

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 753 Judicial Nominating Commissions
SPONSOR(S): Civil Justice & Claims Subcommittee; White
TIED BILLS: **IDEN./SIM. BILLS:** SB 1030

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	8 Y, 6 N, As CS	Jones	Bond
2) Judiciary Committee			

SUMMARY ANALYSIS

Trial court judicial positions that become vacant during a judge's term and all appellate judicial positions are filled by a system of nomination and appointment in which the Governor must appoint a justice or judge from a list of nominees provided by the relevant judicial nominating commission (JNC). There are separate JNCs for the Supreme Court, each district court of appeal, and each of the twenty judicial circuits. Each JNC has nine volunteer members. Five members are appointed solely by the Governor, and four members are appointed by the Governor from a list of nominees provided by The Florida Bar. Members of the JNCs serve 4-year staggered terms.

CS/HB 753 maintains the current JNC structure of twenty-six 9-member JNCs, keeps five members of each JNC appointed solely by the Governor, and keeps four-year terms. This bill changes the method of selection of the four remaining members of each JNC to provide for appointment by the President of the Senate and the Speaker of the House of Representatives. Each leader will appoint two members of each JNC. Before each appointment, The Florida Bar must recommend three qualified individuals and the President or Speaker must publish a list of the individuals the President or Speaker is considering for appointment which list must include the individuals recommended by The Florida Bar. Appointments will be staggered.

The bill creates a transition rule and provides that current members of JNCs will serve the remainder of their terms unless removed for cause.

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

The effective date of the bill is January 8, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Trial court judicial positions that become vacant during a judge's term and all appellate judicial positions are filled by the Governor from a list of nominees provided by a judicial nominating commission (JNC).¹ JNCs are required by the Florida Constitution, but the number of members and composition of each JNC is provided for by statute.² When an appellate judicial position 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 must fill the vacancy by selecting from that list.³ Vacancies on the circuit or county courts that occur between elections are filled in the same manner as vacancies on the appellate bench.⁴

Article V, s. 11(d) of the Florida Constitution provides that JNCs must be created by general law for the Supreme Court, each district court of appeal, and each judicial circuit for all trial courts within that circuit. This constitutional provision is implemented by s. 43.291, F.S., which provides that each JNC consists of nine members appointed by the Governor.⁵ Members serve 4-year staggered terms.⁶ All JNC members must be residents of the territorial jurisdiction served by the JNC to which the member is appointed.⁷

The Governor appoints five of the nine members of each JNC at the Governor's sole discretion. Two of those five appointees must be members of The Florida Bar who are engaged in the practice of law.⁸ The remaining four members of each JNC are appointed by the Governor from a list of nominees provided by the Board of Governors of The Florida Bar. The Board of Governors must submit three nominees for each position. Each of the nominees must be a member of The Florida Bar engaged in the practice of law. The Governor must either select an appointee from the list of nominees or reject all of the nominees and request that the Board of Governors submit a new list of three different recommended nominees.⁹ In making appointments, the Governor must "seek to ensure that, to the extent possible, the membership of the commission reflects the racial, ethnic, and gender diversity, as well as the geographic distribution," of the population within the territorial jurisdiction of the JNC.¹⁰ The Governor must also consider the adequacy of representation of each county within the judicial circuit.¹¹

A justice or judge may not be a member of a JNC, but a JNC member may hold public office other than judicial office. A member of a JNC is not eligible for appointment, during his or her term of office and for a period of 2 years thereafter, to any state judicial office for which that JNC has the authority to make nominations.¹²

Effect of the Bill

CS/HB 753 provides that the President of the Senate and the Speaker of the House of Representatives appoint the four members of each JNC who are currently selected by the Governor upon nomination by

¹ FLA. CONST. art. V, s. 11.

² FLA. CONST. art. V, s. 11(d).

³ FLA. CONST. art. V, s. 11(a).

⁴ FLA. CONST. art. V, s. 11(b).

⁵ S. 43.291(1), F.S.

⁶ S. 43.291(3), F.S.

⁷ S. 43.291(1)(a), (b), F.S.

⁸ S. 43.291(1)(b), F.S.

⁹ S. 43.291(1)(a), F.S.

¹⁰ S. 43.291(4), F.S.

¹¹ Id.

¹² S. 43.291(2), F.S.

the Board of Governors of The Florida Bar. Before the President and Speaker make their appointments, each must publish a list of qualified individuals being considered for appointment. The Board of Governors of the Florida Bar must recommend three qualified individuals for each position to be filled, and the list published by the President or Speaker must include the names of those individuals. The President or Speaker must accept comments on the individuals on the list and wait at least 30 days after publication of the list to make an appointment.

The JNC members appointed by the President and Speaker must still be members of The Florida Bar engaged in the practice of law. The Senate President and the House Speaker each appoint two members to each JNC. The Governor still selects the other five members of each JNC.

The bill provides that each current JNC member serves the remainder of his or her term unless removed for cause. For selections to the Supreme Court JNC, the Senate President appoints the members to fill the first and third positions that become vacant, and the House Speaker appoints the members to fill the second and fourth positions. For selections to circuit and district court JNCs with even-numbered districts or circuits, the Senate President appoints the members to fill the first and third positions that become vacant, and the House Speaker appoints the members to fill the second and fourth positions. For selections to circuit and district court JNCs with odd-numbered districts or circuits, the House Speaker appoints the members to fill the first and third positions that become vacant, and the Senate President appoints the members to fill the second and fourth positions. Once a JNC consists of five members appointed by the Governor, two members appointed by the House Speaker, and two members appointed by the Senate President, each subsequent expired term or vacancy is filled by appointment in the same manner as the member whose position is being filled.

This bill is effective January 8, 2019.

B. SECTION DIRECTORY:

Section 1: Amends s. 43.291, F.S., relating to the manner of appointing JNC members.

Section 2: Provides an effective date of January 8, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2018, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Added a requirement for the President of the Senate and Speaker of the House to consider a list of nominees suggested the Board of Governors of the Florida Bar;
- Restored the current law requirement that the four JNC members at issue must be "engaged in the practice of law"; and
- Changed the effective date to January 8, 2019.

This analysis reflects the committee substitute as passed by the Civil Justice & Claims subcommittee.