

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1135 Judicial Nominating Commissions
SPONSOR(S): Brummer
TIED BILLS: None **IDEN./SIM. BILLS:** SJR 2250

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary		Jaroslav	Havlicak
2) State Administration			
3)			
4)			
5)			

SUMMARY ANALYSIS

Under the Florida Constitution, appellate judgeships are filled by a system of nomination and appointment in which power is divided between the Governor and constitutionally created bodies called judicial nominating commissions ("JNCs"). Proceedings and records of the JNCs are currently public; however, the state constitution specifically provides that deliberations of the JNCs are private.

This joint resolution proposes to amend the Florida Constitution to allow deliberations of the JNCs to be public. This joint resolution would not prevent the Legislature from exempting such deliberations from public access by a two-thirds vote under Florida's "Government in the Sunshine" law, if it chose to do so.

This joint resolution appears to impose a nonrecurring \$35,000 fiscal impact on state government. This joint resolution does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

N/A

B. EFFECT OF PROPOSED CHANGES:

Judicial Nominating Commissions

In Florida, appellate judgeships are filled by a system of nomination and appointment in which power is divided between the Governor and constitutionally created bodies called judicial nominating commissions (“JNCs”).¹ Although the state constitution creates JNCs, the number of members and composition of each JNC may be determined by statute.² When an appellate 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.³ Seats on the trial courts are determined by election but vacancies on the trial bench that occur between elections are filled in the same manner as vacancies on the appellate bench.⁴

Article V, Section 11(d) of the Florida Constitution provides that JNCs shall be created by general law for the Supreme Court, for each District Court of Appeal, and for each judicial circuit (encompassing all trial courts within that circuit). Section 43.291, Florida Statutes, implements the constitutional provisions. Under this statute, each JNC consists of nine members, all of whom must be residents of the territorial jurisdiction served by that JNC: four members of The Florida Bar selected by the Governor from among lists of three recommended for each position by the Board of Governors of The Florida Bar, each of whom must be engaged in the practice of law;⁵ and five appointed by the Governor directly, at least two of whom must be members of The Florida Bar engaged in the practice of law.⁶ No justice or judge may serve on a JNC, but a JNC member may hold another public office.⁷ JNC members serve four-year terms.⁸

Under the Florida Constitution’s “Government in the Sunshine” amendment, public records and meetings are open to the public unless exempted by the Legislature by a two-thirds vote or expressly exempted in the constitution itself.⁹ Article V, Section 11(d) of the Florida Constitution provides that the records and proceedings of the JNCs are open to the public, but their deliberations are closed.

¹ See Art. V, s.11, Fla. Const.

² See Art. V, s. 11(d), Fla. Const.

³ See Art. V, s. 11(a), Fla. Const.

⁴ See Art. V, s. 11(b), Fla. Const.

⁵ See s. 43.291(1)(a), F.S.

⁶ See s. 43.291(1)(b), F.S.

⁷ See s. 43.291(2), F.S.

⁸ See s. 43.291(3), F.S.

⁹ See Art. I, s. 24, Fla. Const.

Amendment Process

This is a legislative joint resolution, which is one of the methods for proposing, approving or rejecting amendments to the Florida Constitution.¹⁰ The joint resolution requires passage by a three-fifths vote of each house of the Legislature. If so passed, the proposed constitutional amendment will then be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. If approved by the electors, it becomes effective on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.

Proposed Change

This joint resolution proposes to amend Article V, Section 11(d) of the Florida Constitution to allow the deliberations of the JNCs to be public. Under this resolution, the Legislature could still provide for all or part of such deliberations to be private if it chose to do so by a two-thirds vote, pursuant to the general provisions of the "Government in the Sunshine" amendment.

C. SECTION DIRECTORY:

N/A

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The Department of State's Division of Elections estimates that the average cost to advertise the proposed constitutional amendment twice in a newspaper of general circulation in each county prior to the 2004 general election will be \$35,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹⁰ See Art. XI, Fla. Const. (providing for amendment by legislative joint resolution, constitution revision commission proposal, citizen initiative, and constitutional budget or tax commission proposal).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

By its own terms, the qualified prohibition against imposing legislative mandates to expend funds on local governments applies only to "general law," not to resolutions proposing amendments to the Florida Constitution.¹¹ However, even if the prohibition did apply, this joint resolution does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A

¹¹ See Art. VIII, s. 18, Fla. Const.