

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 1097 Senate Confirmation of Justices and Judges

**SPONSOR(S):** McBurney

**TIED BILLS:** None **IDEN./SIM. BILLS:** SJR 1664

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 5 N	Billmeier	Bond
2) Judiciary Committee		Billmeier	Havlicak

### SUMMARY ANALYSIS

Under current law, the Governor must appoint justices of the Supreme Court and judges of the district courts of appeal from a list of nominees provided by the appropriate judicial nominating commission. There are separate judicial nominating commissions for the Supreme Court and each of the district courts of appeal. The Legislature is not involved in this process. By contrast, the President of the United States appoints federal justices and judges subject to confirmation by the United States Senate.

This joint resolution provides that judicial vacancies on the Supreme Court and district courts of appeal be filled by appointment by the Governor subject to Senate confirmation, similar to the federal system. If the Senate does not confirm an appointment within 180 days of receipt of the nomination, the nominee is deemed unconfirmed. This joint resolution provides that the Senate may sit for purposes of confirmation regardless of whether the House is in session. Circuit and county judges would be subject to Senate confirmation in any circuit or county that opts to provide for merit retention. Once confirmed, justices and judges sit for retention elections as provided under the current constitution. This joint resolution removes the requirement that the Governor appoint Supreme Court justices and judges of the district courts of appeal from a list submitted by a judicial nominating commission.

The proposed joint resolution, if passed by the Legislature, would be considered by the electorate at the November 2012 general election. A joint resolution must be passed by a three-fifths vote of the membership of each house of the Legislature.

The proposed joint resolution appears to require a nonrecurring expense of approximately \$42,000, payable from the General Revenue Fund in FY 2012-2013, for required advertising of the joint resolution. This joint resolution does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Florida Constitution provides that Governor appoint appellate judges from a list of nominees provided by a judicial nominating commission (JNCs).<sup>1,2</sup> When a judgeship becomes vacant, candidates submit their applications to the JNC for that court. The commission sends a list of three to six nominees to the Governor and the Governor fills the vacancy by selecting from that list.<sup>3</sup> At the next general election occurring at least a year after appointment, justices and district court judges sit for a retention election. If a majority of voters choose to retain the justice or judge, the justice or judge is elected to a six year term.<sup>4</sup>

Nominations must be submitted to the Governor within 30 days of the vacancy unless the Governor extends the period by an additional 30 days.<sup>5</sup> The Governor must make the appointment within 60 days of receiving the list of nominees from the JNC.<sup>6</sup>

Circuit and county court judges are determined by election.<sup>7</sup> Elected judges serve six year terms.<sup>8</sup> Circuits and counties may, by local option, choose to select all judges in the same manner as appellate judges are selected.<sup>9</sup> No circuit or county has opted to change from election to nomination by the judicial nominating commission and appointment by the governor.

##### **History of Judicial Selection in Florida**

When Florida became a state in 1845, the constitution vested the judicial power in the judges of the circuit courts. The circuit judges were elected by the Legislature and also served as justices of the Supreme Court from 1846 until 1851. In 1848 Constitution and subsequent implementing legislation provided that the Supreme Court should have a chief justice and two associate justices. In 1853, the constitution provided for the election of the 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. In 1868, the constitution provided for a Supreme Court appointed by the Governor and confirmed by the Senate.<sup>10</sup> The 1885 Florida Constitution provided for election of Supreme Court justices. The system of appointment of all Supreme Court justices and district court of appeal judges was approved by the voters at the 1976 general election.<sup>11</sup>

##### **Judicial Selection in Other States**

Justices of the United States Supreme Court, judges on the federal circuit courts,<sup>12</sup> and judges on the federal district courts<sup>13</sup> are appointed by the President of the United States and must be confirmed by

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<sup>1</sup> See art. V, s.11, Fla. Const.

<sup>2</sup> Trial court judgeships that become vacant during a judge's term are also filled by a gubernatorial appointment from a list of nominees provided by a judicial nominating commission.

<sup>3</sup> See art. V, s. 11(a), Fla. Const.

<sup>4</sup> See art. V, s. 10, Fla. Const.

<sup>5</sup> See art. V, s. 11(c), Fla. Const.

<sup>6</sup> See art. V, s. 11(c), Fla. Const.

<sup>7</sup> See art. V, s. 10, Fla. Const.

<sup>8</sup> See art. V, s. 10, Fla. Const.

<sup>9</sup> See art. V, s. 10, Fla. Const.

<sup>10</sup> This information is found on the Florida Supreme Court's website at <http://www.floridasupremecourt.org/about/history/schistory.shtml> (accessed March 15, 2011).

<sup>11</sup> See CS/SJR 49 & 81 (1976).

<sup>12</sup> Circuit courts at the federal level are appellate courts.

<sup>13</sup> District courts at the federal level are trial courts.

the United States Senate.<sup>14</sup> There is a great deal of variation among the states in how they select justices and judges. Some states choose justices and judges by direct election, which can be partisan or non-partisan. Some states have a system similar to Florida's merit selection/retention system of selecting appellate judges, with a nomination by a judicial nominating commission and appointment by the governor system. At least eight states, including Delaware, Hawaii, Maine, Maryland, New Jersey, New York, Rhode Island, and Vermont, have systems where the governor selects a justice for the state supreme court who must be confirmed by the state senate.

### **Effect of the Joint Resolution**

This joint resolution provides that judicial vacancies on the Supreme Court and district courts of appeal are filled by the Governor subject to Senate confirmation. The joint resolution provides that the Governor must fill a vacancy by submitting a nominee to the Senate for confirmation. If the Senate does not confirm an appointment with 180 days of receipt, the nominee is deemed unconfirmed. This joint resolution provides that the Senate may sit for purposes of confirmation regardless of whether the House is in session.<sup>15</sup> Once confirmed, justices and judges sit for retention elections as provided under the current constitution. A justice or judge's first retention election is at least one year after Senate confirmation.

This joint resolution does not apply to circuit or county judges unless the circuit or county opts to change from election to selection/retention of judges. If a circuit or county changes to a retention system, the joint resolution would require that the Governor appoint circuit or county judges subject to Senate confirmation.

This joint resolution removes the requirement that the Governor appoint Supreme Court justices and judges of the district courts of appeal from a list submitted by the judicial nominating commission. It abolishes the district court of appeal nominating commissions and removes provisions relating to the supreme court judicial nominating commission from art. V, s. 11. Fla. Const.<sup>16</sup>

#### **B. SECTION DIRECTORY:**

n/a

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

Article XI, s. 5(d), Fla. Const., requires that a proposed constitutional amendment be published twice in one newspaper be published twice in one newspaper of general circulation in each county in which a newspaper is published prior to the election in which the voters will consider it. The Department of State has indicated the average cost to advertise an amendment is \$106.14 per word. The amendment text contains 397 words so the approximate non-recurring expenditure to advertise the amendment is \$42,133.58 payable from the General Revenue Fund in FY 2012-2013.

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<sup>14</sup> See art. II, s. 2, U.S. Const.

<sup>15</sup> The House and Senate must generally meet in session at the same time. See art. III, s. 3, Fla. Const. Article III, s. 17(c), Fla. Const., allows the Senate to meet whether or not the House is in session for purposes of holding impeachment trials.

<sup>16</sup> The judicial nominating commission of the supreme court is referenced in art. IV, s. 4(b), Fla. Const. This joint resolution does not change that provision.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The state may see increased expenditures if the Senate elects to sit for the purposes of considering confirmations at times when the Senate is not otherwise in Tallahassee.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

A mandates analysis is inapplicable as this bill is a proposed constitutional amendment.

2. Other:

A joint resolution must be passed by a three-fifths vote of the membership of each house of the Legislature before it can be proposed to the voters. It must be approved by 60% of the voters in order to be adopted as part of the Constitution. See Art. XI, ss. 1, 5, Fla. Const.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The joint resolution abolishes the Supreme Court Judicial Nominating commission from art. V, s. 10, Fla. Const., but the entity remains in the constitution and in statute. Article IV, s. 4(b), Fla. Const., provides that the statewide prosecutor is appointed by the Attorney General from a list provided by the "judicial nominating commission for the supreme court, or as otherwise provided by general law." Section 16.56, F.S., provides that the Supreme Court Judicial Nominating Commission must submit nominees to the Attorney General for appointment as statewide prosecutor. Section 27.701, F.S., provides that the Supreme Court Judicial Nominating Commission must submit nominees to the Governor for appointment as Capital Collateral Regional Counsel for each of the three regions in the state. Section 27.511, F.S., provides that the Supreme Court Judicial Nominating Commission submit nominees to the Governor for appointment as Criminal Conflict and Civil Regional Counsel.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None