



Judiciary Committee

March 7, 2013

10:00 AM

404 HOB

Meeting Packet

Will Weatherford
Speaker

Dennis Baxley
Chair

Committee Meeting Notice
HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Thursday, March 07, 2013 10:00 am
End Date and Time: Thursday, March 07, 2013 12:00 pm
Location: 404 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 179 Eminent Domain Proceedings by Civil Justice Subcommittee, Young
HB 7017 Terms Of Courts by Civil Justice Subcommittee, Spano

Presentations on:

Faith- and Character-based Programs within the Department of Corrections

Identification Cards for Inmates upon Release from Department of Corrections

NOTICE FINALIZED on 03/05/2013 16:11 by Jones.Missy

1 A bill to be entitled
 2 An act relating to eminent domain proceedings;
 3 amending s. 74.051, F.S.; revising the distribution of
 4 interest on certain deposits held by clerks of court
 5 in eminent domain proceedings; providing an effective
 6 date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Subsection (4) of section 74.051, Florida
 11 Statutes, is amended to read:

12 74.051 Hearing on order of taking.—

13 (4) The court may fix the time within which and the terms
 14 upon which the defendants shall be required to surrender
 15 possession to the petitioner, which time of possession shall be
 16 upon deposit for those defendants failing to file a request for
 17 hearing as provided herein. The order of taking shall not become
 18 effective unless the deposit of the required sum is made in the
 19 registry of the court. If the deposit is not made within 20 days
 20 from the date of the order of taking, the order shall be void
 21 and of no further effect. The clerk is authorized to invest such
 22 deposits so as to earn the highest interest obtainable under the
 23 circumstances in state or national financial institutions in
 24 Florida insured by the Federal Government. Ninety percent of the
 25 interest earned shall be allocated in accordance with the
 26 ultimate ownership in the deposit ~~paid to the petitioner.~~

27 Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 179 Eminent Domain Proceedings
SPONSOR(S): Civil Justice Subcommittee; Young and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Arguelles	Bond
2) Local & Federal Affairs Committee	17 Y, 0 N	Baker	Rojas
3) Judiciary Committee		Arguelles	Avlicak RH

SUMMARY ANALYSIS

Eminent domain refers to the power of the government to take private property for a public use. Florida law allows state and local governments, and specified entities ("condemning authorities") to acquire title and possession of real property before eminent domain proceedings have concluded through a process referred to as "quick taking." The condemning authority must first deposit the estimated value of the property with the Clerk of the Circuit Court. Florida law provides that 90 percent of the interest earned on this deposit is paid to the condemning authority.

The bill provides that 90 percent of interest earned is paid to the ultimate owner of the deposit, which may be the property owner or judgment creditors.

This bill may have a minimal negative fiscal impact on state and local governments.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

"Eminent domain" is the sovereign power to take private property for public use without the owner's consent.¹ Under the federal and state constitutions private property can only be taken for a public purpose and upon payment to the owner of the full and just value of that property.² State government, local governments, and certain entities (the "condemning authorities") all have the power of eminent domain.

In Florida, there are two types of eminent domain proceedings:

- 1) a traditional taking, and
- 2) a quick-take.

In a traditional eminent domain action, the condemning authority files a petition indicating the intent to take the property. The case progresses and eventually is concluded by agreement of the parties or a trial. Once the court's judgment is rendered as to the property's value, the condemning authority pays that amount, and the title or possession sought vests in the condemning authority.³

Because of the inherent delays in the traditional process, a "quick taking" process was enacted as well.⁴ In a "quick taking," the condemning authority must deposit a good faith estimate of the sum that will "fully secure and fully compensate the persons entitled to compensation" in the court's registry and then may take immediate possession and title of the property prior to final judgment.⁵ The Clerk of the Circuit Court is authorized to invest monies that are held, even for temporary periods.⁶

Section 74.051(4), F.S., provides that 90 percent of the interest earned on deposits made under the quick-take procedure is paid to the petitioner (the condemning authority)⁷; the other 10 percent of interest is paid to the clerk as a management fee. Regarding creditor priority, s. 74.051(2), F.S. empowers the court to make orders in respect to claimants and the deposit "as shall be just and equitable."

Effect of Proposed Changes

The bill amends s. 74.051(4), F.S., to allocate 90 percent of interest in accordance with the ultimate ownership in the deposit.

The bill effectively shifts the receipt of most of the earned interest from condemning authorities to those entitled to ownership, i.e., the property owners and judgment creditors.⁸ The bill does not offer an additional order of priority for dispersing the earned interest among those entitled to it.

B. SECTION DIRECTORY:

Section 1 amends s. 74.051, F.S., relating to hearing on order of taking.

¹ *Storer Cable T.V. of Florida, Inc. v. Summerwinds Apartments Associates, Ltd.*, 493 So.2d 417 (Fla. 1986).

² Section 6(a), Art. X, State Constitution ("full compensation paid . . . or secured by deposit in the registry of the court"); *Spafford v. Brevard County*, 110 So. 451 (Fla. 1926); see *City of St. Petersburg v. Div. of Admin., State Dep't of Transp.*, 198 So.2d 781 (Fla. 2d DCA 1974) (the deposit substitutes for the property taken).

³ See s. 73.111, F.S.

⁴ See ch. 65-369, L.O.F.

⁵ Section 74.051(2), F.S.

⁶ Section 74.051(4), F.S.

⁷ *Id.*

⁸ Section 73.141(1), F.S. ("In the event that no appeal has been taken . . . the clerk shall pay each judgment creditor the sum necessary to satisfy the judgment from the funds on deposit").

Section 2 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a minimal negative fiscal impact on state revenues but only to the extent the state uses a quick-take procedure. In the last three years, the Department of Transportation has collected \$17,452.83 in earned interest.⁹ The bill would eliminate that source of revenue.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a minimal negative fiscal impact on local government revenue but only to the extent that local governments decide to use a quick-take procedure. The bill would likely eliminate that source of revenue.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a minimal positive fiscal impact on private property owners in Florida who are subjected to eminent domain proceedings.

D. FISCAL COMMENTS:

At least one Florida Circuit Court has ruled that property owners, not condemning authorities, are entitled to the interest notwithstanding the statute.¹⁰ In a separate suit pending appeal, a property owner is asserting a similar argument.¹¹ If the court rules for the property owners, then the bill merely changes the statute to comply with that finding and there will be no fiscal impact. If the court ultimately rules in favor of the condemning authorities, then the bill will have a negative fiscal impact on condemning authorities.

⁹ The last three years represented a significant reduction in deposit-interest collections by the Department of Transportation. In comparison, since 1986, the department has collected \$8,177,860.52 in earned interest.

¹⁰ See *Mallards Cove, LLP v. Jed Pittman, Clerk of the Court of Pasco County*, (Fla. 6th Cir. Ct. 2011) (appeal taken to the Fla. 2d DCA, Jan. 22, 2013).

¹¹ See *Livingston v. Pat Frank, Clerk of the Circuit Court of Hillsborough County and City of Tampa* (Fla. 13th Cir. Ct. 2012) (appeal taken to the Fla. 2d DCA, Nov. 9, 2012, appeal 2D12-5616).

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:

In 2011, a Florida Circuit Court declared s. 74.051(4), F.S., unconstitutional¹² based on the ruling of the U.S. Supreme Court in *Webb's Fabulous Pharmacies, Inc. v. Beckwith* ("The earnings of a fund are incidents of ownership of the fund itself and are property just as the fund itself is property").¹³ The court in *Webb's* ruled that the portion of Florida's interpleader law whereby the state kept the interest on interpleader funds was unconstitutional since it was a taking without full and just compensation. However, a Florida Circuit Court has ruled the current statute constitutional as well.¹⁴

Further, the Florida Supreme Court has interpreted the Florida Constitution to require that the interest earned on the deposit from the time of the verdict until the resolution of appeals belongs to the owner whose land was taken.¹⁵

B. RULE-MAKING AUTHORITY:

The bill does not appear to create rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to s. 74.051(2), F.S., a court may interpret the enacted bill to permit creditors to receive their share of the interest to the exclusion of the owner whose land was taken.¹⁶

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment substituted the word "allocated" for the word "apportioned." This analysis is drafted to the resulting committee substitute.

¹² See *Mallards Cove*.

¹³ 449 U.S. 155, 164 (1980).

¹⁴ See *Livingston v. Frank*.

¹⁵ *Behm v. Div. of Admin., Dep't of Transp.*, 383 So.2d 216 (Fla. 1980); *Hartleb v. Dep't of Transp.*, 778 So.2d 1063 (Fla. 4th DCA 2001) (holding similarly on the interest accrued from the condemnation deposit).

¹⁶ See s. 74.051(2), F.S. ("The court may make such orders in respect of encumbrances, liens, rents, taxes, . . . [and] deposit, . . . as shall be just and equitable.")

1 A bill to be entitled
 2 An act relating to terms of courts; repealing s.
 3 25.051, F.S., relating to regular terms of the Supreme
 4 Court; repealing s. 26.21, F.S., relating to terms of
 5 the circuit courts; repealing s. 26.22, F.S., relating
 6 to terms of the First Judicial Circuit; repealing s.
 7 26.23, F.S., relating to terms of the Second Judicial
 8 Circuit; repealing s. 26.24, F.S., relating to terms
 9 of the Third Judicial Circuit; repealing s. 26.25,
 10 F.S., relating to terms of the Fourth Judicial
 11 Circuit; repealing s. 26.26, F.S., relating to terms
 12 of the Fifth Judicial Circuit; repealing s. 26.27,
 13 F.S., relating to terms of the Sixth Judicial Circuit;
 14 repealing s. 26.28, F.S., relating to terms of the
 15 Seventh Judicial Circuit; repealing s. 26.29, F.S.,
 16 relating to terms of the Eighth Judicial Circuit;
 17 repealing s. 26.30, F.S., relating to terms of the
 18 Ninth Judicial Circuit; repealing s. 26.31, F.S.,
 19 relating to terms of the Tenth Judicial Circuit;
 20 repealing s. 26.32, F.S., relating to terms of the
 21 Eleventh Judicial Circuit; repealing s. 26.33, F.S.,
 22 relating to terms of the Twelfth Judicial Circuit;
 23 repealing s. 26.34, F.S., relating to terms of the
 24 Thirteenth Judicial Circuit; repealing s. 26.35, F.S.,
 25 relating to terms of the Fourteenth Judicial Circuit;
 26 repealing s. 26.36, F.S., relating to terms of the
 27 Fifteenth Judicial Circuit; repealing s. 26.361, F.S.,
 28 relating to terms of the Sixteenth Judicial Circuit;

29 | repealing s. 26.362, F.S., relating to terms of the
 30 | Seventeenth Judicial Circuit; repealing s. 26.363,
 31 | F.S., relating to terms of the Eighteenth Judicial
 32 | Circuit; repealing s. 26.364, F.S., relating to terms
 33 | of the Nineteenth Judicial Circuit; repealing s.
 34 | 26.365, F.S., relating to terms of the Twentieth
 35 | Judicial Circuit; repealing s. 26.37, F.S., relating
 36 | to requiring a judge to attend the first day of each
 37 | term of the circuit court; repealing s. 26.38, F.S.,
 38 | relating to a requirement for a judge to state a
 39 | reason for nonattendance; repealing s. 26.39, F.S.,
 40 | relating to the penalty for nonattendance of the
 41 | judge; repealing s. 26.40, F.S., relating to
 42 | adjournment of the circuit court upon nonattendance of
 43 | the judge; repealing s. 26.42, F.S., relating to
 44 | calling all cases on the docket at the end of each
 45 | term; repealing s. 35.10, F.S., relating to regular
 46 | terms of the district courts of appeal; repealing s.
 47 | 35.11, F.S., relating to special terms of the district
 48 | courts of appeal; repealing s. 907.05, F.S., relating
 49 | to a requirement that criminal trials be heard in the
 50 | term of court before civil cases; repealing s.
 51 | 907.055, F.S., relating to a requirement that persons
 52 | in custody be arraigned and tried in the term of court
 53 | unless good cause is shown; amending ss. 26.46, 27.04,
 54 | 30.12, 30.15, 34.13, 35.05, and 38.23, F.S.;
 55 | conforming provisions to changes made by the act;
 56 | creating s. 43.43, F.S.; allowing the Supreme Court to

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57 set terms of court for the Supreme Court, district
 58 courts of appeal, and circuit courts; creating s.
 59 43.44, F.S.; authorizing appellate courts to withdraw
 60 a mandate within 120 days after its issuance; amending
 61 ss. 112.19, 206.215, 450.121, 831.10, 831.17, 877.08,
 62 902.19, 903.32, 905.01, 905.09, 905.095, 914.03,
 63 924.065, and 932.47, F.S.; conforming provisions to
 64 changes made by the act; providing an effective date.
 65

66 Be It Enacted by the Legislature of the State of Florida:
 67

68 Section 1. Sections 25.051, 26.21, 26.22, 26.23, 26.24,
 69 26.25, 26.26, 26.27, 26.28, 26.29, 26.30, 26.31, 26.32, 26.33,
 70 26.34, 26.35, 26.36, 26.361, 26.362, 26.363, 26.364, 26.365,
 71 26.37, 26.38, 26.39, 26.40, 26.42, 35.10, 35.11, 907.05, and
 72 907.055, Florida Statutes, are repealed.

73 Section 2. Section 26.46, Florida Statutes, is amended to
 74 read:

75 26.46 Jurisdiction of resident judge after assignment.—If
 76 ~~When~~ a circuit judge is assigned to another circuit, none of the
 77 circuit judges in that ~~such~~ other circuit shall, because of the
 78 ~~such~~ assignment, be deprived of or affected in his or her
 79 jurisdiction other than to the extent essential so as not to
 80 conflict with the authority of the temporarily assigned circuit
 81 judge as to the particular case or cases or class of cases, ~~or~~
 82 ~~in presiding at the particular term or part of term named or~~
 83 ~~specified in the assignment.~~

84 Section 3. Section 27.04, Florida Statutes, is amended to

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85 read:

86 27.04 Summoning and examining witnesses for state.—The
 87 state attorney shall have summoned all witnesses required on
 88 behalf of the state; and he or she is allowed the process of his
 89 or her court to summon witnesses from throughout the state to
 90 appear before the state attorney ~~in or out of term time~~ at such
 91 convenient places in the state attorney's judicial circuit and
 92 at such convenient times as may be designated in the summons, to
 93 testify before him or her as to any violation of the law upon
 94 which they may be interrogated, and he or she is empowered to
 95 administer oaths to all witnesses summoned to testify by the
 96 process of his or her court or who may voluntarily appear before
 97 the state attorney to testify as to any violation or violations
 98 of the law.

99 Section 4. Section 30.12, Florida Statutes, is amended to
 100 read:

101 30.12 Power to appoint sheriff.—~~If Whenever~~ any sheriff in
 102 the state fails ~~shall fail~~ to attend, in person or by deputy,
 103 ~~any term of~~ the circuit court or county court of the county,
 104 from sickness, death, or other cause, the judge attending the
 105 ~~said~~ court may appoint an interim a sheriff, who shall assume
 106 all the responsibilities, perform all the duties, and receive
 107 the same compensation as if he or she had been duly appointed
 108 sheriff, ~~for~~ only the said term of nonattendance ~~court~~ and no
 109 longer.

110 Section 5. Paragraph (c) of subsection (1) of section
 111 30.15, Florida Statutes, is amended to read:

112 30.15 Powers, duties, and obligations.—

113 (1) Sheriffs, in their respective counties, in person or
 114 by deputy, shall:

115 (c) Attend all sessions ~~terms~~ of the circuit court and
 116 county court held in their counties.

117 Section 6. Subsection (2) of section 34.13, Florida
 118 Statutes, is amended to read:

119 34.13 Method of prosecution.—

120 (2) Upon the finding of indictments by the grand jury for
 121 crimes cognizable by the county court, the clerk of the court,
 122 without any order therefor, shall docket the same on the trial
 123 docket of the county court ~~on or before the first day of its~~
 124 ~~next succeeding term.~~

125 Section 7. Subsection (2) of section 35.05, Florida
 126 Statutes, is amended to read:

127 35.05 Headquarters.—

128 (2) A district court of appeal may designate other
 129 locations within its district as branch headquarters for the
 130 conduct of the business of the court ~~in special or regular term~~
 131 and as the official headquarters of its officers or employees
 132 pursuant to s. 112.061.

133 Section 8. Section 38.23, Florida Statutes, is amended to
 134 read:

135 38.23 Contempt ~~Contempts~~ defined.—A refusal to obey any
 136 legal order, mandate or decree, made or given by any judge
 137 ~~either in term time or in vacation~~ relative to any of the
 138 business of the said court, after due notice thereof, is shall
 139 ~~be considered~~ a contempt, punishable ~~and punished~~ accordingly.
 140 ~~But nothing said or written, or published, in vacation, to or of~~

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141 ~~any judge, or of any decision made by a judge, shall in any case~~
 142 ~~be construed to be a contempt.~~

143 Section 9. Section 43.43, Florida Statutes, is created to
 144 read:

145 43.43 Terms of courts.—The Supreme Court may establish
 146 terms of court for the Supreme Court, the district courts of
 147 appeal, and the circuit courts; may authorize district courts of
 148 appeal and circuit courts to establish their own terms of court;
 149 or may dispense with terms of court.

150 Section 10. Section 43.44, Florida Statutes, is created to
 151 read:

152 43.44 Mandate of an appeals court.—An appellate court may,
 153 as the circumstances and justice of the case may require,
 154 reconsider, revise, reform, or modify its own opinions and
 155 orders for the purpose of making the same accord with law and
 156 justice. Accordingly, an appellate court may recall its own
 157 mandate for the purpose of allowing it to exercise such
 158 jurisdiction and power in a proper case. A mandate may not be
 159 recalled more than 120 days after it has been issued.

160 Section 11. Paragraph (b) of subsection (1) of section
 161 112.19, Florida Statutes, is amended to read:

162 112.19 Law enforcement, correctional, and correctional
 163 probation officers; death benefits.—

164 (1) Whenever used in this section, the term:

165 (b) "Law enforcement, correctional, or correctional
 166 probation officer" means any officer as defined in s. 943.10(14)
 167 or employee of the state or any political subdivision of the
 168 state, including any law enforcement officer, correctional

169 officer, correctional probation officer, state attorney
 170 investigator, or public defender investigator, whose duties
 171 require such officer or employee to investigate, pursue,
 172 apprehend, arrest, transport, or maintain custody of persons who
 173 are charged with, suspected of committing, or convicted of a
 174 crime; and the term includes any member of a bomb disposal unit
 175 whose primary responsibility is the location, handling, and
 176 disposal of explosive devices. The term also includes any full-
 177 time officer or employee of the state or any political
 178 subdivision of the state, certified pursuant to chapter 943,
 179 whose duties require such officer to serve process or to attend
 180 a session ~~terms~~ of a circuit or county court as bailiff.

181 Section 12. Subsection (2) of section 206.215, Florida
 182 Statutes, is amended to read:

183 206.215 Costs and expenses of proceedings.—

184 (2) The clerks of the courts performing duties under the
 185 provisions aforesaid shall receive the same fees as prescribed
 186 by the general law for the performance of similar duties, and
 187 witnesses attending any investigation pursuant to subpoena shall
 188 receive the same mileage and per diem as if attending as a
 189 witness before the circuit court ~~in term time~~.

190 Section 13. Subsection (4) of section 450.121, Florida
 191 Statutes, is amended to read:

192 450.121 Enforcement of Child Labor Law.—

193 (4) Grand juries ~~shall~~ have inquisitorial powers to
 194 investigate violations of this chapter; also, trial court judges
 195 shall specially charge the grand jury, ~~at the beginning of each~~
 196 ~~term of the court,~~ to investigate violations of this chapter.

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197 Section 14. Section 831.10, Florida Statutes, is amended
 198 to read:

199 831.10 Second conviction of uttering forged bills.—A
 200 person previously ~~Whoever, having been~~ convicted of violating
 201 ~~the offense mentioned in s. 831.09~~ who is again convicted of
 202 ~~that the like~~ offense committed after the former conviction, and
 203 ~~on whoever is at the same term of the court convicted upon~~ three
 204 distinct charges of such offense committed within a 6-month
 205 period, shall be deemed a common utterer of counterfeit bills,
 206 and shall be punished as provided in s. 775.084.

207 Section 15. Section 831.17, Florida Statutes, is amended
 208 to read:

209 831.17 Violation of s. 831.16; second or subsequent
 210 conviction.—A person previously ~~Whoever having been~~ convicted of
 211 violating either of the offenses mentioned in s. 831.16 who, is
 212 again convicted of violating that statute ~~either of the same~~
 213 ~~offenses~~, committed after the former conviction ~~on~~, and ~~whoever~~
 214 ~~is at the same term of the court convicted upon~~ three distinct
 215 charges of such offense committed within a 6-month period ~~said~~
 216 ~~offenses~~, commits a felony of the second degree, punishable as
 217 provided in s. 775.082, s. 775.083, or s. 775.084.

218 Section 16. Subsection (4) of section 877.08, Florida
 219 Statutes, is amended to read:

220 877.08 Coin-operated vending machines and parking meters;
 221 defined; prohibited acts, penalties.—

222 (4) ~~Whoever violates the provisions of subsection (3) a~~
 223 second or subsequent time commits, ~~and is convicted of such~~
 224 ~~second separate offense, either at the same term or a subsequent~~

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225 ~~term of court, shall be guilty of a felony of the third degree,~~
 226 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

227 Section 17. Subsection (1) of section 902.19, Florida
 228 Statutes, is amended to read:

229 902.19 When prosecutor liable for costs.—

230 (1) If ~~When~~ a person makes a complaint before a county
 231 court judge that a crime has been committed and is recognized by
 232 the county court judge to appear before ~~at the next term of the~~
 233 court having jurisdiction to give evidence of the crime and
 234 fails to appear, the person is ~~shall be~~ liable for all costs
 235 occasioned by his or her complaint, and the county court judge
 236 may enter ~~obtain~~ a judgment and execution for the costs as in
 237 other cases.

238 Section 18. Subsection (2) of section 903.32, Florida
 239 Statutes, is amended to read:

240 903.32 Defects in bond.—

241 (2) If no day, or an impossible day, is stated in a bond
 242 for the defendant's appearance before a trial court judge for a
 243 hearing or trial, the defendant shall be bound to appear 10 days
 244 after receipt of notice to appear by the defendant, the
 245 defendant's counsel, or any surety on the undertaking. ~~If no~~
 246 ~~day, or an impossible day, is stated in a bond for the~~
 247 ~~defendant's appearance for trial, the defendant shall be bound~~
 248 ~~to appear on the first day of the next term of court that will~~
 249 ~~commence more than 3 days after the undertaking is given.~~

250 Section 19. Section 905.01, Florida Statutes, is amended
 251 to read:

252 905.01 Number and procurement of grand jury; replacement

253 | of member; term of grand jury.-

254 | (1) The grand jury shall consist of no ~~not~~ fewer than 15,
 255 | but no ~~not~~ more than 21 persons. The ~~provisions of~~ law governing
 256 | the qualifications, disqualifications, excusals, drawing,
 257 | summoning, supplying deficiencies, compensation, and procurement
 258 | of petit jurors apply to grand jurors. In addition, an elected
 259 | public official is not eligible for service on a grand jury.

260 | (2) The chief judge of any circuit court may provide for
 261 | the replacement of any grand juror who, for good cause, is
 262 | unable to complete the term of the grand jury. Such replacement
 263 | shall be made by appropriate order of the chief judge from the
 264 | list of prospective jurors from which the grand juror to be
 265 | replaced was selected.

266 | (3) The chief judge of each ~~any~~ circuit court shall
 267 | regularly order ~~may dispense with~~ the convening of the grand
 268 | jury for a ~~at any~~ term of 6 months ~~court by filing a written~~
 269 | ~~order with the clerk of court directing that a grand jury not be~~
 270 | ~~summoned.~~

271 | Section 20. Section 905.09, Florida Statutes, is amended
 272 | to read:

273 | 905.09 Discharge and recall of grand jury.-A grand jury
 274 | that has been dismissed may be recalled at any time during the
 275 | ~~same~~ term of the grand jury ~~court.~~

276 | Section 21. Section 905.095, Florida Statutes, is amended
 277 | to read:

278 | 905.095 Extension of grand jury term.-Upon petition of the
 279 | state attorney or the foreperson of the grand jury acting on
 280 | behalf of a majority of the grand jurors, the circuit court may

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281 extend the term of a grand jury impaneled under this chapter
 282 beyond the term ~~of court~~ in which it was originally impaneled. A
 283 grand jury whose term has been extended as provided under this
 284 section herein shall have the same composition and the same
 285 powers and duties it had during its original term. If ~~In the~~
 286 ~~event~~ the term of the grand jury is extended under this section,
 287 it shall be extended for a time certain, not to exceed a total
 288 of 90 days, and only for the purpose of concluding one or more
 289 specified investigative matters initiated during its original
 290 term.

291 Section 22. Section 914.03, Florida Statutes, is amended
 292 to read:

293 914.03 Attendance of witnesses.—A witness summoned by a
 294 grand jury ~~or in a criminal case~~ shall remain in attendance
 295 until excused by the grand jury. A witness summoned in a
 296 criminal case shall remain available for attendance until the
 297 case for which he or she was summoned is disposed of or until he
 298 or she is excused by the court. A witness who departs without
 299 permission of the court shall be in criminal contempt of court.
 300 ~~A witness shall attend each succeeding term of court until the~~
 301 ~~case is terminated.~~

302 Section 23. Subsection (2) of section 924.065, Florida
 303 Statutes, is amended to read:

304 924.065 Denial of motion for new trial or arrest of
 305 judgment; appeal bond; supersedeas.—

306 (2) An appeal may ~~shall~~ not be a supersedeas to the
 307 execution of the judgment, sentence, or order until the
 308 appellant has entered into a bond with at least two sureties to

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309 secure the payment of the judgment, fine, and any future costs
 310 that may be adjudged by the appellate court. The bond shall be
 311 conditioned on the appellant's personally answering and abiding
 312 by the final order, sentence, or judgment of the appellate court
 313 and, if the action is remanded, on the appellant's appearing
 314 before ~~at the next term of~~ the court in which the case was
 315 originally determined and not departing without leave of court.

316 Section 24. Section 932.47, Florida Statutes, is amended
 317 to read:

318 932.47 Informations filed by prosecuting attorneys.—
 319 Informations may be filed by the prosecuting attorney of the
 320 circuit court with the clerk of the circuit court ~~in vacation or~~
 321 ~~in term~~ without leave of the court first being obtained.

322 Section 25. This act shall take effect January 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7017 (PCB CJS 13-01) Terms Of Courts
SPONSOR(S): Civil Justice Subcommittee, Spano
TIED BILLS: IDEN./SIM. **BILLS:** SB 746

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	13 Y, 0 N	Bond	Bond
1) Judiciary Committee		Bond <i>VB</i>	Havlicak <i>[Signature]</i>

SUMMARY ANALYSIS

Terms of court were enacted to ensure that the circuit judges traveled to each of the counties on a regular basis. While terms of court were a necessity in the days of difficult travel and slow communications, the concept is long outdated and unnecessary.

The bill repeals statutory requirements for terms of court and makes conforming changes.

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

The bill has an effective date of January 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

At one time, circuit court judges literally "rode the circuit," travelling from one county seat to the next for the purpose of conducting court. In a day of difficult travel and slow communications, it was important that the circuit judge show up on a date certain to conduct the court's business.¹ Terms of court were developed to fill that need, and were required by the state constitution² until Article V was substantially rewritten in 1957. Current law creates two or more terms of court in each of the counties. See ss. 26.22-.365, F.S.

In the past, on the first day of the term of court the circuit judge would conduct a ceremonial opening of the term of court, the clerk would summon a new grand jury, the sheriff would bring in the prisoners for a docket sounding, and the work of the circuit court would commence. The circuit judge was generally expected to stay in town until the judicial work was complete, but also was required to leave in time to make it to the next county for the start of that county's term of court. After the circuit judge left town, the court was considered "in vacation." A circuit judge is fined \$100 for missing the first day of the term of court.³

In the early days of the state, work as a supreme court justice was a part-time occupation. The justices similarly held terms of court in order that they have a fixed time to travel to Tallahassee to conduct appellate sessions. The concept for terms of court was adopted in statute when the intermediate district courts of appeal were created in 1957. Section 35.11, F.S., requires each of the district courts of appeal to meet at least once in every regular term in each judicial circuit within the district.

Today, terms of court are an archaic concept. It does not appear that any of the courts formally open a term of court with the traditional ceremony. Circuit judges come and go from each of the counties as needed and far more often than once every six months. Two of the five district courts of appeal are known to regularly travel the district for the purpose of conducting oral argument. It is unknown when the last time a circuit judge was fined for nonappearance at the first day of a term.

Reference to terms of court is still relevant today for two purposes: designating the terms of local grand juries and limiting withdrawal of an appellate mandate.

Historically, although not explicitly required by statute, the terms of a grand jury coincide with the term of the court.

In appellate courts, a mandate is the title of the document from the appellate court directing the lower court what to do based on the appellate court's decision in the case. The terms of court limit an appellate court's ability to withdraw a mandate, a rare procedure. The Florida Supreme Court in 1932 explained the scope and limits of the power to withdraw a mandate:

¹ See <http://2ndcircuit.leoncountyfl.gov/courtHistory/firsthundred.php>, which describes the history of the Second Judicial Circuit, including how the terms of court once provided for the circuit judge to travel down the Apalachicola River, and were changed to accommodate the arrival of steamboat service allowing for easier upstream travel (last accessed January 25, 2013).

² Article V, s. 8 of the Constitution of 1885 included this sentence: "Such Judge shall hold at least two terms of his court in each county within his Circuit every year, at such times and places as shall be prescribed by law, and may hold special terms."

³ Sections 26.37 and 26.39, F.S.

But, be that as it may, a majority of the court have reached the conclusion that the correct rule, which should be recognized and applied in such situation, is that the jurisdiction of this court, like the jurisdiction of courts generally, persists to the end of the term, and then terminates, but that, during the term at which a judgment of this court is rendered, this court has jurisdiction and power which it may exercise, as the circumstances and justice of the case may require, to reconsider, revise, reform, or modify its own judgments for the purpose of making the same accord with law and justice, and that it has power to recall its own mandate for the purpose of enabling it to exercise such jurisdiction and power in a proper case.⁴

Under current law, a mandate may only be withdrawn during the current term of the appellate court, which leads to the odd result of some appellate court opinions being subject to withdrawal for nearly six months while others may only be subject to withdrawal for a few days.

Effect of the Bill

The bill repeals statutory terms of court applicable to the circuit courts, district courts of appeal, and the Supreme Court. It also makes the following conforming changes:

- Repeals the fine for nonattendance by a circuit judge.
- Repeals a requirement that a circuit judge call the docket at the end of the term.
- Repeals a requirement that district courts of appeal hear oral arguments in each of the judicial circuits in every term of court.
- Repeals a requirement that criminal cases be heard in the term before civil cases.
- Repeals a requirement that a criminal case be heard in the same term of court that the indictment was handed down unless the court holds the case to the next term for good cause.
- Removes references to terms of court in statutes regarding county sheriffs.
- Removes references to terms of court in the definitions of three crimes. Two of those crimes relate to the penalty for a repeat offense of uttering. Those statutes are amended to reference offenses committed within a six month period (which approximates a term of court).
- Removes references to terms of court in the statute on contempt of court.
- Removes the requirement that a criminal defendant show up on the first day of a term of court if the appearance bond is unclear.
- Requires the chief judge of the circuit to set the terms of a grand jury.
- Removes reference to terms of court in statute requiring a witness in a criminal case to appear in court.

The bill creates two new conforming statutes. These new sections:

- Allow the Supreme Court to establish terms of court for the Supreme Court and for the lower courts, if the court wishes.
- Provide in statute that an appellate court may withdraw a mandate for up to 120 days after it is issued. The conditions upon which withdrawal is allowed are taken from the case law quoted above. The time commences upon issuance of the mandate.

B. SECTION DIRECTORY:

Section 1 repeals ss. 25.051, 26.21, 26.22, 26.23, 26.24, 26.25, 26.26, 26.27, 26.28, 26.29, 26.30, 26.31, 26.32, 26.33, 26.34, 26.35, 26.36, 26.361, 26.362, 26.363, 26.364, 26.365, 26.37, 26.38, 26.39, 26.40, 26.42, 35.10, 35.11, 907.05 and 907.055, F.S.

Section 2 amends s. 26.46, F.S., regarding jurisdiction of a resident judge.

⁴ *Chapman v. St. Stephens Protestant Episcopal Church, Inc.*, 138 So. 630 (Fla. 1932). The *Chapman* case specifically provides that the power to withdraw a mandate may be limited by statute.

Section 3 amends s. 27.04, F.S., regarding witnesses in a criminal case.

Section 4 amends s. 30.12, F.S., regarding the power to appoint a sheriff.

Section 5 amends s. 30.15, F.S., regarding powers, duties and obligations of the sheriff.

Section 6 amends s. 34.13, F.S., regarding methods of prosecution.

Section 7 amends s. 35.05, F.S., regarding the headquarters of a district court of appeal.

Section 8 amends s. 38.23, F.S., regarding contempt of court.

Section 9 creates s. 43.43, F.S., regarding terms of court.

Section 10 creates s. 43.44, F.S., regarding mandates of appellate courts.

Section 11 amends s. 112.19, F.S., regarding law enforcement officers.

Section 12 amends s. 206.15, F.S., regarding court costs.

Section 13 amends s. 450.121, F.S., regarding child labor law.

Section 14 amends s. 831.10, F.S., regarding forged bills.

Section 15 amends s. 831.17, F.S., regarding offenses.

Section 16 amends s. 877.08, F.S., regarding coin-operated machines.

Section 17 amends s. 902.19, F.S., regarding when prosecutor liable for costs.

Section 18 amends s. 903.32, F.S., regarding defects in a criminal bond.

Section 19 amends s. 905.01, F.S., regarding grand jury terms.

Section 20 amends s. 905.09, F.S., regarding discharge and recall of a grand jury.

Section 21 amends s. 905.095, F.S., regarding extension of a grand jury term.

Section 22 amends s. 914.03, F.S., regarding attendance of witnesses.

Section 23 amends s. 924.065, F.S., regarding appearance bonds.

Section 24 amends s. 932.47, F.S., regarding information filed by a prosecuting attorney.

Section 25 provides an effective date of January 1, 2014.

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 government revenues.

2. Expenditures:

The 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:

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:

None.

B. RULE-MAKING AUTHORITY:

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


C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

**Faith- and Character-
Based Program**




Department of Corrections

Faith & Character Based Program

House Judiciary Committee
March 7, 2013


Michael D. Crews, Secretary
Alex Taylor, Chaplaincy Services Administrator



Chaplaincy Services


Chaplaincy Services provides for the religious and spiritual needs of inmates in a Constitutional manner.

- 2,100 weekly services
- 31,000 weekly inmate attendance
- 42% of inmate population attends at least one sign-in activity each month.
- 16,800 active volunteers contribute over 23,600 hours per month.




Faith & Character Programs

- Residential program completed in 12-36 months
- 10 Locations: 2 Institutions and 8 dormitories
- Reduces **recidivism** and **disciplinary infractions**
- Unites corrections and the faith community to effect
 - Inner transformation addresses **attitude, knowledge** and **motivation**
 - Outer transformation addresses **behavior**.
- Incorporates personal faith as a catalyst for change
- Offers both **religious** and **secular** activities



Faith & Character Programs


Institution	Capacity
Gulf Annex	128
Tomoka CI	290
Polk CI	128
Union CI	96
Everglades CI	128
Lancaster CI	62
Lowell Reception Center (F)	344
Hernando CI (F)	181
Lawtey CI	835
Wakulla CI & Annex	3,243
<i>Total Beds</i>	<i>5,435</i>



Faith & Character Programs

SEVEN DOMAINS

1. Living With Purpose	Life Mapping / Attitude
2. Living In Community	Community Functioning
3. Living With Family	Marital / Family Domain
4. Responsible Living	Healthy Choices Domain
5. Living With Accountability	Mentoring Domain
6. Life After Prison	Re-entry Domain
7. Living In Faith	Faith Formation Domain




Faith & Character Programs

- Life Skills
- Personal Faith
- Victim Awareness
- Substance Abuse
- Financial Concepts
- Anger Management
- Interview & Job Skills
- Goal Setting
- Computer Literacy
- Small Business Concepts
- Community Meetings
- Community Projects

The following programs focus specifically on strengthening Florida's families:


- Fatherhood Curriculum
- Motherhood Curriculum
- Parenting Classes
- Family Days
- Reading Family Ties
- Writing Family Ties
- Marriage Enrichment
- Women's Empowerment
- Family Relationships



Faith & Character Programs

- The Disciplinary Report (DR) rate indicates inmate adjustment and impacts institutional safety for both inmates and staff.

Category	Tomoka	Gulf Anx	Polk
Removed because of DR (Aug 2012)	0	0	0
Institutions - DR Rate / 1000 inmates	354	226	207
FCB Dorms - DR Rate / 1000 inmates	111	101	96
Comparison Dorms - DR Rate /1000 inmates	343	164	221



Department of Corrections

Faith & Character Based Program

Future Expansion