

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 1 Judicial Term Limits  
**SPONSOR(S):** Sullivan and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SJR 482

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	8 Y, 7 N	Bond	Bond
2) Judiciary Committee	11 Y, 8 N	Bond	Camechis

### SUMMARY ANALYSIS

Justices of the Florida Supreme Court and judges of the Florida district courts of appeal are appointed to office by the Governor. There are no limits on the number of terms of office that a justice or judge may serve, although each justice or judge is subject to removal pursuant to the merit retention process and is subject to a mandatory retirement age.

Merit retention is the system of retaining appellate court justices and judges established by a 1976 state constitutional amendment. Newly appointed justices or judges face their first merit retention vote in the next general election that occurs more than one year after their appointment. If retained in office by a majority of voters, the justice or judge serves a full six-year term. Thereafter, the justice or judge is subject to a merit retention election every six years. No Florida justice or judge has ever lost a merit retention election.

The joint resolution provides that a justice or district court of appeal judge may not appear on a ballot for retention if he or she has served more than 12 years in the same office. The joint resolution applies to justices and district court of appeal judges currently in office, but the 12-year limit does not include time served in office prior to January 9, 2019.

The joint resolution also prohibits reappointment of a term-limited justice or district court of appeal judge to the same court he or she left for one year.

The joint resolution appears to require a nonrecurring expense by the Department of State of \$107,685 payable from the General Revenue Fund in FY 2018-19 for the publication of the proposed constitutional amendment in newspapers of general circulation in each county. The joint resolution has no current fiscal impact on the State Courts System. The 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 next general election on November 6, 2018. If adopted at the 2018 general election, the effective date of this resolution is January 9, 2019.

**A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature to appear on the next general election ballot. If on the ballot, the constitution requires 60 percent voter approval for passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Appointment of Justices and District Court of Appeal Judges

Where there is a judicial vacancy in the Florida Supreme Court or a Florida district court of appeal, the Governor must appoint a replacement justice or judge from a list of nominees provided by a Judicial Nominating Commission (JNC).<sup>1</sup> There are separate JNC's for the Supreme Court and for the 5 district courts of appeal. When an office becomes vacant, candidates submit an application to the JNC for that court. The JNC sends a list of three to six nominees to the Governor and the Governor fills the vacancy by selecting from that list.<sup>2</sup> At the next general election occurring at least a year after appointment, the newly appointed justice or district court judge sits for a retention election. If a majority of voters choose to retain the justice or judge, the justice or judge is retained for a six year term.<sup>3</sup> Thereafter, the justice or judge will sit for a retention election every six years.

##### Past Retention Election Results

Supreme Court justices have appeared on the ballot for retention 45 times between 1980 and 2016. In all 45 instances they were retained by a majority of the voters. For the general elections from 2004 through 2016, all 153 district court of appeal judges that appeared on the ballot were retained.

##### Mandatory Retirement Age

The Florida Constitution establishes a mandatory retirement age for justices and judges. The exact date of retirement depends upon when the 70th birthday occurs. If it occurs during the first half of a six-year term, then the mandatory retirement age is the same as the birthday. If the 70th birthday occurs in the second half of a six-year term, then the justice or judge can remain on the bench until the full term expires.<sup>4</sup>

##### Term Limits

While the state has term limits applicable to the Governor, cabinet members, and legislators, no term limit applies to justices or judges. A justice or judge can serve an unlimited number of terms of office, limited only by a failure to be retained or achieving the mandatory retirement age.

#### **Effect of the Joint Resolution**

The joint resolution provides that a Supreme Court justice or a judge of a district court of appeal may not appear on the ballot for retention if, by the end of the current term of office, the justice or judge will have served in that office for 12 consecutive years.

A justice ineligible for retention or a justice who resigns is ineligible for reappointment to the Supreme Court for one year. Similarly, a district court of appeal judge ineligible for retention or a judge who resigns is ineligible for reappointment to any district court of appeal for one year.

The term limits created by this joint resolution apply only to the office in which a justice or district court of appeal judge is serving. For instance, a district court of appeal judge promoted to the Supreme Court starts a new term limit.

The joint resolution applies to justices and district court of appeal judges currently in office, but the 12-year limit does not include time served in office prior to January 9, 2019.

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<sup>1</sup> art. V, s.11, Fla. Const.

<sup>2</sup> art. V, s. 11(a), Fla. Const.

<sup>3</sup> art. V, s. 10, Fla. Const.

<sup>4</sup> art. V, s. 8, Fla. Const.

If approved by the electorate, the joint resolution takes effect January 9, 2019.

B. SECTION DIRECTORY:

n/a

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The joint resolution does not appear to have any impact on state revenues.

2. Expenditures:

Publication Requirement

Article XI, s. 5(d) of the state constitution requires publication of a proposed amendment in a newspaper of general circulation in each county.

The Division of Elections is required to advertise the full text of proposed constitutional amendments twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments. The cost to advertise constitutional amendments for the 2016 general election was \$117.56 per word.<sup>5</sup>

The joint resolution has 916 words, thus requiring an estimated \$107,685 for publication. These funds must be spent regardless of whether the amendment passes, and are payable from the General Revenue Fund in FY18-19.

Fiscal Impact on the State Courts System

The Office of State Courts Administrator indicated that the "fiscal impact of this legislation cannot be accurately determined due to the unavailability of data ...."<sup>6</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have any impact on local government revenues.

2. Expenditures:

The joint resolution does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The joint resolution does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

While unable to determine a specific fiscal impact to this legislation, the Office of State Courts Administrator speculates that this joint resolution may increase costs to the judicial system due to increased judicial turnover, which will lead to more frequent gaps in service, increased use of senior

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<sup>5</sup> E-mail correspondence from the Department of State dated January 26, 2017, on file with the Civil Justice & Claims Subcommittee.

<sup>6</sup> Office of the State Courts Administrator, 2017 Judicial Impact Statement for HJR 1, dated February 2, 2017. On file with the Civil Justice & Claims Subcommittee.

judges during gaps in service, increased staff turnover, and increased training costs.<sup>7</sup> Because of the prospective nature of the joint resolution, the potential fiscal impacts to the court system would not occur until FY 2031-32 at the earliest.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This section does not apply to a proposed constitutional amendment.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The joint resolution does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution, along with the requirements for election and approval or rejection of a proposal. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.<sup>8</sup> Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.<sup>9</sup> If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution 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.<sup>10</sup>

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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<sup>7</sup> Office of the State Courts Administrator, *2017 Judicial Impact Statement for HJR 1*, dated February 2, 2017. On file with the Civil Justice & Claims Subcommittee.

<sup>8</sup> art. XI, s. 1, Fla. Const.

<sup>9</sup> art. XI, s. 5(a), Fla. Const.

<sup>10</sup> art. XI, s. 5(e), Fla. Const.