

**STORAGE NAME:** h1035.jud  
**DATE:** March 13, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
JUDICIARY  
ANALYSIS**

**BILL #:** HB 1035  
**RELATING TO:** Judicial Nominating Commissions  
**SPONSOR(S):** Rep. Brummer  
**TIED BILL(S):** None

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

- (1) JUDICIARY
  - (2) CRIMINAL JUSTICE APPROPRIATIONS
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

HB 1035 repeals s. 43.29, F.S., which implements the provisions of Article V, Section 11(d) of the Florida Constitution creating judicial nominating commissions (JNC).

HB 1035 creates s. 43.291, F.S., which provides for the composition of the JNC's as follows: Three appointed to 4 year terms by the Florida Bar, four appointed to 4 year terms by the Governor, and one each appointed to 2 year terms by the President of the Senate and the Speaker of the House of Representatives. The bill also allows the Governor to appoint alternate members who must reside in counties in which no other member of the affected JNC resides. The alternate members, if appointed, shall serve in place of a single appointee of the Governor in any case in which the affected JNC is filling a county court vacancy, and shall participate as a nonvoting member concerning circuit court vacancies.

The bill prohibits a JNC member from holding a judicial or legislative office, and prohibits a state legislator from serving on a JNC. It also makes a JNC member ineligible for appointment to any state judicial office during that member's period of service on the JNC and for a 2 year period after such term of membership.

The bill abolishes the offices of those JNC members appointed pursuant so s. 43.29(1)(b) or (1)(c) prior to July 1, 2000 and replaces those members with members appointed pursuant to new s. 43.291(1)(b). This will remove those persons appointed by the Governor and by the six JNC members appointed by the Governor and Florida Bar. Those persons who do not complete a 4 year term because of the effects of the bill may be reappointed to a new term.

The bill allows for the suspension of any JNC member for cause by the Governor and for the member's removal by the Senate.

The bill requires appointing authorities to seek to ensure diversity among JNC members, and requires the appointing entities to report the results of their diversity efforts to the Governor, Speaker of the House, and President of the Senate each year.

The bill appropriates \$25,000 to the Executive Office of the Governor to cover travel costs associated with the training of JNC members. The bill does not otherwise appear to have any fiscal impact on state or local government.

**STORAGE NAME:** h1035.jud

**DATE:** March 13, 2000

**PAGE 2**

The bill has an effective date of July 1, 2000.

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:

Section 43.29, F.S., implements the provisions of Article V, Section 11(d) of the Florida Constitution. Under the statute, each JNC consists of nine members. The Board of Governors of The Florida Bar appoints three members who must be Florida lawyers practicing in the affected jurisdiction. The Governor appoints three members who must reside in the affected jurisdiction or in the judicial circuit. These six members appoint three additional members who must not be members of The Florida Bar and who must reside in the affected jurisdiction. In addition, one person from each group appointed by the Florida Bar, the Governor, and their appointees must be drawn from a racial or ethnic minority group or be a woman. Therefore, each JNC must consist of no less than three members who are either of an ethnic or racial minority or female.

Members of a JNC may not be justices nor judges. s. 43.29, F.S. Members of a JNC may hold public office other than judicial office. *Id.* A member of a JNC may not be appointed to state judicial office in the territory or jurisdiction in which that member makes nominations, either during the member's 4-year term or any time less than 2 years after the expiration of the member's 4-year term. *Id.* Members may not serve consecutive 4-year terms and may be suspended by the Governor and removed by the Senate in a manner consistent with s. 7, Art. IV, Fla. Const. *Id.*

On July 7, 1995, in Mallory v. Harkness, 895 F.Supp. 1556 (S.D. Fla. 1995), the United States District Court for the Southern District of Florida held s. 43.29(1)(a), F.S., unconstitutional as a race/gender based quota, finding that it violated the Fourteenth Amendment of the U.S. Constitution. The court permanently enjoined enforcement of s. 43.29(1)(a), F.S., against the Mallory plaintiff.

In its final report, the Article V Task Force recommended the elimination of language relating to the racial or gender composition of nominating commissions. However, the Article V Task Force also recommend that this language be replaced with language suggestive of the aspirations reflected in the current statutes with respect to race and gender diversity. The Florida Bar approves such a change.

C. EFFECT OF PROPOSED CHANGES:

HB 1035 creates s. 43.291, F.S., which provides for the composition of the JNC's. Each JNC will be comprised of 9 members. Three appointed to 4 year terms by the Florida Bar, four appointed to 4 year terms by the Governor, and 1 each appointed to 2 year terms by the President of the Senate and the Speaker of the House of Representatives. The bill also allows

the Governor to appoint alternate members who must reside in counties in which no other member of the affected JNC resides. The alternate members, if appointed, shall serve in place of a single appointee of the Governor in any case in which the affected JNC is filling a county court vacancy, and shall participate as a nonvoting member concerning circuit court vacancies.

The bill prohibits a JNC member from holding a judicial or legislative office, and prohibits a state legislator from serving on a JNC. It also makes a JNC member ineligible for appointment to any state judicial office during that member's period of service on the JNC and for a 2 year period after such term of membership.

The bill abolishes the offices of those JNC members appointed pursuant so s. 43.29(1)(b) or (1)(c) prior to July 1, 2000 and replaces those members with members appointed pursuant to new s. 43.291(1)(b). This will remove those persons appointed by the Governor and the three members appointed by the six JNC members appointed by the Governor and Florida Bar. Those persons who do not complete a 4 year term because of the effects of the bill may be reappointed to a new term.

The bill allows for the suspension of any JNC member for cause by the Governor and that member's removal by the Senate.

The bill also requires appointing authorities to seek to ensure diversity among JNC members, and requires the appointing entities to report the results of their diversity efforts to the Governor, Speaker of the House, and President of the Senate.

The bill appropriates \$25,000 to the Executive Office of the Governor to cover travel costs associated with the training of JNC members.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1.** Creates s. 43.291, F.S.

Composition of Judicial Nominating Commissions

Provides that each judicial nominating commission shall be composed as follows:

Three members appointed by the Board of Governors of the Florida Bar from among members who are actively engaged in the practice of law with offices within the territorial jurisdiction of the affected court who shall serve terms of 4 years to begin following the expiration of terms of members appointed pursuant to s. 43.29(1)(a), F.S., prior to July 1, 2000 or pursuant to paragraph (1)(a) of the new law. These members will not be eligible for consecutive reappointment.

Four electors who reside in the territorial jurisdiction of the affected court, appointed by the Governor, for 4 year terms beginning July 1 following the election of Governor. These members are not eligible for consecutive reappointment, and vacancies are to be filled only for the remainder of the vacating member's term.

One elector who resides in the territorial jurisdiction of the affected court, appointed by the President of the Senate, for a 2 year term beginning July 1 following the organization session. A member appointed under this paragraph is eligible for one consecutive reappointment. Any vacancy in membership appointed under this provision may be filled only for the remainder of the vacating member's term.

**STORAGE NAME:** h1035.jud

**DATE:** March 13, 2000

**PAGE 5**

One elector who resides in the territorial jurisdiction of the affected court, appointed by the Speaker of the House of Representatives, for a 2 year term beginning July 1 following the organization session. A member appointed under this paragraph is eligible for one consecutive reappointment. Any vacancy in membership appointed under this provision may be filled only for the remainder of the vacating member's term.

#### Alternate Members

The Governor may also appoint one or more alternate members to a Circuit Court Judicial Nominating Commission, each of whom is a resident of a county in which no other member of the commission resides. Alternate members shall be appointed by August 1 of the year following the election of the Governor and serve a term ending June 30 following the end of the term of office of the appointing Governor. Alternative members appointed pursuant to this section shall serve in place of one member appointed by the Governor, as the Governor may designate, in any case in which the commission is filling a vacancy on the county court for the county of which such alternate member is a resident. Alternate members shall participate, without voting, in any meeting concerning a vacancy on the circuit court.

#### Limitations on Holding Other Public Offices

Section 1 also provides that no justice, judge, or state legislator may be a member of a judicial nominating commission. Members of the judicial nominating commissions may hold public office other than a judicial or state legislative office however. Members of a judicial nominating commission are not eligible for appointment to any state judicial office during such term of membership or for a period of 2 years after such term of membership.

#### Abolishment of Current JNC Offices

Section 1 also abolishes the office of any member of the judicial nominating commissions appointed pursuant to s. 43.29(1)(b) or (1)(c), F.S., prior to July 1, 2000, effective July 1, 2000, and shall be replaced by those offices created by and appointed pursuant to paragraph (1)(b) of the bill. Current members of any judicial nominating commission who have not completed a 4 year term because of the provisions of this section may be reappointed to serve a new term. Members of the judicial nominating commissions may be suspended for cause by the Governor pursuant to uniform rules of procedure established by the Governor consistent with Article IV, Section 7 of the Florida Constitution and thereafter removed by the Senate.

#### Diversity

Each appointing authority shall seek to ensure that the existing commission members, together with potential appointees, reflect the racial, ethnic, and gender diversity, as well as the geographic distribution, of the population within the territorial jurisdiction of the court for which the appointing authority is making nominations. The appointing authorities for the judicial circuits shall seek to ensure the adequacy of representation of each county within the judicial circuit.

#### Voting

All acts of a judicial nominating commission shall be made with a concurrence of a majority of its voting members.

**Section 2.** Requires each appointing authority described in s. 34.291, F.S., by December 1 of each year, to report to the Governor, the Speaker of the House of Representatives, and the President of the Senate the number of appointments made during the preceding year from each minority group and the number of nonminority appointments made, expressed both in numerical terms and as a percentage of the total membership of the judicial nominating commission. In addition, the report shall contain information describing the number of physically disabled persons appointed to the judicial nominating commission in the previous calendar year. Each appointing authority shall designate a person responsible for retaining all applications for appointment, who shall ensure that information describing each applicant's race, ethnicity, gender, physical disability, if applicable, and qualifications is available for public inspection during reasonable hours. These provisions shall not require disclosure of an applicant's identity or of any other information made confidential by law.

**Section 3.** Appropriates the sum of \$25,000 to the Executive Office of the Governor to provide travel costs for training to members of the judicial nominating commissions.

**Section 4.** Provides that notwithstanding s. 112.0455(1)(c) or (1)(d), F.S., a member of a judicial nominating commission appointed pursuant to s. 112.0455(1)(c) or (1)(d), F.S., whose term begins on or after July 1, 2000, shall serve a term ending July 1, 2001, and is eligible for one consecutive reappointment for a 2 year term.

**Section 5.** Repeals s. 43.29, F.S.

**Section 6.** Contains standard severability clause.

**Section 7.** Provides an effectiveness date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The bill provides for an appropriation of \$25,000 to the Governor's Office to cover costs of travel for training JNC members.

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:

N/A

B. RULE-MAKING AUTHORITY:

The bill appears to direct the Executive Office of the Governor to promulgate uniform rules relating to the Governor's power to suspend a public officer pursuant to Article IV, Section 7 of the Florida Constitution. The Governor apparently does not currently have any rules, as the Constitution authorizes suspensions by executive order. It is not clear what rules are needed in order for the Governor to suspend a JNC member.

C. OTHER COMMENTS:

The bill appropriates \$25,000 for training of JNC members, but is silent on who will conduct the training and what the training program might involve. Currently, JNC members operate without staff support -- even without physical space. This raises a question regarding the requirement that certain records be made available for public inspection during "reasonable hours." Since JNC members are not employees of the state and do not have staff support, making records regularly available to the public may be difficult. The uniform rules of the supreme court and district courts of appeal JNC's allow these entities to transmit the records of their proceedings to the Florida Bar once they have sent their nominations to the Governor. The Florida Bar may be better able to provide public access to these records and to conduct such training as may be required for new JNC members.



**STORAGE NAME:** h1035.jud

**DATE:** March 13, 2000

**PAGE 9**

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

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Michael W. Carlson, J.D.

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