S. Supreme Court's decision in *Planned Parenthood v. Casey*, this fundamental right is evaluated under the U.S. Constitution using the undue burden test.[35] A law governing abortion is struck down as an undue burden "if its purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability."[36]

Constitutional law cases regarding abortion are mostly related to laws creating various regulatory burdens on abortion. For civil causes of action, courts in other states have ruled that civil causes of action based on strict liability constitute an undue burden on the right to an abortion.[37] There have been no Florida case rulings on the constitutionality of a specific cause of action regarding abortion.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create rulemaking authority or a need for rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[32] *In re T.W.*, 551 So. 2d 1186, 1192.
[33] *North Fla. Women's Health & Counseling Servs., Inc. v. Florida*, 866So. 2d 612, 620-21 (Fla. 2003); *In re T.W.*, 551 So. 2d 1186.
[34] *Roe v. Wade*, 410 U.S. 113 (1973).
[35] *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).
[36] *Planned Parenthood v. Casey*, 505 U.S. at 836.
[37] *Planned Parenthood v. Miller*, 63 F. 3d 1452 (8th Cir. 1995).

A bill to be entitled

An act relating to termination of pregnancies; creating s. 390.035, F.S.; creating a cause of action for physical and emotional injury resulting from a termination of pregnancy; providing that this cause of action is not an exclusive remedy; providing that laws on medical malpractice actions do not apply to this cause of action; providing a statute of limitations and statute of repose; providing for tolling of the limitations periods; authorizing an award of attorney's fees and costs to a prevailing plaintiff; providing definitions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 390.035, Florida Statutes, is created to read:

390.035 Liability for acts related to a termination of pregnancy; remedies; limitations.--

(1) A woman who suffers injury or death as a result of an abortion, or who suffers emotional distress as a result of a physician's failure to obtain the informed consent as required by s. 390.0111, has a cause of action for damages against the physician who performed the abortion or failed to provide the statutorily required informed consent.

(2) The signing of an informed consent form by the woman prior to the abortion shall not bar a cause of action brought under this section.

(3) An action brought pursuant to this section is not a claim for medical malpractice, and ch. 766 does not apply. This section shall not be construed as barring any other statutory or common law cause of action for medical malpractice otherwise available resulting from an abortion procedure or diminish the nature or the extent of those causes of action. The cause of action created in this section is in addition to any other statutory or common law cause of action available to an injured person.

(4) Notwithstanding s. 95.11 or any other provision of law, any action for damages brought under this section shall be commenced within the latter of 4 years from the time the incident giving rise to the action occurred or 4 years from the time the injury is discovered or should have been discovered with the exercise of due diligence; however, in no event shall the action be commenced later than 10 years from the time the incident giving rise to the action occurred. The limitations periods created by this subsection shall be tolled while the woman is a minor.

(5) A prevailing plaintiff in any action brought under this section is entitled to reasonable attorney's fees and costs.

(6) For the purposes of this section "damages" means all special and general damages which are recoverable in an intentional tort, negligence, survival or wrongful death action, including but not limited to actual and punitive damages.

Section 2. This act shall take effect July 1, 2017.

PCS for HB 175

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 175 Florida Court Educational Council
SPONSOR(S): Civil Justice & Claims Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice & Claims Subcommittee	MPM	MacNamara	Bond

SUMMARY ANALYSIS

In 1982, the Legislature established the Court Education Trust Fund, which is the primary funding source for training provided to judges and staff of the judicial branch. Those funds are generated by $3.50 fees authorized by statute and assessed in civil actions. Current law authorizes the Supreme Court to administer the fund through the Florida Court Education Council ("FCEC" or "Council"), the composition of which is not set by statute. The 20 member Council makes budgetary, programmatic, and policy recommendations to the Court regarding judicial education. The Chief Justice selects the members of the Council.

The bill transfers responsibility for the Court Education Trust Fund from the Supreme Court to the FCEC. The bill provides that membership of the FCEC is composed of the 20 chief judges of the circuit courts and the 5 chief judges of the District Courts of Appeal. The bill also provides guidance as to the administrative duties to be performed by the Council, establishes a headquarters in the 9th Judicial Circuit, limits administrative costs and the number of employees, and requires the Council to submit an annual report to the Senate President and the Speaker of the House of Representatives.

The bill appears to reduce program FTE's by 12 and limits trust fund expenditures for administrative overhead, but the overall fiscal impact on the Court Education Trust Fund is unknown. The bill does not appear to have a fiscal impact on local governments.

The effective date of the bill is July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background and Current Law

Florida Court Education Council

In 1978, the Supreme Court established the Florida Court Education Council ("FCEC"). The FCEC was originally created to oversee educational programs for Florida judges and certain court support personnel;[1] and making budgetary, programmatic, and policy recommendations to the Supreme Court regarding continuing education.[2] The Council is currently comprised of 20 members, chosen by the Chief Justice, and selected from the following entities:

- The Supreme Court (1)
- The Appellate Courts (2)
- The Circuit Courts (4)
- The County Courts (4)
- Deans and Associate Deans (4)
- Trial Court Administrators (1)
- Florida Court Personnel (2)
- The Universal Planning Committee (2)[3]

The Office of the State Court Administrators ("OSCA") provides staffing for the FCEC through their Court Education section. There are currently 15 full-time employees ("FTEs") paid through the Court Education Trust Fund, of which 11 are "fully engaged in direct service delivery."[4] The staff supplied to the Council assists with budgeting, record keeping, and processing travel reimbursements and other budgetary items.[5] Staff also assists in planning and developing training and works with other entities to help judges meet their educational requirements.

Pursuant to s. 25.385, F.S., the FCEC is also required to establish standards for instruction of circuit and county court judges who have responsibility for domestic violence cases, providing such instruction on a periodic and timely basis.

Continuing Judicial Education

Rule 2.320 of the Florida Rules of Judicial Administration requires all county, circuit, and appellate judges and Supreme Court justices to comply with continuing education requirements. Each judge and justice is required to complete a minimum of 30 credits hours of approved judicial education programs every 3 years.[6]

In addition to the 30-hour continuing education requirement, every new judge must complete the Florida Judicial College program. This program, organized by the FCEC, includes an in-depth trial skills

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[1] *See e.g.*, Fla. R. Jud. Admin. 2.320(c-e). The FCEC develops the educational programs for the Florida Judicial College. *See generally In Re 2015 Florida Judicial College*, Fla. Admin. Order No. AOSC14-57 (October 2, 2014) (on file with the Clerk. Fla. Sup. Ct.).

[2] *See In Re Florida Court Education Council*, Fla. Admin. Order No. AOSC16-42 (June 30, 2016) (on file with Clerk, Fla. Sup. Ct.).

[3] *Id.* at p.3-5.

[4] OSCA 2017 Judicial Impact Statement Draft, HB 175 (Created January 16, 2017) (Received by the Civil Justice & Claims Subcommittee on February 2, 2017).

[5] Office of Program Policy Analysis & Government Accountability ("OPPAGA") Report, No. 15-13, p. 18 (December 2015). Available at oppaga.state.fl.us/MonitorDocs/Reports/pdf/1513rpt.pdf.

[6] Fla. R. Jud. Admin. 2.320(b)(2). These requirements are similar to the continuing legal education (CLE) credits attorneys in the state are required to obtain every 3 years. *See* Fla. Bar Reg. R. 6-10.3.

workshop, a mock trial experience, intensive substantive law courses, and a mentoring program providing one-on-one guidance from experienced judges. The FCEC also provides educational opportunities to magistrates, staff, and other court personnel.[7]

Last year, approximately 3,200 judges and court staff received in person training, and an additional 142 individuals attended distance learning sessions. In addition to these in person training sessions, twenty-eight publications were maintained online.[8]

Court Education Trust Fund

In 1982, the Legislature enacted s. 25.384, F.S., creating the Court Education Trust Fund.[9] The funds are used to provide education and training for judges and other court personnel as defined and determined by the FCEC.[10] The Legislature allowed the Supreme Court, through the FCEC, to administer the fund.[11] The moneys credited to the trust fund include filing fees from circuit civil cases,[12] service charges and filing fees in probate matters,[13] and filing fees from civil proceedings in county court.[14]

The statute requires the Supreme Court, through the FCEC, to adopt a comprehensive plan for the operation of the trust fund and the expenditure of moneys deposited in the trust fund. The comprehensive plan must provide for travel, per diem, tuition, educational materials, and other related costs incurred for educational programs that will benefit the state.

In addition to the management of funds and adoption of a comprehensive plan, the Supreme Court, through the FCEC, is required to provide a report to the President of the Senate and Speaker of the House of Representatives detailing the fees deposited in the fund and the costs incurred in providing education and training for judges.

For fiscal year 2015-16, the Court Education Trust Fund had revenues totaling $2,585,090[15] with expenditures totaling $2,477,738.[16] For FY 2015-16, the administrative expenses associated with court education was approximately $255,000.[17]

Effect of the Bill

The bill removes the Supreme Court as administrator of the Court Education Trust Fund and transfers that responsibility to the FCEC. The Council is required to adopt a comprehensive plan for operation of the fund similar to the comprehensive plan required under current law. Likewise, the fund is to be funded by the same fees and will continue providing training and education for judges and other court personnel.

The bill also amends s. 25.385, F.S., to specify that the Council consists of 25 members: the chief judge of each judicial circuit (20 members) and the chief judge of each district court of appeal (5 members). The Council must elect a chair from its membership to serve a 1-year term and may also

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[7] *See e.g.,* note 5, p.23 Exhibit 9.
[8] *See* note 4, Section III.
[9] ch. 82-168, L.O.F.
[10] s. 25.384(2), F.S.
[11] The statute refers to the Supreme Court and the Florida Court Education*al* Council. As such, the statute as written references a council with a slightly different name than the "Florida Court Education Council" established by the Supreme Court. However, in operation, the Council has acted pursuant to s. 25.384, F.S. since its adoption.
[12] ss. 28.241(1)(a)1.c., and 28.241(1)(a)2.e., F.S. ($3.50).
[13] s. 28.2401(3), F.S., ($3.50).
[14] s. 34.041(1)(b), F.S., ($3.50).
[15] Transparency Florida, Court Education Trust Fund Revenue Report, FY 2015-16 (Last accessed January 25, 2017).
[16] 2015-16 Annual Report on Activities Sponsored through the Court Education Trust Fund (September 30, 2016) (On file with the CJC Sub).
[17] *See* note 4, Section III. This total was calculated using the definition of administrative costs consistent with the definition utilized by the US Department of Labor: "the allocable portion of necessary and reasonable costs that are not related to the direct provision of services."

elect other offices from its membership as it deems necessary. The Council must be headquartered in the 9th Judicial Circuit (Orange and Osceola counties). The bill allows the Council to employ up to 3 full-time employees.

The bill requires the FCEC to:

- Adopt guidelines for administrative expenses, capping the total amount at 15% of the previous fiscal year's deposited funds
- Adopt policies related to the selection and approval of education and training programs.
- Submit a report each year to the Senate President and the Speaker of the House of Representatives in substantially the same form as current law.

The bill repeals a definition of "family or household member" as the term is not used in the section.

Lastly, the bill requires that the Court Education Trust Fund be terminated, with all remaining unencumbered funds reverting to the General Revenue Fund, in the event that any provision contained in sections 1 or 2 of the bill is declared invalid for any reason. In such circumstance, the $3.50 additional fee pursuant to ss. 28.0241(3), 28.241(1)(a)1.c., 28.241(1)(a)2.e., and 34.041(1)(b), F.S. (probate, general circuit civil, foreclosure, and general county civil, respectively) would no longer be collected.

B. SECTION DIRECTORY:

Section 1 amends s. 25.384, F.S., relating to the Court Education Trust Fund.

Section 2 amends s. 25.385, F.S., relating to the standards for instruction of circuit and county court judges.

Section 3 relating to a finding that any provision of sections 1 or 2 is invalid.

Section 4 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have an impact on state government revenues.

2. Expenditures:

   The fiscal impact of the bill on the Court Education Trust Fund is unclear, see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have an impact on local government revenues.

2. Expenditures:

   The bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

For fiscal year 2015-16, the Court Education Trust Fund incurred $2,477,738 in total expenditures. The two largest components of this figure are Salaries ($1,070,161) and In-State Court Education Programs

($1,264,732).[18] While the bill would reduce FTE's from 15.0 to 3.0, and would limit administrative overhead, it is unclear whether the savings resulting from reducing salaries, benefits and administrative savings would revert to the state, would allow the trust fund balance to increase, or would be used to improve programming.

In OSCA's 2017 Judicial Impact Statement draft for the bill, the Office stated that "[i]t is unclear if an FCEC-controlled Court Education unit staffed by a maximum of three employees would be able to continue to produce meaningful, high-quality education to meet [the judicial education] requirements."[19]

If any provision in Section 1 or 2 of the bill is found invalid, there would be a non-recurring increase in state government revenues as the remaining unencumbered funds from the Court Education Trust Fund would revert to the General Revenue Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of sales tax shared with counties or municipalities.

2. Other:

   Article V, s. 2(a) of the state Constitution provides that "[t]he supreme court shall adopt rules for the practice and procedure in all courts... [and] the administrative supervision of all courts[.]" Article V, s. 14(d) of the state Constitution provides that "[t]he judiciary shall have no power to fix appropriations."

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

At lines 69-70 of the bill, it places a cap on administrative expenses at 15%. There is no definition of "administrative expense."

The bill also contains the original language from ss. 25.384, F.S., and 25.385, F.S., that refers to the FCEC as the Florida Court Educational Council. The Council, as established by the Supreme Court, is called the Florida Court Education Council.

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IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[18] *See* note 14.
[19] *See* note 4, Section V.

A bill to be entitled

An act relating to the Florida Court Educational Council; amending s. 25.384, F.S.; specifying that the Court Education Trust Fund shall be administered by the Florida Court Educational Council; deleting a provision requiring the council to provide an annual report; amending s. 25.385, F.S.; specifying the membership, voting procedures, and duties of the council; specifying the location of the council headquarters; requiring the council to submit an annual report; providing for nonseverability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1), (2), and (4) of section 25.384, Florida Statutes, are amended to read:

25.384 Court Education Trust Fund.—

(1) There is created a Court Education Trust Fund to be administered by ~~the Supreme Court through~~ the Florida Court Educational Council as set forth in s. 25.385.

(2)(a) The Florida Court Educational Council shall adopt a comprehensive plan for the operation of the Court Education Trust Fund and the expenditure of the moneys deposited in the trust fund.

(b) The plan shall provide for travel, per diem, tuition, educational materials, and other related costs incurred for in-state and out-of-state education and training programs for judges and other court personnel to benefit the judiciary of the state. Such ~~The trust fund moneys shall be used to provide~~ education and training programs shall be ~~for judges and other court personnel~~ as defined and determined by the ~~Florida Court Educational~~ council as set forth in s. 25.385.

~~(b) The Supreme Court, through its Florida Court Educational Council, shall adopt a comprehensive plan for the operation of the trust fund and the expenditure of the moneys deposited in the trust fund. The plan shall provide for travel, per diem, tuition, educational materials, and other related costs incurred for educational programs, in and out of state, which will be of benefit to the judiciary of the state.~~

~~(4) The Supreme Court, through the Florida Court Educational Council, shall submit a report each year, on October 1, to the President of the Senate and the Speaker of the House of Representatives, which report shall include the total number of judges and other court personnel attending each training or educational program, the educational program attended and the location of the program, and the costs incurred. In addition, the report shall identify the judges and other court personnel attending out-of-state programs and the costs associated with such programs. The report shall also show the total dollars~~

~~deposited in the fund for the fiscal year and the balance at the end of the fiscal year.~~

Section 2. Section 25.385, Florida Statutes, is amended to read:

25.385 Florida Court Educational Council; composition; duties; reports ~~standards for instruction of circuit and county court judges in handling domestic violence cases~~.—

(1)(a) The Florida Court Educational Council shall consist of the chief judge of each district court of appeal and the chief judge of each judicial circuit. The council shall elect a chair from its membership for a 1-year term to preside at all council meetings. The council shall also elect other officers from its membership as it deems necessary.

(b) A majority of the council members shall constitute a quorum, and the affirmative vote of a majority of the members present shall be necessary for any action to be taken by the council.

(c) The administrative duties of the council include:

1. Adopting guidelines on permissible administrative expenses, which may not exceed 15 percent of the funds deposited into the previous fiscal year's Court Education Trust Fund.

2. Adopting policies and guidelines related to the selection of education and training programs, approval of courses for such programs, and selection of participants. The council shall also develop and fund appropriate education and

training programs for new trial judges, appellate judges, child support hearing officers, and magistrates.

3. Adopting reporting formats.

4. Supervising council employees. However, the council may not employ more than three full-time employees.

(d) The council and its employees shall be headquartered in the ninth circuit.

(2)(a) ~~(1)~~ The ~~Florida Court Educational~~ council shall establish standards for instruction of circuit and county court judges who have responsibility for domestic violence cases, and the council shall provide such instruction on a periodic and timely basis.

(b) ~~(2)~~ As used in this subsection, ~~section:~~

~~(a)~~ the term "domestic violence" has the meaning set forth in s. 741.28.

~~(b) "Family or household member" has the meaning set forth in s. 741.28.~~

(3) The council shall submit a report each year, on October 1, to the President of the Senate and the Speaker of the House of Representatives that includes the total number of judges and other court personnel attending each in-state training or educational program, the training or educational program attended and the location of the program, and the costs incurred. The report shall also identify the judges and other court personnel attending out-of-state training or educational

programs and the costs associated with such programs. The report shall identify the total dollars deposited into the trust fund for the fiscal year and the balance in the trust fund at the end of the fiscal year.

Section 3. If any provision contained in sections 1 or 2 of this act is declared invalid for any reason, then sections 1 and 2 of this act shall be declared invalid, the fees that would be directed to the Court Education Trust Fund may not be assessed pursuant to ss. 28.2401(3), 28.241(1)(a)1.c., 28.241(1)(a)2.e., and 34.041(1)(b), the remaining unencumbered funds in the Court Education Trust Fund shall revert to the General Revenue Fund, and the trust fund shall be terminated.

Section 4. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 301 Supreme Court Reporting Requirements
SPONSOR(S): White and others
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Stranburg	Bond
2) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Rules of Judicial Administration, written and adopted by the Supreme Court, provide time standards for the resolution of various types of cases. Among the standards is that an appellate court render a decision within 180 days of oral argument or submission of the case to the court panel without oral argument. The trial courts and district courts of appeal must report every quarter all cases on their dockets that fall outside of the applicable time standard. This report is sent to the Chief Justice of the Supreme Court as part of the Supreme Court's constitutional duty to supervise the lower courts. The Supreme Court by practice also creates a report each quarter of the cases on its docket past the 180 day time standard, which it files with itself.

This bill requires the Supreme Court to provide an annual report by October 15 of each year listing its cases without a decision or disposition beyond a 180 day period. The report is to be delivered to the Governor, Attorney General, President of the Senate, and the Speaker of the House of Representatives. The report must list all cases on the court's docket outside of the time standard that have not been resolved and cases resolved in the previous year beyond the time standard. The report must also include the case name, number and type, the amount of time since oral argument or submission without oral argument, and the reason for the delay in rendering a decision. The report must be made in electronic spreadsheet format and able to be filtered and sorted. The bill includes 6 different designations for the case type portion of the report.

The requirement is repealed July 1, 2022, unless reviewed and reenacted by the Legislature before that date.

The bill does not appear to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Art. V, s. 2 of the Florida Constitution requires the Supreme Court to adopt rules for the practice and procedure in all courts and rules for the administrative supervision of all courts.[1] Florida Rule of Judicial Administration 2.250 provides time standards for all courts to dispose of cases.[2] Trial courts have multiple time standards based on case type.[3] These standards range from 90 days from arrest to final disposition in misdemeanor cases to 24 months from filing to final discharge of contested probate cases.[4]

The general time standard for the Supreme Court and the District Courts of Appeal requires a decision to be rendered in a case within 180 days of either oral argument or submission of the case to the court panel for a decision without oral argument.[5] The time standard for juvenile dependency and termination of parental rights appeals, however, is within 60 days of oral arguments or submission to the court without oral arguments.[6]

Rule 2.250 also requires a report from each trial and district court on cases not resolved within the time standards.[7] All pending cases in circuit courts and district courts of appeal exceeding the time standards must be listed separately in a report submitted quarterly to the Chief Justice of the Supreme Court.[8] The Supreme Court, by practice, also produces a report detailing its pending cases exceeding the appellate time standard, which it files with itself. Pursuant to Rule 2.250(b), the report must include the case number, case type, case status, the date of arrest in criminal cases, and the original filing date in civil cases for each case in the report.[9] The reports generated by the District Courts and the Supreme Court contain the case number, the case name, and the date of oral argument or submission without oral argument.[10] These reports also include a list of all cases that exceed the time standard during the last quarter and that were resolved during the current quarter, including the date the opinion was rendered.[11]

The reports are furnished to the Chief Justice.[12] The cases in the report are listed in order by case number.[13] The report is due to the Chief Justice on the 15th day of the month following the last day of the quarter.[14]

Effect of Proposed Changes

The bill creates s. 25.052, F.S, requiring the Supreme Court to provide an annual report on its cases without a decision or disposition beyond a 180 day period. The report must be provided by October 15 and contain data as of September 30 of that year. The report must be delivered to the Governor, the Attorney General, the President of the Senate, and the Speaker of the House of Representatives.

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[1] Art. V, s. 2(a), Fla. Const.
[2] Fla. R. Jud. Admin. 2.250(a)
[3] Fla. R. Jud. Admin. 2.250(a)(1)
[4] Fla. R. Jud. Admin. 2.250(a)(1)(A),(D)
[5] *Id.*
[6] *Id.*
[7] Fla. R. Jud. Admin. 2.250(b)
[8] *Id.*
[9] *Id.*
[10] Appellate Courts Pending Caseload Report for Quarter Ending September 30, 2016. A copy of this document is on file with the Civil Justice and Claims Subcommittee.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Fla. R. Jud. Admin. 2.250(b)

The report must include cases on the court's docket as of September 30 that fall outside of the 180 day time standard for disposition or decision. The report also includes cases decided or disposed of between October 1 of the previous year and September 30 of the current year for which the court did not meet the 180 day time standard. For each case listed in the report, the Supreme Court must provide:

- Case name and number;
- Case type;
- A brief description of the case;
- The date on which the case was added to the court's docket;
- The date of oral argument or submission to the court panel without oral argument;
- The number of days that have elapsed since the date of oral argument or submission without oral argument for each case;
- A detailed explanation of the court's failure to render a decision or disposition within the 180 day period; and
- The date on which, or time period within which, the court expects to render a decision or disposition, if the case has not yet been decided.

For cases that were decided outside of the 180 period between October 1 of the previous year and September 30 of the current year, the Supreme Court must also provide the date of the decision or disposition and the number of days elapsed between the date of oral argument or submission without oral argument and date on which a decision or disposition was issued.

The report must be submitted in an electronic spreadsheet format. The spreadsheet must be able to be sorted and filtered by:

- Case number;
- Case type;
- The date on which the case was added to the court's docket;
- The date of oral argument or submission without oral argument;
- The number of days that have elapsed since oral argument or submission without oral argument; and
- The date of decision or disposition.

Case type designations are to include civil, criminal not seeking the death penalty, criminal seeking the death penalty, court rules, bar discipline, and judicial discipline.

The act is repealed July 1, 2022, unless it is reviewed and reenacted by the Legislature before that date.

B. SECTION DIRECTORY:

Section 1 creates s. 25.052, F.S., related to Supreme Court reporting requirements.

Section 2 provides for future legislative review and repeal by July 1, 2022.

Section 3 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have any impact on local government revenues.

2. Expenditures:

   This bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Office of the State Courts Administrator was not able to determine the fiscal impact of the bill.[15]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create rulemaking authority or a need for rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

[15] Office of the State Courts Administrator 2017 Judicial Impact Statement, dated February 2, 2017. A copy of the statement is on file with the Civil Justice & Claims Subcommittee.

A bill to be entitled

An act relating to Supreme Court reporting requirements; creating s. 25.052, F.S.; requiring the Supreme Court to issue an annual report regarding certain cases; specifying data to be included in such report; providing for future legislative review and repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 25.052, Florida Statutes, is created to read:

25.052 Annual report.—

(1) Between October 1 and October 15 of each year, the Supreme Court shall provide a report with data as of September 30 of that year, to the Governor, the Attorney General, the President of the Senate, and the Speaker of the House of Representatives consisting of two parts.

(a) In part I of the report, the court shall provide the following information regarding each case on the court's docket as of September 30 of the current year, for which a decision or disposition has not been rendered within 180 days after oral argument was heard or after the date on which the case was submitted to the court panel for a decision without oral argument:

1. The case name and number.

2. The case type.

3. A brief description of the case.

4. The date on which the case was added to the court's docket.

5. The date of oral argument or the date the case was submitted to the court panel for decision without oral argument.

6. The number of days that have elapsed since the date the oral argument was heard or the date the case was submitted to the court panel for a decision without oral argument.

7. A detailed explanation of the court's failure to render a decision or disposition within 180 days after oral argument was heard or after the date on which the case was submitted to the court panel for a decision without oral argument.

8. The date on which, or the time period within which, the court expects to render a decision or disposition.

(b) In part II of the report, the court shall provide the following information regarding each case decided or disposed of by the court between October 1 of the prior year and September 30 of the current year, for which the decision or disposition was not rendered within 180 days after oral argument was heard or after the date on which the case was submitted to the court panel for a decision without oral argument:

1. The information required in subparagraphs (a)1.-5. and 7.

2. The date that a decision or disposition was issued.

3. The number of days that had elapsed between the date oral argument was heard or the date the case was submitted to the court panel for a decision without oral argument and the date on which a decision or disposition was issued.

(2) The report shall be submitted in an electronic spreadsheet format capable of being sorted and filtered by the following elements:

(a) The case number.

(b) The case type.

(c) The date on which the case was added to the court's docket.

(d) The date of oral argument or the date the case was submitted to the court panel for decision without oral argument.

(e) The number of days that elapsed since the date oral argument was heard or the date the case was submitted to the court panel for a decision without oral argument.

(f) The date of decision or disposition.

(3) The case type of each case reported shall include civil, criminal not seeking the death penalty, criminal seeking the death penalty, court rules, bar discipline, or judicial discipline.

Section 2. This act is repealed July 1, 2022, unless reviewed and reenacted by the Legislature before that date.

Section 3. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6011 Tobacco Settlement Agreements
SPONSOR(S): Burgess, Jr. and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 100

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	mom	MacNamara	Bond
2) Appropriations Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In civil litigation, a successful party may execute (initiate collection activities) on a judgment entered by the trial court. An appeal does not restrict the right of the successful party to collect the judgment unless the court enters a stay of execution pending the appeal. A stay is automatically granted if the appealing party posts a bond or other surety in an amount equal to the judgment plus two years' interest, except as otherwise provided by law.

In 1997, the state and four large tobacco companies entered into a settlement agreement for all past, present, and future claims by the state. Current law caps the total required amount of all appeal bonds in civil actions filed against one of the four companies by private individuals at $200 million. In addition to the cap on appeal bonds, current law provides procedural rules related to changing or collecting bonds posted by these companies, and imposes reporting requirements on the four tobacco companies and the Supreme Court in connection with these appeals.

Separately, current law provides a means by which a judgment debtor may ask the court for a lower bond, caps the appeal bond at approximately $60 million for a single defendant in a civil action, and caps class action appeal bonds at the lesser of 10% of net worth or $100 million. These laws are not affected by this bill.

This bill repeals the appeal bond limit for appeals by any of the four companies, subjecting these appeals to the Rules of Appellate Procedure, except as otherwise provided by law. The bill also repeals the procedural rules and reporting requirements mandated under current law.

This bill does not appear to have a fiscal impact on state or local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Any trial court judgment may be appealed by the unsuccessful party. An appeal does not restrict the right of the successful party to initiate collection unless the trial court enters a stay of execution pending the appeal. Stays of execution are governed by applicable law and by the Florida Rules of Appellate Procedure.[1] In the case of appeals of judgments for the payment of money, a stay of execution is conditioned on the posting of an appeal bond.

Appeal Bonds in General

Rule 9.310(b)(1) of the Florida Rules of Appellate Procedure provides that, if the judgment is solely for the payment of money, a party may obtain an automatic stay by posting a good and sufficient bond (a supersedeas bond) equal to the principal amount of the judgment plus twice the statutory rate of interest.[2] A "supersedeas" is often defined as either a suspension of the power of the trial court to issue an execution on a judgment or decree from which an appeal has been taken or, if execution has issued, a prohibition emanating from the appellate court against further proceedings under the execution.[3]

The supersedeas bond required for an automatic stay of execution may be made in the form of cash, deposited into the registry of the circuit court in the county where the judgment was entered,[4] or may be in the form of a surety bond that is posted with the court. Posting or depositing this security serves to protect the successful party from being adversely affected against the consequences of the supersedeas or stay when a money judgment or decree is appealed. Specifically, if a judgment debtor loses the appeal, the cash or bond deposited or posted with the court is used to satisfy the judgment.

A court clerk is entitled to fees for examining bond certificates issued by surety companies, and also for receiving registry deposits, which would occur if a party deposited cash as their form of security. [5] Court clerks ordinarily have discretion to deposit such cash receipts with their local depository institution, commingled with county funds, unless in a particular case a court enters specific escrow orders.

Exceptions to Bond Requirement

Florida law has several exceptions to the requirement to post an appeal bond pursuant to Rule 9.310:

- Section 45.045(2), F.S., provides that a party seeking a stay of execution may move the court to reduce the amount of supersedeas bond required to obtain such stay on equitable grounds.

- Section 45.045(1), F.S., applies a $50 million bond cap, for each appellant, on all supersedeas bonds required in any civil action brought under any legal theory, regardless of the judgment appealed. This figure is adjusted for inflation, the cap is approximately $59.5 million presently.

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[1] Fla. R. App. P. 9.310(a) to (f).

[2] As of January 1, 2017, the interest rate on judgments, set by the Chief Financial Officer pursuant to s. 55.03, F.S., is 4.97% per annum or 0.01361644% per day. *See* http://www.fldfs.com/aadir/interest.htm. By way of comparison, the interest rate on judgments in 2003, when s. 569.23, F.S. was enacted, was 6% per annum. In 2009, when the statute was amended, the interest rate on judgments was 8% per annum.

[3] The term "supersedeas" though not used in the rule, is often used by the courts to refer to a stay pending review.

[4] *See* Fla. R. App. P. 9.310(c)(1).

[5] *See* s. 28.24(10)(a)(1-2), F.S. (Allowing the clerks of circuit courts to charge of a fee in an amount equal to 3% of the first $500 received plus 1.5% on each subsequent $100 received.). *See also* s. 28.231, F.S. (Granting any state appellate or county or state trail court the power collect fees as the clerk of the circuit court.); s. 28.24(14), F.S. (Provides for a fee of $3.50 for validating certificates or bonds).

- Section 768.733, F.S., dealing with class action lawsuits, sets a cap of the lessor of either the amount of the punitive damages judgment, plus twice the statutory interest rate or 10% of the appellant's net worth to stay execution pending appeals on punitive damages awards. In either instance, the bond required is capped at $100 million.

Tobacco Lawsuits

In 1995, the state sued the "Big Four" tobacco companies (Phillip Morris, R.J. Reynolds, Brown and Williamson, and Lorillard), asserting various claims for monetary damages and injunctive relief.[6] The suit was resolved in 1997 through a settlement agreement, imposing both monetary and non-monetary sanctions on the tobacco companies. Under the terms of the agreement, the state was to receive $12.1 billion over 25 years along with 5.5% of the unadjusted amounts in perpetuity. Subsequent to the state's settlement, the Big Four and some other smaller tobacco producers settled with 46 states,[7] the District of Columbia, the Commonwealth of Puerto Rico and four U.S. territories, referred to as the Master Settlement Agreement ("MSA"). The total unadjusted cost of the state settlements ranges between $212 billion to $246 billion over the first 25 years, subject to numerous adjustments ranging from inflation to fluctuations in cigarette consumption and market share. From FY 2016-2017 through FY 2025-2026, the state estimates it will receive approximately $3.75 billion in tobacco settlement payments under the agreement.[8]

In March of 2003, an Illinois trial court ordered Phillip Morris Inc. to post a $12 billion bond to file an appeal in a class-action tobacco lawsuit.[9] Following the court's ruling, there was speculation that Phillip Morris would not be financially able to post the bond, could default on its $2.6 billion obligation under the MSA,[10] and therefore might seek bankruptcy protection.[11] Phillip Morris filed a Request for Reduction of Bond and Stay of Enforcement of the Judgment, in which a Brief of *Amici Curiae* signed by the chief law enforcement officers of 37 jurisdictions, and by the National Conference of State Legislatures ("NCSL"),[12] was filed urging the court to exercise its discretion to reduce the appeal bond so as not to interfere with the interests of the states in receipt of the settlement payments. The court in *Price* entered an order substantially reducing the appeal bond and no MSA payments were missed.

Engle Progeny Litigation

In 1994, a Florida resident, Howard Engle, filed a national class-action lawsuit against R.J. Reynolds Tobacco Co., and the other "Big Four" tobacco companies. The plaintiff smokers alleged that the tobacco companies had misled consumers about the dangers of their cigarettes. The class was later limited to Florida residents.[13]

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[6] *See State of Fla. et al. v. Am. Tobacco Co., et al.*, Case No. 95-1466 AH (Fla. 15th Cir. Ct.).
[7] Like Florida, the states of Texas, Minnesota and Mississippi also entered into earlier individual settlement agreements.
[8] State of Florida Revenue Estimating Conference for Tobacco Settlement Payments, *Executive Summary* (8/5/2016)
[9] *See Price v. Phillip Morris, Inc.*, Cause No. 00-L-112 (Ill. 3d Cir. Ct. 2003) At issue in this class-action lawsuit was whether the defendant had violated the Illinois Consumer Fraud Act and the Uniform Deceptive Trade Practices Act in its manufacturing, promoting, marketing, distributing and selling Marlboro Lights and Cambridge Lights and allegedly declaring them safer for consumers than "regular" cigarettes. The court found in favor of the plaintiffs and awarded the sum of $7.1005 billion in compensatory damages. In addition, the court ordered the defendant to pay punitive damages in the amount of $3 billion to the State of Illinois. Enforcement could be stayed only if an appeal bond was presented and approved pursuant to Illinois court rule in the amount of $12 billion.
[10] Under the MSA, Phillip Morris' next payment following the judgment was due April 15, 2003.
[11] *See, e.g.*, Associated Press, "Attorneys general ask to lower Phillip Morris bond," BRADENTON HERALD, April 8, 2003; Ameet Sachdev, "Phillip Morris appeals ruling: Seeks to subtract punitive damages of $3 billion," CHICAGO TRIBUNE, April 5, 2003; Editorial, "Legal trouble for tobacco," BOSTON HERALD, April 5, 2003; Sun-Times Springfield Bureau, "Thompson: Cap tobacco bond ; Says $12 bil. appeal cost can hurt state," CHICAGO SUN-TIMES, March 26, 2003.
[12] NCSL is a bipartisan organization that serves the legislators and staff of the legislatures as an advocate for the interests of the states, providing research, technical assistance and information exchange among policymakers on important state issues. In the *amicus* brief, NCSL's interest in the case is stated as "protecting state finances during the most difficult state budget period in fifty years."
[13] *R.J. Reynolds Tobacco Co. v. Engle*, 672 So.2d 39 (Fla. 3d DCA 1996).

In May 2000, a Florida jury found the companies liable for misleading consumers and awarded the plaintiffs $145 billion in damages, one of the largest jury awards ever in the U.S. The tobacco companies appealed and argued that the class of plaintiffs was too diverse and the punitive damage award was excessive. In 2003, the Florida Third District Court of Appeal agreed and reversed the judgment of punitive damages and decertified the class.[14]

On July 6, 2006, the Florida Supreme Court affirmed the reversal of the punitive damages and the decertification of the class, but it allowed former class members to file individual lawsuits.[15] The Florida Supreme Court also permitted the individual plaintiffs, known collectively as the "*Engle* progeny," to rely on the factual findings in the original lawsuit under the legal principal of *res judicata*.[16] As a result, the individual plaintiffs would not have to prove that the tobacco companies misled consumers, but would have to prove that they relied on those misleading representations and were harmed.

Tobacco Lawsuits and Appeals Post-*Engle*

In 2003, s. 569.23, F.S. was enacted,[17] requiring trial courts to automatically stay the execution of judgments entered in favor of class members during the pendency of civil appeals involving any of the four major tobacco companies that entered into the settlement agreement with the state in 2003 following the posting of the required supersedeas bond. The supersedeas bond required to stay the execution of judgment for appeals involving the four tobacco companies was capped at $100 million, collectively.

At the time the Supreme Court decertified the *Engle* class, there was an estimated 7,000 former members of the class who could file individual lawsuits. According to records provided by the Supreme Court, approximately 3,000 individual trial court lawsuits filed by former class members are currently pending.[18]

Current Law on Appeal Bonds of Certain Tobacco Companies

In 2009, s. 569.23, F.S. was amended[19] to extend the application of the statute to include civil actions against the four major tobacco companies brought by persons who are members of the decertified *Engle* class.[20] This amendment increased the supersedeas bond cap to $200 million dollars, collectively, and placed a limit on the amount of each bond in actions filed by members of the decertified class. Specifically, it capped the total cumulative value of all security based upon or equal to the appellant's proportionate share of liability in all cases pending appeal plus twice the statutory rate of interest.[21] The amount of the security (or bond) required is based on the following chart:

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[14] *Liggett Group, Inc. v. Engle*, 853 So.2d 434 (Fla. 3d DCA 2003).
[15] *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006), *cert. denied,* 552 U.S. 941 552 U.S. 941, 128 S. Ct. 96, 169 L. Ed. 2d 244 (2007).
[16] "*Res judicata*" refers to the legal concept that once a point in controversy has been legally determined by a court judgment, it cannot be contested again by the parties in the same action or in subsequent proceedings. *See* BLACK'S LAW DICTIONARY, FIFTH EDITION (1979).
[17] Ch. 2003-133, L.O.F. (SB 2826)
[18] *Id.*; *See also* What is the "Engle Progeny" Litigation?, Tobacco Control Legal Consortium, September 2015, available at: publichealthlawcenter.org/sites/default/files/resources/tclc-fs-engle-progeny-2015.pdf
[19] Ch. 2009-188, L.O.F. (SB 2198)
[20] Prior to the decertification, the class action suit would have been covered by the supersedeas bond cap in s. 569.23, F.S. However, the separate lawsuits were not covered by the statute, which meant that the tobacco companies would have had to post supersedeas bonds in accordance with state law and rules of court, in any lawsuit filed by a former member of the class.
[21] s. 569.23(3)(a)2, F.S.

Appeal Bond Caps		
TIER-Number of Judgments	Amount of Security per Judgment	Maximum Total Security
1-40	$5,000,0000	$200,000,000
41-80	$2,500,000	$200,000,000
81-100	$2,000,000	$200,000,000
101-150	$1,333,333	$199,999,950
151-200	$1,000,000	$200,000,000
201-300	$666,667	$200,000,100
301-500	$400,000	$200,000,000
501-1,000	$200,000	$200,000,000
1,001-2,000	$100,000	$200,000,000
2,001-3,000	$66,667	$200,001,000

In a 2011 opinion the First District Court of Appeal determined that s. 569.23(3), F.S., may have a "broader application than the *Engle* progeny cases."[22] In other words, under the current language of the statute, the bond cap may potentially be applied to judgments entered against one of the big four tobacco companies in lawsuits filed by individuals who are not members of the decertified *Engle* class.

In addition to capping the supersedeas bonds in such actions, s. 569.23, F.S. mandates that all security be posted or deposited with the clerk of the Supreme Court. As sole recipient of securities from the tobacco companies, the clerk must collect fees for receipt of security as authorized by law. All fees collected are to be deposited in the State Courts Revenue Trust Fund and the clerk is required to utilize the services of the Chief Financial Officer, as needed, for the custody and management of the security posted or deposited with the clerk.

The statute also provides rules for the payment of judgments following an appeal and procedural requirements for changing the amount of security required. Lastly, the statute imposes several reporting and record retention requirements on the tobacco companies and the Clerk of the Supreme Court with respect to these lawsuits and the amount of security posted or paid.[23] Section 569.23, F.S. was found constitutional in *R.J. Reynolds Tobacco Co., v. Hall*, 67 So. 3d 1084 (Fla. 1st DCA 2011).

Currently there are 40 tobacco appeals pending in the state, totaling approximately $470 million in trial court judgments entered against the tobacco companies. In these cases, the tobacco companies have posted roughly $170 million in bonds. In all, 91 appeals on judgments totaling approximately $950 million have been filed by the tobacco companies since the Supreme Court decertified the *Engle* class in 2006. These companies have posted over $400 million in appeal bonds in connection with these appeals.[24]

Effect of Repeal

This bill repeals the supersedeas bond cap that limits the amount of the supersedeas bond the four major tobacco companies are required to post and requires them to post a bond in accordance with the Florida Rules of Appellate Procedure, except as otherwise provided by law. Furthermore, these bonds will no longer be required to be posted with the clerk of the Supreme Court. Rather, bonds will be posted with or deposited in the registry of the clerk of court in the county where the judgment was entered.

While the remaining number of *Engle* progeny cases is declining, the statute may be applied to cases filed by individuals who were not members of the *Engle* class.[25] Therefore, the total number of cases affected by the repeal is unknown.

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[22] *R.J. Reynolds Tobacco Co. v. Hall*, 67 So.3d 1084, 1092 (Fla. 1st DCA 2011).

[23] s. 569.23(3)(e), F.S.

[24] Data used for calculating total appeal bonds and judgements in such actions was provided by the Supreme Court and may be found on the Court's website. *See* www.floridasupremecourt.org/clerk/bonds.shtml (Last accessed 1/26/17)

[25] *See R.J. Reynolds Tobacco Co. v. Hall,* 67 So.2d at 1092. ("Section 569.23(3)...was specifically intended to apply to the *Engle* litigation and, at the time of the passage, the scope of the statute's application was limited to that litigation. This is

B. SECTION DIRECTORY:

Section 1 repeals s. 569.23, F.S., relating to tobacco settlement agreements.

Section 2 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have an impact on state government revenues.

2. Expenditures:

   The bill does not appear to have an impact on state government expenditures. However, the bill would reduce the workload for the Clerk of the Supreme Court by approximately five hours a month.[26]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have an impact on local government revenues.

2. Expenditures:

   The bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on litigants filing suit against a tobacco company as well as the tobacco companies themselves. It appears that this bill may increase costs to tobacco companies for premiums required to post a surety bond, and would correspondingly increase revenues to bonding companies.

D. FISCAL COMMENTS:

Under current law, when an appeal bond is deposited with the clerk of a circuit court in the form of cash, clerks may collect a percentage of the cash deposit as a fee.[27] If, however, a surety bond is posted with the clerk, they are entitled to a flat fee.[28] As such, if any of the four tobacco companies satisfied their appeal bond obligations by depositing cash with a clerk of court, the local government would see an increase in revenue. However, since the amendments to s. 569.23, F.S., none of the tobacco companies have satisfied their appeal bond obligations by depositing cash with the clerk of the Supreme Court; all have done so by posting a surety bond.[29]

Attorney General Pam Bondi has opined that s. 569.23, F.S., "serves a vital, statewide public purpose by protecting a significant stream of income to the state." Specifically, the Attorney General's position is

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clear from the statute's legislative history. However, the statute is not limited to judgments entered in favor of *Engle* plaintiffs; it applies in any civil case against an FSA signatory brought by or on behalf of a member of a decertified class action.") (emphasis added).

[26] Office of the State Court Administrator 2017 Judicial Impact Statement, HB 6011 (January 19, 2017).

[27] *See* s. 28.24(10)(a)(1-2), F.S. (Allowing the clerks of circuit courts to charge of a fee in an amount equal to 3% of the first $500 received plus 1.5% on each subsequent $100 received.)

[28] *See* s. 28.24(14), F.S. (Provides for a fee of $3.50 for validating certificates or bonds) and s. 28.24(19), F.S. (Provides for a fee of $8.50 for approving bonds).

[29] *See* footnote 26.

that the statute prevents the tobacco companies from having to post such large bonds that they may default on their payments to the state.[30]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[30] *See Amanda Jean Hall, etc. v. R.J. Reynolds Tobacco Company*, Case No.: SC11-1611, "Brief of the State of Florida as Amicus Curiae in Support of Respondent," p.1-4 and appendixes, filed June 1, 2012.

A bill to be entitled

An act relating to tobacco settlement agreements; repealing s. 569.23, F.S., relating to security requirements for the signatories, successors, parents, and affiliates of a specified tobacco settlement agreement; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 569.23, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2017.