

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CVJS 11-06 Supreme Court
SPONSOR(S): Civil Justice Subcommittee; Eisnaugle
TIED BILLS: PCB CVJS 11-07 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	10 Y, 5 N	De La Paz	Bond

SUMMARY ANALYSIS

Article V, Section 1 of the Florida Constitution (Constitution) provides that “[t]he judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts.” The Supreme Court of Florida (Supreme Court) is the state’s highest court and consists of seven justices. The justices are appointed by the Governor and are subject to retention elections at the end of their terms. The Chief Justice is chosen by a majority of the members of the court.

The Supreme Court must review final orders imposing death sentences, district court decisions declaring a statute or provision of the Constitution invalid, bond validations, and certain orders of the Public Service Commission on utility rates and services. The Supreme Court may review any decision of a district court of appeal that expressly declares a statute valid, construes a provision of the state or federal constitution, affects a class of constitutional or state officers, or conflicts with a decision of another district court or of the Supreme Court on the same question of law. It may also review certain categories of judgments, decisions, and questions of law certified to it by the district courts of appeal and federal appellate courts. The Supreme Court may also issue writs of prohibition, mandamus, quo warranto, and habeas corpus and other writs necessary to the complete exercise of its jurisdiction.

PCB CVJS 11-06 creates a Supreme Court of Civil Appeals and a Supreme Court of Criminal Appeals to replace the current Supreme Court. The bill provides that each supreme court consist of five justices. To fill the positions on the new supreme courts, the three existing justices with the most seniority are assigned to the Supreme Court of Criminal Appeals, and the remaining four justices are assigned to the Supreme Court of Civil Appeals. The remaining vacant positions will be appointed by the Governor. The bill provides that the Chief Justice of each supreme court will be selected by the Governor, with the advice and consent of the Senate. PCB CVJS 11-06 provides that the two supreme courts have all of the jurisdictional powers given to the current Supreme Court, divided among them according to whether the case involved is a criminal case or a civil case.

If passed by the Legislature, the joint resolution would be considered by the electorate at the November 2012 general election. If adopted by the electorate, the new courts would begin operation 120 days after the election.

This bill requires a nonrecurring expenditure for publication in FY 2012-2013 of \$1,113,515 payable from the General Revenue Fund. If adopted by the electorate, the first full fiscal year of implementation, and beyond, would require recurring funding of approximately \$1.6 million, commencing in FY 2013-2014, payable from the General Revenue Fund. The bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview of the Florida Supreme Court

Article V, Section 1 of the Constitution currently provides that “[t]he judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts.” The state is divided into five appellate districts and twenty judicial circuits according to general law.¹ The Supreme Court is the state’s highest court and consists of seven justices, five of which constitute a quorum.² Of the seven justice positions two are “at large” seats and the remaining five are appointed from each appellate district.³ The Constitution requires four justices to concur in order for the Court to reach a decision.⁴ Justices are appointed by the Governor and, except when appointed to fill an unexpired term, serve six year terms. The justices are subject to retention elections at the end of each term.⁵ The Chief Justice is chosen by a majority of the members of the court.⁶ In practice, the justices select the Chief Justice by rotating the position every two years to the most senior justice who has not previously served as chief.⁷

Historical Background

From 1846 until 1851, the first state Constitution created a Supreme Court but gave it no justices of its own. At that time, the Supreme Court was simply a panel consisting of all of the state’s circuit judges. The circuit judges were elected by the Legislature, collectively serving in the capacity of Justices of the Supreme Court. Pursuant to an 1848 constitutional amendment, in 1851 the first justices were named to the Supreme Court. These justices were elected by the Legislature for the term of their "good behavior." In 1853 an amendment provided for popular election of justices for six-year terms. The 1861 Constitution provided for the appointment of the justices by the Governor, with the advice and consent of the Senate, to serve for six-year terms. The 1868 Constitution changed the terms of justices to "life or during good behavior," and the 1885 Constitution returned to popular elections.

In 1902, an amendment allowed the Legislature to increase the Supreme Court membership from three to as many six justices. Initially there were six, but the 1911 Legislature reduced the number of justices to five. In 1923 the number was again raised to six and continued to be six until a 1940 constitutional amendment increased the size of the court to seven justices.⁸

In 1956, three intermediate appellate courts (district courts of appeal) were created to ease the workload of the Supreme Court. A fourth district court of appeal was added in 1965, and a fifth was added in 1979.⁹

Jurisdiction

Article V, s. 3(b) of the Constitution establishes the jurisdiction of the Supreme Court. The court must review by appeal:

¹ Fla. Const. art V. section 3; Section 35.01, F.S.; Section 26.01, F.S.

² Fla. Const. art. V. section 3

³ Fla. Const. art. V. section 3.

⁴ Fla. Const. art. V. section 3.

⁵ Fla. Const. art. V. section 10.

⁶ Fla. Const. art. V. section 2.

⁷ Florida Supreme Court, Manual of Internal Operating Procedures, Section 1, B.

⁸ <http://www.floridasupremecourt.org/about/history/schistory.shtml>, accessed March 16, 2011.

⁹ HJR 810 (1955); SJR 261 (1965); Ch. 65-294, Laws of Florida; SJR 52-D (1971); Ch. 79-413, Laws of Florida.

- Final orders of courts imposing a death sentence; and
- Decisions of a district court of appeal declaring invalid a state statute or provision of the state constitution.¹⁰

When provided by general law, the Supreme Court reviews by appeal:

- Final judgments entered in proceedings for the validation of bonds or certificates of indebtedness; and
- Action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.¹¹

The Supreme Court has discretion to review decisions of a district court of appeal that:

- Expressly declares valid a state statute;
- Expressly construes a provision of the state or federal constitution;
- Expressly affects a class of constitutional or state officers;
- Expressly and directly conflicts directly with a decision of another district court of appeal or of the Supreme Court on the same question of law;¹² and
- Passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.¹³

In addition, the Supreme Court may:

- Review trial court orders certified by the district court of appeal to be of great public importance, or to have a great effect on the proper administration of justice, and certified to require immediate resolution by the Supreme Court.¹⁴
- Review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the Supreme Court of Florida.¹⁵

The Supreme Court has original jurisdiction to issue writs of prohibition to courts, issue writs of mandamus and quo warranto to state officers and state agencies, writs of habeas corpus, and all writs necessary to the complete exercise of its jurisdiction.¹⁶

Other Responsibilities of the Supreme Court

In addition to its duties related to the exercise of jurisdiction noted above, the Supreme Court:

- Has authority to adopt rules for practice and procedure in all courts.¹⁷
- Has authority to adopt rules for the administration of all courts.¹⁸
- Has express exclusive jurisdiction to regulate “the admission of persons to the practice of law and the discipline of persons admitted.”¹⁹
- Shall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law.²⁰

¹⁰ Fla. Const. art. V. section 3(b)(1).

¹¹ Fla. Const. art. V. section 3(b)(2).

¹² Fla. Const. art. V. section 3(b)(3).

¹³ Fla. Const. art. V. section 3(b)(4).

¹⁴ Fla. Const. art. V. section 3(b)(5).

¹⁵ Fla. Const. art. V. section 3(b)(6).

¹⁶ Fla. Const. art. V. section 3(b)(7)-(9).

¹⁷ Fla. Const. art. V. section 2(a).

¹⁸ *Id.*

¹⁹ Fla. Const. art. V. section 15.

²⁰ Fla. Const. art. V. section 3(b)(10).

- Has the responsibility to determine the need for additional lower court judges based on a court rule providing uniform criteria to perform the evaluation.²¹
- Responds to requests of the Governor for advisory opinions interpreting a provision of the Constitution upon any question affecting the Governor's executive powers and duties.²²
- Reviews the validity of legislative joint resolutions on apportionment and issues orders on apportionment when the Legislature fails to adopt a valid joint resolution on apportionment.

Duties of the Chief Justice

The Chief Justice is the administrative officer of the Supreme Court, responsible for managing the Supreme Court's business, and is also the chief administrative officer of the state's judicial system. The Chief Justice has the power to make temporary assignments of senior and active justices and judges to duty on any court for which they are qualified. The Chief Justice also appoints an administrative justice who is authorized to act on routine procedural motions and other case-related matters which do not require action by a panel of justices.²³

The Chief Justice also presides over trials of impeachment in the senate except when the Chief Justice is the subject of the impeachment trial.²⁴ In lieu of presiding over a trial his or herself, the Chief Justice may designate another justice to preside over an impeachment trial.²⁵

The Chief Justice is also responsible for selecting three of the thirty-seven members of the Constitution Revision Commission which convenes in 2017 and reconvenes every twenty years thereafter.²⁶

The Clerk and Marshal

Under current law, the Supreme Court appoints its own clerk and marshal. The clerk and marshal serve at the pleasure of the court and perform such duties as the court directs. Their compensation is set by general law. The marshal has the power to execute process for the court throughout its territorial jurisdiction.

The Judicial Qualifications Commission

The Judicial Qualifications Commission (JQC) has constitutional authority to investigate any judge or justice for misconduct. If the JQC files charges against a justice or judge, the Supreme Court may remove a justice or judge from office if the misconduct demonstrates a present unfitness to hold office. Alternatively, the Supreme Court may impose a lesser disciplinary action (i.e. reprimand, fine or suspension) if the conduct warrants.²⁷

The Supreme Court receives recommendations from the JQC and may accept, reject or modify in whole or in part the findings, conclusions and recommendations of the JQC.²⁸ Judges or justices whom are the subject of a JQC investigation may be suspended from office, with or without compensation, pending determination of an inquiry once a formal proceeding has commenced. If the person who is the subject of proceedings by the JQC is a justice of the Supreme Court, all justices of the Court are automatically disqualified to sit as justices with respect to the inquiry against the justice. In such cases, panels of seven of the most senior chief judges of the judicial circuits serve the Supreme Court's function.

²¹ Fla. Const. art. V. section 9.

²² Fla. Const. art IV. section 1(c).

²³ Florida Supreme Court Manual of Internal Operating Procedures. Section I.

²⁴ Fla. Const. art. V. section 17(c).

²⁵ Id.

²⁶ Fla. Const. art. XI, section 2.

²⁷ Fla. Const. art. V. section 12.

²⁸ Fla. Const. art. V, section 12(c).

Current Caseload Statistics From the Supreme Court

The following are selected case statistics regarding the Supreme Court from the court's latest budget documents for FY 2009-10.²⁹

- Initial death penalty appeals disposed of within 2 years of case filing: 31%
- Post-conviction death penalty cases disposed of within 1 year of filing: 42.6%
- Other mandatory review jurisdiction cases disposed of within 1 year of filing: 96.3%
- Discretionary review jurisdiction cases disposed of within 1 year of filing: 93.8%
- Non-death penalty original writ petition cases disposed of within one year of filing: 99.4%
- Florida Bar disciplinary cases disposed of within 1 year of filing: 82.1%
- Other original jurisdiction cases disposed of within 1 year of filing: 81.7%

In FY 2010-11, criminal cases constituted 68% of the Supreme Court's mandatory jurisdiction, while civil cases constituted 32%. Also, criminal cases made up 60% of the court's discretionary jurisdiction, while civil cases made up 40%. With regard to original proceedings, criminal cases were 33%, civil cases were 30%, and Florida Bar, Board of Bar Examiners, and court rule proceedings combined to make up 35% of the Supreme Court's jurisdiction.

Current Timeliness of the Florida Supreme Court

According to the time standards the Supreme Court established for itself and the district courts of appeal, the presumptively reasonable time frame for the disposition of cases is within 180 days of either oral argument or from the submission of the case to the court for a decision without oral argument.³⁰

Every case decided with a written opinion, issued from July 1, 2010 through December 31, 2010, was reviewed to determine how many cases met this standard. Of the 68 opinions issued during that time period, 23, or roughly one-third of the opinions, exceeded the time limit. The longest delay was 617 days from oral argument to opinion in a death penalty post-conviction case.

Another measure of the ability of an appellate court to process its workload in a timely manner is to measure the time from "perfection" of the case to oral argument. Perfection is the point at which the record on appeal and the briefs are complete and the case can be set for oral argument.³¹ The advantage to this measure is that it does not include delays caused by the parties. Looking at criminal cases from the same time period above, the following results were found:

Table 1: Criminal Cases With Written Opinions July 1 – December 31, 2010

Type of Proceeding	Opinions Issued	Average Number of Days Between Perfection and Oral Argument	Most Days Between Perfection and Oral Argument in a Single Case
Criminal non-death penalty	9	119	296
Death penalty, direct appeal	16	160	334
Death penalty post-conviction	8	184	275

²⁹ Long Range Program Plan, FY 2011-12 through 2015-16 reflecting performance measure information for FY 2009-10.

³⁰ The presumptive nature of the time period recognizes that there are some cases, because of their complexity, present problems that cause reasonable delays. The exceptions to this rule are juvenile dependency cases or termination of parental rights cases which have a 60 day presumptive time frame. See, Fla. R. Jud. Admin. 2.250(a).

³¹ Even after reaching this point, however, there may still be some cause for reasonable delay.

In terms of all cases in which an opinion was rendered between July 1, 2010, and December 31, 2010, for the 68 opinions issued overall, the average time from filing to disposition was 547 days. The longest time period was 1575 days (4.3 years). A total of 15 cases took over 2 years from filing to opinion, and 4 of those took over 3 years. The shortest time period was 21 days from filing to opinion.

As of March 15, 2011, of cases outstanding and pending resolution by the Supreme Court, the oldest:

- Criminal case was filed in 2005.³²
- Civil case was filed in 2006.³³
- Direct appeal of a death sentence conviction was filed in 2007.³⁴
- Appeal of a post-conviction motion was filed in 2007.³⁵
- Bar disciplinary case was filed in 2008.³⁶

The Death Penalty and the Supreme Court's Workload

The processing of cases involving persons sentenced to death is a significant part of the Supreme Court's workload.³⁷ A report of the State Court Administrator explains:

The volume of the record on appeal, and the thoroughness and number of briefings, is unique in criminal law to capital case litigation. These factors have a very direct bearing on the workload of the Court. Furthermore, because of the gravity of the ultimate punishment of death, every case is afforded oral argument, and every decision is released with a written opinion. Every capital case, both on initial appeal and in postconviction, requires and receives the full, in-depth scrutiny of the Court.³⁸

In the years following the reinstatement of Florida's death penalty in 1976, delays in the execution of persons sentenced to death have steadily increased. For executions carried out from 1994 to 1999, delays averaged nearly 14 years, which represents an 80% increase from the 7.74 year average for executions between 1979 and 1983.

In January of 2000, the Legislature held a special session to craft legislation directed toward eliminating known causes of delay in carrying out death sentences of persons convicted of capital murder whose convictions and sentences had been affirmed on appeal. The product of the Legislature's efforts was called the Death Penalty Reform Act of 2000 ("DPRA"). In *Allen v. Butterworth*,³⁹ the Supreme Court struck down the DPRA, holding that it violated the separation of powers provision of the Constitution and that it was an unconstitutional encroachment of the their exclusive power to adopt rules for the practice and procedure in all courts. The ruling eliminated the Legislature's ability to address by general law the protracted nature of litigating death penalty postconviction claims. The table below shows the progression of delays in the years before and after *Allen v. Butterworth*.

³² *State v. Lemuel Isaac*, SC05-2047. Oral argument was April 8, 2010.

³³ *Genovese v. Provident Life & Accident Ins. Co.*, SC06-2508. Oral argument was August 31, 2009.

³⁴ *Richard Knight v. State*, SC07-841. Oral argument is set for April 11, 2011.

³⁵ *Barwick v. State*, SC07-1831. Oral argument was September 3, 2009.

³⁶ *The Florida Bar v. Gwynn*, SC08-622.

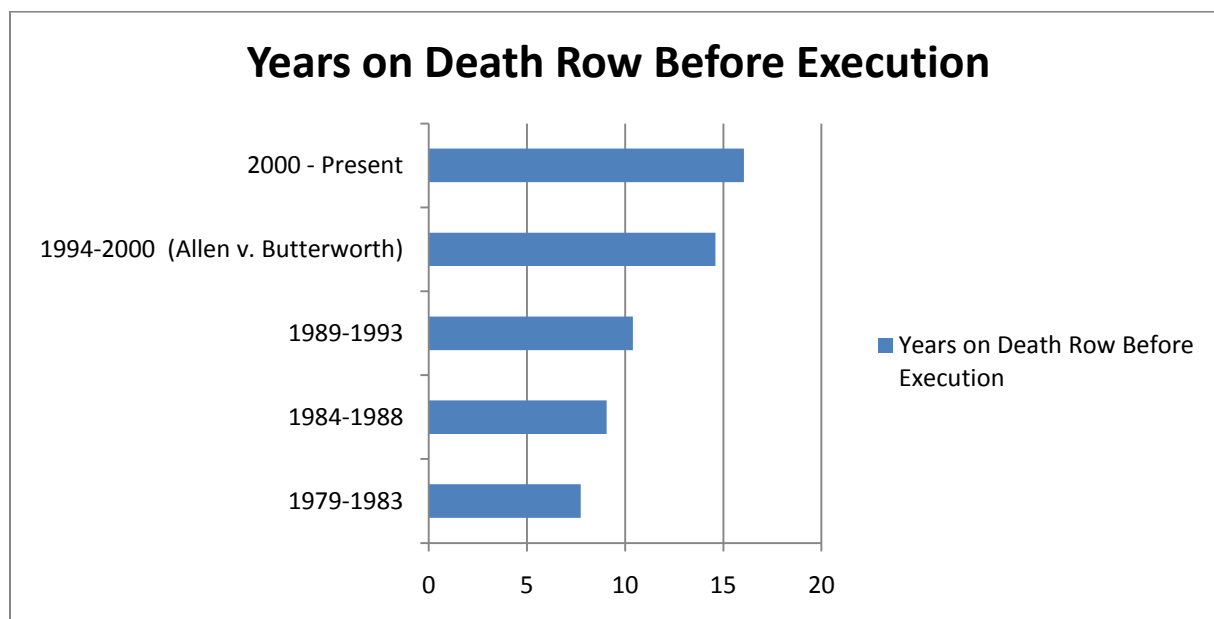
³⁷ Report of the Office of State Courts Administrator: *Workload of the Supreme Court of Florida*, at 46. November 7, 2000.

http://www.floridasupremecourt.org/pub_info/workload/workloadcomplete.pdf

³⁸ *Id.* at 50.

³⁹ *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000).

Years on Death Row Before Execution



As the table above reflects, in the ten years since *Allen v. Butterworth*, the average years spent on death row before execution has increased to just over 16 years. In June of 1998 Florida's death row housed 367 inmates; as of March 3, 2011, there were 394. The number of inmates since 2000 on death row dying of natural causes (29) has now surpassed the number of inmates executed (25).⁴⁰ Presently there are 145 inmates who have been on death row for 20 years or longer, of those, 34 have been on death row for 30 years or more.

When the Supreme Court invalidated the DPRA it assumed responsibility for reforming capital postconviction procedures.⁴¹ In July of 2001, the Supreme Court adopted newly amended rules governing procedures for capital postconviction proceedings, saying:

We are hopeful that the new rule will allow future capital postconviction proceedings to be *resolved within two years from the time the case becomes final*, thereby eliminating the months and years of needless delay that we have seen in the past.⁴² (emphasis added).

However, eleven years later, no apparent progress toward the goal of improving the timely review of meritorious claims, and more importantly, curtailing, discouraging and sanctioning the filing of dilatory and frivolous motions has been made.

Some might point to delays in the trial courts as a reason for the increasing overall delays in the death penalty process. However, that argument overlooks the Supreme Court's oversight role over the lower courts under art. V, s. 2(a), Fla. Const. Florida Rule of Criminal Procedure 3.851(c)(2) requires status conferences to be conducted every 90 days after a judge has been assigned to a death penalty case after the issuance of the mandate on direct appeal. All circuit judges are subject to the administrative supervision of the chief judge of the judicial circuit.⁴³ Pursuant to Rule of Judicial Administration 2.215, the chief judge of the judicial circuit must monitor the status of all postconviction proceedings in capital cases and "shall take necessary actions to assure that such cases proceed without undue delay."⁴⁴

⁴⁰ One inmate committed suicide.

⁴¹ *Allen v. Butterworth*, 756 So.2d 52, 67 (Fla. 2000).

⁴² *Amendments to Florida Rules of Criminal Procedure 3.851, 3.852, and 3.993 and Florida Rule of Judicial Administration 2.050*, 797 So.2d 1213 (Fla. 2001).

⁴³ Fla. R. Jud. Admin. 2.215(b)(4).

⁴⁴ Fla. R. Jud. Admin. 2.215(b)(7).

The chief judge of a circuit is also required to inform the Chief Justice of the Supreme Court of the status of all such cases on a quarterly basis starting in January of each year.⁴⁵

2001 Supreme Court Workload Study Commission

In 2001, the Supreme Court Workload Study Commission (“study commission”) was created to “develop recommendations for addressing workload issues, including but not limited to, the need for additional justices on the Supreme Court.”⁴⁶ There were three proposals that the commission did not adopt:

- First, the commission unanimously decided not to recommend increasing the number of justices on the Supreme Court from seven to nine, noting that increasing the number of justices on an appellate panel tends to slow resolution of cases. (See, “Drafting Issues or Other Comments” section)
- Second, a majority of the commission “was not convinced that the present workload of the Supreme Court was great enough to create a separate criminal court of appeals at this time.” The report further noted that “[s]ome of the members thought the idea should be subject to further study and if the caseloads continued to increase, creation of a new court might be necessary.”
- Third, none of the commission members suggested changes to the Supreme Court’s jurisdiction.

In its 2001 final report, the study commission acknowledged that there exists a workload problem at the Supreme Court and that some civil cases were not being heard in a timely fashion because of the work devoted to criminal cases.⁴⁷ The study commission made five recommendations:

1. The Legislature support the court’s request for additional staff and technology support at the Supreme Court to address the processing of death penalty cases and “tag” cases.⁴⁸
2. The Supreme Court develop a plan for the efficient and expeditious handling of “tag” cases.
3. The Supreme Court request from the Legislature sufficient law clerk staff at the trial court level to address the quality of decisions in death penalty cases.
4. The selection of the Chief Justice remain with the Supreme Court but that efficiency could be effected by the election of a Chief Justice being based on the person’s background and experience; the option for re-election for a Chief Judge; expanding the duties of the Administrative Justice; and the extension of the term for which the Chief Justice serves.
- 5A. The Legislature further study the potential to reduce the Supreme Court’s workload by requiring a supermajority vote of the jury (of no less than 9 to 3) before a trial judge may impose the death penalty.
- 5B. The Legislature further study the potential to reduce the Supreme Court’s workload by passing a law preventing the trial judge from overriding a jury’s recommendation of life imprisonment [in a death penalty case].

⁴⁵ *Id.*

⁴⁶ Chapter 2000-237, Laws of Florida.

⁴⁷ 2001 Final Report of the Supreme Court Workload Study Commission, at 14.

⁴⁸ The Supreme Court had requested two more attorneys for the central staff, paralegals in the Clerk’s office, and funding for upgrades to the case management system. A tag case is where two or more cases are tagged because of similar legal issues.

As to funding issues, the table below reflects the funding of Supreme Court positions from FY 2000-01 through FY 2010-11:

Table 2: Supreme Court Funded Positions

Fiscal Years	Number of Positions Funded	Difference from Prior Year
2000-01	104	
2001-02	88	- 16
2002-03	88	No change
2003-04	86	- 2
2004-05	88	+2
2005-06	91	+3
2006-07	94	+3
2007-08	101	+7
2008-09	97	-4
2009-10	97	No change
2010-11	97	No change

With respect to trial court positions, over the course of the regular sessions of 2005 and 2006, the Legislature added 69 circuit judge positions, and 39 county judge positions.⁴⁹ Additionally in 2006, 122 full-time positions were funded and authorized to implement the additional judicial positions created in 2006.

With respect to the fourth recommendation, the Supreme Court has not implemented any changes to its current system of selecting the Chief Justice. Regarding recommendation 5A, the House of Representative further studied the issue from the context of requiring unanimous jury verdicts to impose a death sentence, and declined to require unanimity for a death sentence.⁵⁰ Recommendation 5B has not been acted upon, however, according to the capital appeals division of the Attorney General’s Office there are an extremely limited number of cases that are still pending involving a trial judge’s decision to override a jury’s recommendation for a life sentence. In practice, trial judges are no longer overriding jury recommendations for life imprisonment in capital cases.

In arriving at its recommendations, the study commission identified two major areas where improvements could be made: 1) the processing of death penalty cases, and 2) the processing of “tag” cases.⁵¹ As previously discussed, the delay in the processing of death penalty cases has increased in the ten years since the study commission issued its report.⁵²

Splitting the Workload

The Supreme Court does not report the number of work hours consumed according to the type of case processed for review. An article published in the Florida Bar News quoted Florida Supreme Court Clerk Tom Hall recalling that when then Chief Justice Charles Wells [2000-02] testified before the work load study commission considering whether to expand the number of justices on the Supreme Court from seven justices to nine, he said death penalty cases constituted about 50 percent of their workload,

⁴⁹ Chapter 2005-150 , Laws of Florida; Ch. 2006-166, Laws of Florida.

⁵⁰ House Resolution 1627 (2006).

⁵¹ 2001 Final Report of the Supreme Court Workload Study Commission, at 8.

⁵² Testimony from the head of the criminal appeals division of the Attorney’s General’s Office before the Civil Justice Committee on February 9, 2011, described the futile nature of the post *Allen v. Butterworth* modifications to the court rules governing capital postconviction proceedings describing them as “cosmetic.” She also characterized the current rules as preserving a postconviction process in which “we are spinning our wheels” in litigation. Video clip of testimony at the House Civil Justice Subcommittee held on February 9, 2011, at time position 3:12:40 to 3:13:15. For a full description of the effect of the Supreme Court’s current rules governing capital postconviction litigation see position 3:06:25 to 3:13:15. See, <http://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?SessionId=66&CommitteeId=2613>

though only 12 percent of their caseload in terms of the number of cases processed. Hall in the same article reported that approximately 40 percent of cases heard in oral arguments are death cases.⁵³

The division of the Supreme Court's workload according to case filings is as follows based on 2010 filings:

	Number of Filings	Percentage of Filings
Mandatory Review		
Criminal	64	68%
Civil	30	32%
Discretionary Review		
Criminal	578	60%
Civil	389	40%
Original Proceedings		
Criminal	479	33%
Civil	444	30%
Bar/Bar Examiners/Rules	523	35% ⁵⁴

Effect of PCB CVJS 11-06

Overview

PCB CVJS 11-06 amends Article V of the Constitution to create a Supreme Court of Civil Appeals and a Supreme Court of Criminal Appeals. The bill divides among these two distinct supreme courts the duties currently performed by the Supreme Court. The two supreme courts will each serve as the courts of last resort for matters within their respective jurisdictions. The bill provides that each supreme court consist of five justices, four of which constitute a quorum.⁵⁵ The five justices for both supreme courts must be appointed from each of the five appellate districts. The bill requires three justices to concur in order for the Court to reach a decision. Like the current law, the bill provides that justices are appointed by the Governor and, except when appointed to fill an unexpired term, serve six year terms. The justices are subject to retention elections at the end of each term. The bill provides that the Chief Justice of both supreme courts will be selected by the Governor, with the advice and consent of the Senate. The bill also expressly requires that all justices receive the same compensation.

Jurisdiction

PCB CVJS 11-06 amends Article V to split the jurisdiction of the two supreme courts. The Supreme Court of Civil Appeals has jurisdiction over the civil law, as provided in general law. The Supreme Court of Criminal Appeals has jurisdiction over the criminal law, as provided in general law. The implementing provision, creating art. V, s. 21 of the Constitution provides further details regarding the jurisdictional split. Section 21 provides that the courts collectively have all of the jurisdiction of the current Supreme Court.

All appeals from a death sentence are assigned to the Supreme Court of Criminal Appeals, both direct and post-conviction. The bill expressly provides that the Supreme Court of Civil Appeals has no

⁵³ *What About the Death Penalty*, Florida Bar News, December 15, 2008.

⁵⁴ The clerk's office had 2% of cases marked as "no entry" because the deputy clerk could not classify the case.

⁵⁵ Eighteen other states currently have 5 justices on a supreme court.

jurisdiction to issue a stay of execution or to hear any challenge of any law or procedure regarding the death penalty.

In the event that in a particular case the jurisdiction of the supreme courts is unclear, both supreme courts assert jurisdiction and neither one withdraws, the determination of where the appropriate jurisdiction resides will be made by the chief judge of the Supreme Court of Civil Appeals.⁵⁶

Other Responsibilities of the Supreme Courts

The bill authorizes the Supreme Court of Civil Appeals to adopt rules for practice and procedure in civil court proceedings and appeals, and authorizes the Supreme Court of Criminal Appeals to adopt rules for practice and procedure in criminal court proceedings and appeals. Administration of the court system is as provided by general law. The Supreme Court of Civil Appeals is given exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted, while the Supreme Court of Criminal Appeals is given the authority for judicial discipline. The two supreme courts jointly establish uniform criteria for the determination of the need for additional lower court judges in the same manner as provided under current law for the Supreme Court. The bill assigns to the Supreme Court of Civil Appeals the responsibility of carrying out the Supreme Court's present duties regarding reapportionment.

Duties of the Chief Justice

The bill provides the chief justices of each supreme court administrative supervision over his or her own supreme court. The Chief Justice of the Supreme Court of Civil Appeals is provided with the authority to assign justices or judges, including consenting retired justices or judges, to temporary duty in any court for which the judge is qualified. He also has the power to delegate to a chief judge of a judicial circuit the power to assign judges for duty in that circuit.

The bill assigns to the Chief Justice of the Supreme Court of Criminal Appeals the responsibility of presiding over impeachment trials. The Chief Justice of the Supreme Court of Criminal Appeals may designate another justice from either supreme court to preside over the trial. When the Chief Justice of either supreme court is the subject of the impeachment trial, however, the Governor presides.

The bill assigns the responsibility for assigning three members of the Constitution Revision Commission jointly to the Chief Justices of both supreme courts.

The Clerk and Marshal

PCB CVJS 11-06 removes the provision concerning the clerk and marshal of the Supreme Court and of the district courts of appeal from the Constitution.⁵⁷

The Judicial Qualifications Commission

PCB CVJS 11-06 assigns to the Supreme Court of Criminal Appeal the responsibility of receiving JQC recommendations concerning judicial misconduct. The Supreme Court of Criminal Appeals is provided the same authority to accept, reject or modify the JQC's findings, conclusions and recommendations regarding an inquiry, and to suspend from office judges or justices whom are the subject of a JQC investigation, to the same extent as provided for the present Supreme Court. In the event the subject of a JQC investigation is a justice of the Supreme Court of Criminal Appeals, the Supreme Court of Civil Appeals hears the case.

⁵⁶ Texas also refers jurisdictional disputes to the civil supreme court.

⁵⁷ The duties and compensation of marshals and clerks of the district courts of appeal and of the supreme court are provided by general law. Sections 35.25, F.S., 35.26, F.S., 35.27, F.S., 25.191, F.S., 25.231, F.S., 25.241, F.S., 25.251, F.S., 25.262, F.S., 25.281, F.S.

Transition and Implementation

PCB CVJS 11-06 contains specific provisions to govern issues relating to the transition from the current Supreme Court to the Supreme Court of Criminal Appeals and the Supreme Court of Civil Appeals.

Existing Law

The bill provides that unless laws or rules are inconsistent with the provisions of the revised Article V, all laws and rules of court in force on the effective date of the new Article V, will remain in effect until superseded in a manner authorized by the Constitution. The clause is taken from previous amendments modifying the court system.

Beginning Jurisdiction

The bill provides that the two supreme courts will begin operations on the 120th day after the election. Until that time, the present Supreme Court shall retain jurisdiction and power to issue final process until the cases are actually transferred. The present Supreme Court will be responsible for inventorying all cases in its possession and transferring each case to the appropriate supreme court. At the time the term of the present Supreme Court ends all of its mandates shall be final and not subject to recall or reconsideration.

Initial Appointments to the Supreme Courts

The bill requires the present Supreme Court, on the first day after election approving the amendment, to rank all of the justices according to seniority in office. The three most senior justices will be assigned to the Supreme Court of Criminal Appeals while the remaining four justices will be assigned to the Supreme Court of Civil Appeals. The initial appointments are not limited by the district court jurisdiction that the justice was appointed from. The vacant positions on each supreme court shall be filled by the Governor, who must be presented with recommendations from the supreme court judicial nominating commission within 45 days after the election. Also, at the time of making initial appointments to the supreme courts, the Governor must also select a Chief Justice for each court, which for the initial selection will not require Senate confirmation.

Rules of Procedure

All rules of criminal and civil procedure will remain in effect through the start of both supreme courts as if adopted by each supreme court respectively.

State Budget Process

As part of the state budgeting process, the Constitution requires that all general appropriation bills be furnished to each member of the Legislature, member of the Cabinet, the Governor and the Chief Justice of the Supreme Court at least seventy-two hours before final passage by either house of the Legislature.⁵⁸ Under the bill, the Chief Justice of the Supreme Court of Civil Appeals will receive general appropriations bills for the judicial branch.

In times of budgetary shortfalls, the Constitution authorizes the Governor and Cabinet to establish all necessary reductions in the state budget to comply with the mandate requiring that “[p]rovision . . . be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period.”⁵⁹ It also requires that in the event of revenue shortfalls and their impact on the judicial branch, the Chief Justice of the Supreme Court must implement all necessary reductions for the judicial budget. The bill assigns the responsibility for implementing reductions in the judicial budget to the Chief Justice of the Supreme Court of Civil Appeals.

⁵⁸ Fla. Const. art. III, section 19(d).

⁵⁹ Fla. Const. art. VII, section 13.

B. SECTION DIRECTORY:

n/a

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Office of State Courts Administrator based on the current rate of salary and benefits for Supreme Court justices and associated full time employees (FTEs) presently provided for each justice, the cost of adding three Supreme Court justices can be broken down as follows:

	Recurring	Expenses	HR Services	Non-Recurring	Total
<u>Justices</u>					
Salary and Benefits per FTE					
\$210,745 (x 3 FTEs)	\$632,235	\$31,359	\$654	\$11,694	\$664,248
<u>Staff Attorney</u>					
Salary and Benefits per FTE					
\$67,878 (x 9 FTEs)	\$610,902	\$94,077	\$1962	\$35,082	\$706,941
<u>Judicial Assistant</u>					
Salary and Benefits per FTE					
\$75,653 (x 3 FTEs)	\$226,959	\$331,359	\$654	\$11,694	\$258,972
Totals	\$1,470,096	\$156,795	\$3,270	\$58,470	\$1,630,161

In addition, this amendment requires publication prior to the election. The Florida Department of State estimates that required publication of a proposed constitutional amendment costs \$106.14 per word. At 10,491 words, the amendment would require \$1,113,515. This must be paid regardless of whether the amendment passes, and would be payable in FY 2012-2013 from General Revenue.

Total costs by year, payable from the General Revenue Fund, should the amendment be adopted:

FY 2012-2013 Non-recurring: \$1,113,515

FY 2012-2013 Recurring: \$407,540

FY 2013-2014 and beyond Recurring: \$1,630,161

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

This bill is a legislative joint resolution, which is one of the methods for proposing amendments to the Constitution. The joint resolution requires passage by a three-fifths vote of the membership of each house of the Legislature. The proposed constitutional amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. If approved by 60% of the electors voting on the question, the proposed amendment becomes effective on the Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment. This proposed constitutional amendment has specific effective dates (see above).

B. RULE-MAKING AUTHORITY:

This neither expands or limits the existing rulemaking power of the courts, although the power is split between two entities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Increasing the Number of Justices to Florida's Supreme Court

As noted earlier in this analysis, the Supreme Court Workload Study Commission, when evaluating the Supreme Court's workload in 2001, decided not to recommend increasing the number of Supreme Court justices from seven to nine. The report stated:

. . . Theoretically, increasing the number of justices on the court would reduce the workload on the members of the court by spreading the justices' existing individual duties among more people. The Commission heard testimony that the expansion of the court may actually increase workload for the court by slowing down those court processes requiring a consensus of the justices. For example, the . . . Chief Justice of the Texas Supreme Court, and . . . the Chief Justice of the Washington State Supreme Court, testified that a seven-member supreme court is more efficient than a nine-member court. (The Texas and Washington State Supreme Court both have nine

members.⁶⁰ (footnote added) After considering the testimony, the Commission was persuaded that an increase in the number of justices would slow down the court by requiring more justices to resolve each case.⁶¹

If additional justices on a panel lead to increased delays in making decisions, it is possible that decreasing the size of panels may correspondingly decrease delays.

Other States

On moving to a 5 justice panel: Currently there are 18 other states that have 5 justices serving on a supreme court.

On having separate civil and criminal panels: Currently there are two states, Texas and Oklahoma, that have two separate courts of last resort.

Texas

Texas has a Court of Criminal Appeals and a Supreme Court. Each has 9 justices. The Court of Criminal Appeals has final jurisdiction over all criminal cases except for juvenile proceedings. The Texas Supreme Court has jurisdiction over civil appeals and juvenile proceedings. The justices of both courts are elected to six-year terms in state-wide elections. When a vacancy arises the Governor may appoint a justice, subject to Senate confirmation, to serve out the remainder of an unexpired term until the next general election. By statute, the Texas Supreme Court has administrative control over the State Bar of Texas⁶² and sole authority for licensing attorneys in Texas.⁶³

Oklahoma

Oklahoma's court of last resort in criminal cases is the Oklahoma Court of Criminal Appeals. It has 5 justices. It has exclusive appellate jurisdiction in criminal cases. There is no intermediate appellate court for criminal cases in Oklahoma. Criminal appeals come directly to the Court of Criminal Appeals from Oklahoma's district courts and municipal courts of record. District courts are the trial level courts handling both criminal and civil cases. Municipal courts of record handle most violations of parking, traffic, criminal and environmental municipal ordinances and some misdemeanor level criminal cases. The Supreme Court of Oklahoma is the court of last resort for civil cases. All appeals from civil cases are first filed with the Supreme Court which then assigns cases to its intermediate appellate court for civil cases, the Court of Civil Appeals. Oklahoma's appellate judges are first appointed by the Governor from a list of three names of qualified individuals prepared by the Judicial Nominating Commission. Thereafter they are subject to a retention vote. The terms are for 6 years. Vacancies are filled by Governor's appointment. The Oklahoma Supreme Court has the authority to regulate admission to the state bar.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁶⁰ The report does not indicate if these justices had any experience working on a seven-member court.

⁶¹ 2001 Final Report of the Supreme Court Workload Study Commission, at 13.

⁶² Tex. Gov't Code § 81.011.

⁶³ Tex. Gov't Code §§ 82.00, 82.004.