HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:   HJR 7039   PCB CVJS 11-04   Judicial Retention Elections
SPONSOR(S): Civil Justice Subcommittee, Hager
TIED BILLS: **IDEN./SIM. BILLS:** SJR 1672

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	10 Y, 4 N	Billmeier	Bond
1) Judiciary Committee		Billmeier	Havlicak

SUMMARY ANALYSIS

Justices of the Florida Supreme Court, judges of the district courts of appeals, circuit judges, and county judges serve six year teams. Before the expiration of each term, Supreme Court justices and judges on the district courts of appeal appear on the ballot for a retention election. If a majority of voters approve, the justice or judge is elected to another term. No Florida justice or judge has ever failed to receive a majority. Circuit and county judges compete in contested elections but circuits and counties have the option to change to the retention election system used for the appellate courts.

This joint resolution changes the retention requirements for Supreme Court justices and judges of the district courts of appeal that are on the ballot in retention elections to 60%. If a justice or judge is not approved by at least 60% of the voters in an election, a vacancy exists in the office effective at the end of the justice or judge's term. This 60% requirement will apply to circuit and county judges in any circuit or county that changes to a retention election system for selecting and retaining judges.

The proposed joint resolution appears to require a nonrecurring expense of approximately $66,000 payable from the General Revenue Fund in FY 2012-13 for required advertising of the joint resolution. This joint resolution does not appear to have a fiscal impact on local governments.

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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Article V, Fla. Const., provides for four categories of justices and judges: justices of the Supreme Court and judges on the district courts of appeal, the circuit courts, and the county courts. Justices and judges serve for terms of six years.[1]

To become a justice of the Supreme Court or a judge on the district court of appeals, one applies to the appropriate judicial nominating commission. The judicial nominating commission selects three to six applicants and submits that list of nominees to the Governor. The Governor must select the justice or judge from that list. At the general election prior to the expiration of each term, Supreme Court justices and judges on the district courts of appeal whose terms of office are expiring appear on the ballot for a retention election. If a majority of voters approve, the justice or judge is elected to another term.[2] Florida enacted this system, sometimes called "merit retention," in 1972. No Florida justice or judge has ever failed to achieve a majority vote.

Circuit and county judges compete in contested elections.[3] If there is no opposition when a judge runs for reelection, a judge is reelected to the seat. Each judicial circuit and each county has had the option since 2000 of changing from the contested election method of selecting judges to the "merit retention" method but, thus far, no circuit or county has done so. Every circuit and county held a referendum on the issue in 2000.

Past Election Results

According to information gathered from the Division of Elections website, 39 supreme court justices have appeared on the ballot since 1980. All 39 were approved by a majority of the voters. Two of those justice received less than 60% of the vote. During the 2004-2010 general elections, 81 of the 88 district court of appeal judges that appeared on the ballot received more than 60% of the vote.

Political Campaigning by Justices and Judges

Political campaigns in Florida are governed by statutes that require, among other things, the reporting of donations and the identification of donors and impose campaign contribution limits. State election laws apply to justices and judges running for retention, circuit and county judges running in contested elections, candidates for the Legislature, candidates for statewide office, state attorneys, and public defenders. Candidates for judicial office, whether in a contested election or a retention election, have additional requirements imposed by the Florida Code of Judicial Conduct. The Code was created by the Florida Supreme Court and was not created or authorized by general law.[4]

The Code governs the political activities of justices and judges who are candidates for merit retention. It currently provides that a candidate for merit retention may conduct only limited campaign activities until such time as the justice or judge certifies that the candidacy has drawn active opposition.[5] Once

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[1] *See* Art. V, ss. 10(a), 10(b)(3), Fla. Const.

[2] *See* Art. V, s. 10(a), Fla. Const.

[3] *See* Art. V, s. 10(b), Fla. Const.

[4] The Court's authority to create the Code is derived its authority to create rules of practice and procedure in the courts. *See In re Amendment to the Code of Judicial Conduct – Amendments to Canon 7*, 985 So. 2d 1073 (Fla. 2008)("This case is before the Court on the petition of the Florida Judicial Ethics Advisory Committee (Committee) for approval of amendments to the Florida Code of Judicial Conduct. We have jurisdiction. *See* art. V, § 2(a), Fla. Const.").

[5] "Limited campaign activities" include such things as interviews with the media and appearances and speaking engagements before public gatherings and organizations.

the justice or judge so certifies, the justice or judge in any manner authorized by law subject to additional restrictions set forth in the Code.[6]

Effect of Proposed Changes

This joint resolution changes the retention requirements for justices and judges that are on the ballot in retention elections from a majority to 60%. If a justice or judge is not approved by at least 60% of the voters in an election, a vacancy exists in the office effective at the end of the justice or judge's term. Vacancies are filled by a nominee appointed by the Governor from a list provided by the appropriate judicial nominating commission. The 60% retention requirement will also apply to circuit and county judges if the circuit or county changes its method of selecting judges from a direct election to a merit selection system.

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 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 not yet analyzed this proposal to determine the estimated costs but has previously indicated the average cost to advertise a proposed constitutional amendment is $106.14 per word. The joint resolution contains 621 words so the advertising costs would be approximately $65,912.94.

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:

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[6] *See* Florida Code of Judicial Ethics, Canon 7C(2).

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:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a