

STORAGE NAME: h0737s1.jud
DATE: March 15, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 737
RELATING TO: District Courts of Appeal
SPONSOR(S): Committee on Judiciary and Representative Sorensen
TIED BILL(S): None

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

- (1) JUDICIARY YEAS 6 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 737 requires each district court of appeal to consist of at least one judge from each judicial circuit within the district.

The bill does not affect the current terms of any appellate judges or any vacancy that is awaiting appointment by the Governor.

The bill provides that upon the retirement, removal, or death of a sitting appellate judge or the expiration of that judge's term of office without reelection, or upon the creation of an additional judgeship on a district court of appeal for an appellate district for which there is a judicial circuit from which there is no judge then serving, such vacancy shall be filled only by a qualified resident of the geographical area of such unrepresented judicial circuit.

The bill also provides that if there is a vacancy on a district court of appeal where there is more than one judicial circuit which is unrepresented by a judge on such district court of appeal, the vacancy will be filled by a qualified resident of the circuit having the lowest judicial circuit designating number.

The bill requests the district courts of appeal judicial nominating commissions to promulgate rules effectuating the bill's provisions.

The bill appears not to have any fiscal impact on state or local government.

The bill shall take effect on becoming law.

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. According to the current statute, 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. However, this provision has been declared unconstitutional. Mallory v. Harkness, 895 F.Supp. 1556 (S.D. Fla. 1995).

Article V, Section 11(d) of the Florida Constitution requires the establishment of a JNC for each district court of appeal. Judicial nominating commissions are authorized to adopt uniform rules of procedure. The Governor is empowered to appoint new district court of appeal judges (one per vacancy) from a list of "not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission." Art. V, s. 11(a), Fla. Const. The JNC's rarely offer more than three candidates for any one judicial vacancy.

According to the Office of State Court's Administrator, of Florida's five district courts of appeal, only the First and Third consist of judicial circuits that are not represented by sitting appellate judges. In the First District, the Eighth Circuit, representing Alachua, Baker, Bradford, Gilchrist, Levy and Union counties, and the Fourteenth Circuit, representing Bay, Calhoun, Gulf, Holmes, Jackson and Washington counties, are not represented on the court of appeal. In the Third District, the Sixteenth Judicial Circuit, representing Monroe County, is not represented on the court of appeal.

C. EFFECT OF PROPOSED CHANGES:

CS/HB 737 requires each district court of appeal to consist of at least one judge from each judicial circuit within the district.

The bill does not affect the current terms of any appellate judges or any vacancy that is awaiting appointment by the Governor.

The bill provides that upon the retirement, removal, or death of a sitting appellate judge or the expiration of that judge's term of office without reelection, or upon the creation of an additional judgeship on a district court of appeal for an appellate district for which there is a judicial circuit from which there is no judge then serving, such vacancy shall be filled only by a qualified resident of the geographical area of such unrepresented judicial circuit.

The bill provides that if there is a vacancy on a district court of appeal where there is more than one judicial circuit which is unrepresented by a judge on such district court of appeal, the vacancy will be filled by a qualified resident of the circuit having the lowest judicial circuit designating number.

The bill also requests the district courts of appeal judicial nominating commissions to promulgate rules effectuating the bill's provisions.

While the bill will affect all district courts of appeal, it will have the immediate and practical effect of requiring judges drawn from the Eighth and Fourteenth Circuits to sit on the First District Court of Appeal once appropriate vacancies open up, and for a judge representing Monroe County to sit on the Third District Court of Appeal at the next available vacancy. Currently, only these two courts have gaps in representation.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

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:

While the bill directs that the district courts of appeal shall have representation by all circuits making up each district, the authority to select candidates for appellate courts rests with the Governor under Article V, Section 11(a) of the Florida Constitution. As such, the Governor could choose not to appoint a candidate representing an unrepresented circuit unless the JNC in a particular case nominated only persons from unrepresented judicial circuits.

B. RULE-MAKING AUTHORITY:

Judicial nominating commissions are authorized to promulgate uniform rules of procedure under Article V, Section 11(d) of the Florida Constitution. The bill requests the appellate JNCs to adopt rules ensuring an adequate number of candidates representing all judicial circuits within the respective district courts of appeal.

C. OTHER COMMENTS:

The Florida Bar reports that it ordinarily provides staff and administrative support for JNC rules conventions. Since the bill requests the appellate JNC's to undertake rulemaking to effectuate the bill's provisions, the Bar will likely assume responsibility for the costs of the rulemaking convention that will lead to the new rules. In addition, the judicial branch pays the travel costs for convention delegates, and would be responsible for such costs for any convention that occurs as a result of the bill.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judiciary adopted one amendment on March 15, 2000 and made the bill a committee substitute. The amendment requests the district courts of appeal judicial nominating commissions to promulgate rules effectuating the bill's provisions.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael W. Carlson, J.D.

P.K. Jameson, J.D.