

STORAGE NAME: h0923s1.jud

DATE: April 11, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HJR 923

RELATING TO: Judicial Nominating Commissions

SPONSOR(S): Committee on Judiciary and Rep. Brummer

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY YEAS 5 NAYS 4
 - (2) RULES & CALENDAR (W/D)
 - (3) JUDICIARY YEAS 6 NAYS 2
 - (4)
 - (5)
-

I. SUMMARY:

CS/HJR 923 proposes an amendment to Section 11 of Article V of the Florida Constitution that will require judicial nominating commissions to submit lists of all applicants for any judicial vacancy in rank-order based upon the qualifications of the applicants, to the Governor, along with any comments and recommendations. The joint resolution will also make the proceedings of the judicial nominating commissions -- including their deliberations -- open to the public.

The bill appears to meet the requirements of s. 101.61, F.S., with respect to the ballot title and summary.

If adopted, the proposed amendment would be voted on by the electorate in the November 2000 general election.

The bill will have a fiscal impact associated with the advertising of the proposed constitutional amendment.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Judicial nominating commissions are authorized by Article V, Section 11 of the Florida Constitution and created by s 43.29, F.S. These bodies are responsible for nominating candidates for judicial office in the supreme court, the district courts of appeal, and the circuit courts of Florida. Each commission is made up of nine members. Three are selected by the Governor, three are selected by the Florida Bar, and those six select an additional three persons. Each member must reside within the territorial jurisdiction of the court for which they will make nominations. s. 43.29, F.S. Each member serves a 4 year term and is not eligible for consecutive reappointment. *Id.* While the nominating commissions review candidates for judicial office and nominate at least three candidates for any vacancy, the Governor selects the final appointee. See Art. V, s. 11, Fla. Const.

Under Article V, Section 11 of the Florida Constitution, the proceedings and records of judicial nominating commissions are open to the public, but the deliberations of the judicial nominating commissions are exempt from this requirement.

Prior to 1984, the Constitution did not provide for any openness regarding the proceedings or records of judicial nominating commissions. HJR 1160, which went on the ballot in 1984, required that the proceedings and records of the commissions be open to the public. HJR 1160 also specifically exempted the deliberations from public scrutiny. There is no record of the legislative history of HJR 1160 explaining the Legislature's intention regarding these deliberations however.

C. EFFECT OF PROPOSED CHANGES:

If the proposed amendment is adopted by the electorate, each judicial nominating commission will be required to prepare a list of all applicants for any judicial vacancy in rank-order based upon the qualifications of each applicant, and submit that list, along with any comments and recommendations, to the Governor. In addition, the deliberations of the judicial nominating commission will be open to the public.

The joint resolution will ensure that the Governor has the opportunity to review the qualifications of every applicant for any one judicial office.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The Division of Elections is required to advertise proposed constitutional amendments in newspapers of general circulation in each county two times prior to the general election at an estimated cost of \$46,000 per amendment.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The bill appears to meet the ballot title and summary requirements of s. 101.161, F.S.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Representatives of the judicial nominating commissions have expressed their concerns that the bill will have a strong chilling effect on their deliberations. They point out that oftentimes the commissioners will receive evidence or allegations regarding sensitive personal information about the candidates and that they consider such evidence and allegations. If their deliberations were made public, sensitive personal and professional information would most likely be suppressed. Alternatively, such information may be discussed to the detriment of the candidates, who do not have any rebuttal rights with regard to the selection process. Moreover, most candidates are known to the JNC members, who may be dissuaded from speaking candidly about their personal and professional acquaintances in their presence at an open forum.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judiciary adopted a strike-everything amendment on April 11, 2000, and made the joint resolution a committee substitute. The amendment requires the judicial nominating commissions to provide lists of all applicants for a judicial vacancy, in rank-order based upon their qualifications, and with any comments or recommendations, to the Governor. The amendment also requires that the deliberations of judicial nominating commissions be open to the public.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Michael W. Carlson, J.D.

Staff Director:

P.K. Jameson, J.D.

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