

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2004

SPONSOR: Committee on Judiciary and Senator King

SUBJECT: District Courts of Appeal

DATE: April 26, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable /CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute requires each district court of appeal to consist of at least one judge from each judicial circuit within the district. The Judicial Nominating Commissions making appointments to district courts of appeal are requested to adopt rules of procedure to effectuate the provisions of this act.

The CS does not affect the current terms of any appellate judges or any vacancy that is awaiting appointment by the Governor upon the effective date of the bill.

The CS provides that upon the retirement, removal, or death of a sitting appellate judge or the expiration of that judge's term of office without reelection, or upon the creation of an additional judgeship on a district court of appeal for an appellate district for which there is a judicial circuit from which there is no judge then serving, such vacancy shall be filled only by a qualified resident of the geographical area of such unrepresented judicial circuit.

The CS also provides that if there is a vacancy on a district court of appeal where there is more than one judicial circuit which is unrepresented by a judge on such district court of appeal, the vacancy will be filled by a qualified resident of the circuit having the lowest judicial circuit designating number.

The CS requests the district courts of appeal judicial nominating commissions to promulgate rules effectuating the bill's provisions.

This bill substantially amends section 35.01, Florida Statutes, and creates an unnumbered section.

II. Present Situation:

All of the courts of the state are established in Article 5, s. 1 of the State Constitution. Section 1 directs the Legislature to, by general law, divide the state into appellate court districts and judicial circuits following county lines.

The membership of the Supreme Court is provided in Article 5, s. 2 of the State Constitution. There are to be seven justices and each appellate district is to have at least one justice elected or appointed from the district who is a resident of the district at the time of his original appointment or election.

The district courts of appeal are provided for in Article 5, s. 3 of the State Constitution. That section provides that each district court of appeals must consist of at least three judges but it does not otherwise provide direction as to the selection of members for each court.

Chapter 35, entitled "District Courts of Appeal" contains specific statutory provisions related to the District Courts of Appeal but does not include any requirements for the selection of the judges other than specifying the number of judges in each district.

Sections 5 and 6 of Article 5 of the State Constitution, provide for the circuit and county courts respectively. There is no designation in those sections specifying the geographical or other distribution for the selection of judges except that the county court provisions provide that there will be one or more county court judges as provided by general law.

Chapter 26, entitled "Circuit Courts" contains specific provisions for the location and jurisdiction of circuit courts. Section 26.021, F.S., provides for the counties contained in each circuit and for the fifth, seventh, and sixteenth circuits the section provides residency requirements for some of the judges. The authority of the Legislature to provide for geographic distribution of circuit court judges, while not the issue under litigation, was accepted as within the power of the Legislature in *E. L. Eastmoore v. Stone*, 265 So. 2d 517(Fla. 1st DCA, 1972).

Article V, s. 11 of the State Constitution, authorizes the Governor to fill vacancies on the courts of the state. The Governor is to select an appointee from among "not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission." Art. V, s. 11(a), Fla. Const. The section then provides that the Legislature is to provide for a JNC for the Supreme Court, for each district court of appeals, and for each circuit court. The JNC for each circuit court is to make nominations for the circuit court and each county court within the circuit. Judicial nominating commissions are authorized to promulgate uniform rules of procedure under Article V, Section 11(d) of the State Constitution.

Section 43.29, F.S., implements the provisions of Article V, Section 11(d) of the State Constitution by providing for membership and authorizing rulemaking for the JNCs. The JNC's rarely offer more than three candidates for any one judicial vacancy.

While the Legislature provides for the JNC's, the Supreme Court has found that after the Legislature establishes the Judicial Nominating Commission as provided by the constitution, those commissions become part of the executive branch of government and not subject to legislative control. The Supreme Court in *In re Advisory Opinion to Governor*, 276 So. 2d 25(1973), held that the JNC's were part of the executive branch of government performing an executive function which could not be limited by legislative act. Further, the court held the Governor had no power to establish rules governing the operation of the commissions because "the exercise of such a power might tend to curtail the constitutional independence of the commissions." In the opinion the Court stated:

The legislative role in the appointment of judges has been completed with the enactment of Fla. Stat. s. 43.29, F.S.A.

Id. at 30.

According to the Office of State Court's Administrator, of Florida's five district courts of appeal, only the First and Third contain judicial circuits that are not represented by sitting appellate judges. In the First District, the Eighth Circuit, representing Alachua, Baker, Bradford, Gilchrist, Levy and Union counties, and the Fourteenth Circuit, representing Bay, Calhoun, Gulf, Holmes, Jackson and Washington counties, are not represented on the court of appeal. In the Third District, the Sixteenth Judicial Circuit, representing Monroe County, is not represented on the court of appeal.

The First District Court of Appeals is composed of the First, Second, Third, Fourth, Eighth and Fourteenth Judicial Circuits and s. 35.06, F. S., provides for 15 judges in the district.

The Third District Court of Appeals is composed of the Eleventh and Sixteenth Judicial Circuits and s. 35.06, F.S., provides for 11 judges in the district.

III. Effect of Proposed Changes:

This bill requires the panel of all sitting judges in each district court of appeal to consist of at least one judge from each judicial circuit within the district.

The bill does not affect the current terms of any appellate judges or any vacancy that is awaiting appointment by the Governor.

The bill provides that where every circuit is not currently represented, vacancies will be filled with a qualified resident of the unrepresented circuit. The vacancy may occur through retirement, removal, or death of a sitting appellate judge or the expiration of that judge's term of office without reelection, or upon the creation of an additional judgeship on a district court of appeal.

The bill provides that when there is a vacancy on a district court of appeal where there is more than one unrepresented judicial circuit, the vacancy must be filled by a qualified resident of the circuit having the lowest judicial circuit designating number.

While the bill will affect all district courts of appeal, it will have the immediate and practical effect of requiring judges drawn from the Eighth and Fourteenth Circuits to sit on the First District Court of Appeal once appropriate vacancies occur, and for a judge representing Monroe County to sit on the Third District Court of Appeal at the next available vacancy. Currently, only these two courts have gaps in representation.

The Judicial Nominating Commissions making nominations for the district courts of appeal are requested to adopt uniform rules to effectuate the purposes of the committee substitute.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

While the bill directs that the district courts of appeal shall have representation by all circuits making up each district, Article V, Section 11(a) of the State Constitution provides that the authority to select candidates for appellate courts rests with the Governor who must select from recommendations of the nominating JNC. Under the constitution the JNC's independently select a panel of candidates for presentation to the Governor. The Governor then has constitutional authority to select any member of the panel presented by the JNC. This bill attempts to control the appointments by the Governor and the recommendations of the JNC which could be found to violate Article V, Section 11(a) of the State Constitution.

In the case of judges subject only to appointment, such as judges of the district courts of appeal, rather than election, such as circuit court judges, the Supreme Court holding in *In re Advisory Opinion to Governor, Id.* may be considered to conflict with the statements in *E. L. Eastmoore v. Stone, Id.*, and may require a judicial resolution of the conflict..

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The judicial nominating commissions will need to adopt rules to determine how the advertisement of vacancies and selection of nominees for district court of appeal positions will be carried out to comply with the provisions of this act.

VI. Technical Deficiencies:

There is no provision in the bill to direct the judicial nominating commissions to adopt rules.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
