

**STORAGE NAME:** h3507.go  
**DATE:** March 16, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
GOVERNMENTAL OPERATIONS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 3507  
**RELATING TO:** Judicial Nominating Commissions  
**SPONSOR(S):** Representative Crist  
**COMPANION BILL(S):** SB1560 (i)

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

- (1) GOVERNMENTAL OPERATIONS
  - (2)
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

At present, the selection and composition of judicial nominating commissions is governed by section 43.95, Florida Statutes. Section 43.95, Florida Statutes, provides for the selection of 9 members for each judicial nominating commission according to certain specifications.

HB 3507 repeals section 43.29, Florida Statutes, and creates section 43.295, Florida Statutes. Section 43.295, Florida Statutes, continues to provide for 9 members per each judicial nominating commission, but alters their method of appointment as well as the criteria they must meet to be appointed. The resulting changes will provide for the selection of judicial nominating commissions as follows:

- (a) Four electors appointed by the Governor. Of these four electors, at least three must be members of The Florida Bar in good standing for a minimum of 5 years and actively engaged in the practice of law within this state.
- (b) Two electors appointed by the Speaker of the House of Representatives. Of these two electors, at least one must be a member of The Florida Bar in good standing for a minimum of 5 years and actively engaged in the practice of law within this state.
- (c) Two electors appointed by the President of the Senate. Of these two electors, at least one must be a member of The Florida Bar in good standing for a minimum of 5 years and actively engaged in the practice of law within this state.
- (d) One elector appointed by the Attorney General. This member must be a member of The Florida Bar in good standing for a minimum of 5 years and actively engaged in the practice of law within this state.

This increases the number of attorneys that must be on a commission and eliminates the requirements regarding selecting from a racial or ethnic minority group. HB 3507 also prohibits judicial nominating commission members from holding other public offices, and amends section 400.45, Florida Statutes, to make reference to section 43.295, Florida Statutes. Further, HB 3507 provides that the act will take effect on July 1 of the year following enactment.

This bill does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**1. Judicial Nominating Commissions**

**a. Constitutional Provision for Judicial Nominating Commissions**

Article V., Section 11 of the Constitution of the State of Florida provides, in pertinent part,

There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit.

The purpose of judicial nominating commissions is to provide a list of nominees to the governor from which to fill vacancies occurring within the judiciary. The nominees pertain to the specific judicial body to which that nominating committee is assigned, i.e. "the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit." The State Constitution provides for an initial organizational structure<sup>1</sup>, but also asserts that subsequent changes in the organizational structure are subject to change "as provided by the general law."

**b. Section 43.29, Florida Statutes, Regarding the Selection of**

At present, the organizational structure of the judicial nominating commission is set forth in section 43.29, Florida Statutes.

Section 43.29, Florida Statutes, provides, in pertinent part,

- (1) Each judicial nominating commission shall be composed of the following:
  - (a) Three members, at least one of whom must be a member of a<sup>2</sup> racial or ethnic minority group or a woman, appointed by the Board of Governors of The Florida Bar from among The Florida Bar members who are actively engaged in the practice of law with offices within the territorial jurisdiction of the affected court, or in the district or circuit;
  - (b) Three electors, at least one of whom must be a member of a racial or ethnic minority group or a woman, who reside in the territorial jurisdiction of the court or in the circuit appointed by the Governor; and
  - (c) Three electors, at least one of whom must be a member of a racial or ethnic minority group or a woman, who reside in the territorial jurisdiction of the court or in

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<sup>1</sup> See section 20 (c) (5-7), Article V of the State Constitution.

<sup>2</sup> Footnote to section 43.29, Florida Statutes cites section 9, chapter 91-74, which provides that the term "[r]acial and ethnic minorities . . . means members of a socially or economically disadvantaged group which includes Blacks, Hispanics, and American Indians."

the circuit and who are not members of the bar of Florida, selected and appointed by a majority vote of the other six members of the commission.

This provides for a total of 9 members for each judicial nominating commission, three of whom must be attorneys.

In 1995, a United States District Court found the provisions of section 43.29, Florida Statutes, allocating one seat out of each judicial nominating commission to a member of a racial or ethnic minority or a woman to be in violation of the Equal Protection Clause of the Fourteenth Amendment.<sup>3</sup>

**c. Section 43.29 Provisions Regarding Other Judicial Nominating Commission Matters**

Section 43.29, Florida Statutes, also provides for exclusion from membership in judicial nominating commissions of justices and judges, and that the members of the judicial nominating commissions are not eligible to also be nominees by that commission to fill vacancies in the judicial body to which that commission is assigned either for their term of membership or for 2 years thereafter. However, section 43.29, Florida Statutes, states that members of judicial nominating commissions may hold other forms of non-judicial public office.

Section 43.29, Florida Statutes, provides that a member of a judicial nominating commission shall serve a term of 4 years, with no consecutive reappointment. Members of judicial nominating commissions may be suspended by the governor or removed by the Senate for cause pursuant to rules of procedure established by the judicial nominating commissions consistent with section 7, Article IV of the State Constitution.<sup>4</sup> Furthermore, all acts of a judicial nominating commission must be made with a concurrence of a majority of its membership.

**2. Office of the Judges of Compensation Claims**

Section 440.45, Florida Statutes, established the Office of The Judges of Compensation Claims as a part of the Department of Labor and Employment Security. Pursuant to this section, the governor is to appoint full-time judges of compensation claims to deal with subject matter under Chapter 440 ("Workers' Compensation"), Florida Statutes, or any other relevant area of law. This section also states:

The Office of the Judges of Compensation Claims shall be headed by a Chief Judge who shall serve at the pleasure of the Governor and Cabinet. The Chief Judge shall

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<sup>3</sup> Mallory v. Harkness, 895 F. Supp. 1556 (S.D. Fla. 1995).

<sup>4</sup> Section 7, Article V provides for procedures and requirements regarding: (a) the power of the governor, upon stating grounds, to suspend from office any state official not subject to impeachment, any officer of the militia not in active service of the United States, or any county officer, (b) the power of the Senate to remove from office any suspended official; and (c) the power of the governor to suspend any elected official under indictment, and to fill by appointment the office until acquittal.

be appointed by the Governor and confirmed by the Cabinet from a list of two names submitted by each of the District Court Judicial Nominating Commissions created by s. 2, Art. V of the State Constitution<sup>5</sup> and s. 43.29.

**B. EFFECT OF PROPOSED CHANGES**

**1. Repeals section 43.29, Florida Statutes**

Section 43.29, Florida Statutes, provides for procedures and requirements regarding appointments to the judicial nominating commissions.

**2. Creates section 43.295, Florida Statutes**

Section 43.295, Florida Statutes, establishes new criteria for appointing members to judicial nominating commissions.

Section 43.295, Florida Statutes, provides that:

- (1) Each judicial nominating commission shall be composed of the following:
  - (a) Four electors appointed by the Governor. Of these four electors, at least three must be members of The Florida Bar in good standing for a minimum of 5 years and actively engaged in the practice of law within this state.
  - (b) Two electors appointed by the Speaker of the House of Representatives. Of these two electors, at least one must be a member of The Florida Bar in good standing for a minimum of 5 years and actively engaged in the practice of law within this state.
  - (c) Two electors appointed by the President of the Senate. Of these two electors, at least one must be a member of The Florida Bar in good standing for a minimum of 5 years and actively engaged in the practice of law within this state.
  - (d) One elector appointed by the Attorney General. This member must be a member of The Florida Bar in good standing for a minimum of 5 years and actively engaged in the practice of law within this state.

This language continues to provide for 9 members per each judicial nominating commission, but changes their method of appointment eliminating requirements regarding appointment from racial or ethnic minority groups and increasing from a requirement of at least 3 to at least 6 appointees who are members of The Florida Bar.

HB 3507 also provides that, "A member of a judicial nominating commission may hold no other public office." This is contrary to a provision in section 43.29, Florida Statutes which holds the opposite.

All other language and provisions of section 43.295, Florida Statutes, are identical with the remaining provisions of section 43.29, Florida Statutes.

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<sup>5</sup> Section 2, Article V of the State Constitution provides none.

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**3. Amends section 440.45, Florida Statutes**

HB 3507 amends section 440.45, Florida Statutes, to change the reference to section 43.29, Florida Statutes, to instead refer to section 43.295, Florida Statutes.

**4. Provides that this act shall take effect July 1 of the year following the year of its enactment.**

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. This bill creates responsibilities in the Speaker of the House of Representatives and for the President of the Senate to select 2 members each to each of the judicial nominating commissions, and for the Attorney General to select 1 member. This bill also increases the number of members which the Governor must appoint to 4.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

This bill does not purport to eliminate or reduce an agency or program.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

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(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

Repeals section 43.29.

Creates section 43.295.

**E. SECTION-BY-SECTION RESEARCH:**

See "Effects of Proposed Changes."

**III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures

None

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. Non-recurring Effects:

None



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2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

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