

STORAGE NAME: h0783.jo.doc
DATE: March 5, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HJR 783
RELATING TO: Election/Term Limits of Justices and Judges
SPONSOR(S): Representative Johnson
TIED BILL(S): None

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

- (1) JUDICIAL OVERSIGHT
 - (2) RULES, ETHICS, AND ELECTIONS
 - (3) SMARTER GOVERNMENT
 - (4)
 - (5)
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I. SUMMARY:

HJR 783 changes the method of selecting supreme court justices and district court of appeal judges from merit selection and retention to contested election. Under the joint resolution, each justice or judge is elected to a four year term and must sit for reelection in a contested election. Currently, justices and appellate judges are nominated by the judicial nominating commission and appointed by the Governor to serve six year terms and must stand for a retention election.

The joint resolution changes the term of circuit and county court judges from six years to four years.

The joint resolution prohibits justices or judges, including circuit or county court judges, who have served, or but for resignation would have served, eight consecutive years from appearing on the ballot. This language in the joint resolution is similar to the legislative "term limits" language prohibiting certain members of the legislature from appearing on the ballot.

Judicial vacancies that occur during a term would be filled by the Governor from a list of nominees provided by the appropriate judicial nominating commission. The joint resolution does not change the current system for filling vacancies.

The joint resolution eliminates the local option for changing the method of selection of circuit and county court judges from election to merit selection. Under the joint resolution, all judges and justices will be selected by election unless a vacancy occurs during a term.

The joint resolution eliminates the requirement that one supreme court justice be selected from each appellate district. Under the joint resolution, supreme court justices may be from anywhere in the state.

The joint resolution would take effect January 7, 2003 and apply to elections held in 2004. All justices and judges in office on January 7, 2003 shall retain their offices for the remainder of their terms.

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"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Article V of the Florida Constitution creates the Florida court system. Article V, section 3 of the Florida Constitution creates the Supreme Court of Florida. The court's seven justices are selected and retained by a system commonly known as merit selection and retention. See Art. V, s. 10(a), Fla. Const. When a vacancy occurs on the court, the Supreme Court Judicial Nominating Commission sends a list of not less than three or no more than six nominees to the Governor. See Art. V, s. 11, Fla. Const. The Governor selects a justice from that list. Id. When the term expires, the justice must stand for a retention election. The voters are asked whether the justice should be retained. If a majority of voters vote yes, the justice is retained. If a majority votes no, the justice is removed and the judicial nominating commission sends a list of nominees to the Governor to replace the justice. See Art. V, s. 10, Fla. Const. Supreme court justices sit for six year terms. See Art. V, s. 10, Fla. Const.

Judges on the district courts of appeal are also chosen and retained by merit selection and retention. See Art. V, ss. 10, 11. There is a separate judicial nominating commission for each appellate district. See Art. V, s. 11, Fla. Const. Judges on the district court of appeal sit for six year terms. See Art. V, s. 10, Fla. Const. Circuit and county judges are chosen by contested election. See Art. V, s. 10, Fla. Const. Vacancies are filled by the Governor from a list submitted by the circuit's judicial nominating commission. See Art. V, s. 11, Fla. Const.

Article V, section 10 of the Florida Constitution permits a local option vote to change the method of selection of circuit and county court judges from election to merit selection and retention. A referendum to change the method was defeated in each circuit and county in the 2000 general election. The question may appear on future ballots if proponents gather the appropriate number of signatures.

C. EFFECT OF PROPOSED CHANGES:

The joint resolution changes the method of selecting supreme court justices and district court of appeal judges to contested election. Under the joint resolution, each justice or judge is elected to a four year term. Currently, justices and appellate judges are nominated by the judicial nominating commission and appointed by the Governor to serve six year terms. After their term, justices and judges must stand for a retention election.

The joint resolution prohibits justices or judges, including circuit or county court judges, who have served, or but for resignation would have served, eight consecutive years from appearing on the ballot. This language in the joint resolution is similar to the legislative "term limits" language prohibiting certain members of the legislature from appearing on the ballot. See Art. VI, s. 4(b), Fla. Const.

Judicial vacancies that occur during a term would be filled by the Governor from a list of nominees provided by the appropriate judicial nominating commission. The joint resolution does not change the current system for filling vacancies.

The joint resolution eliminates the local option for changing the method of selection of circuit and county court judges from election to merit selection. Under the joint resolution, all judges and justices will be selected by contested election unless a vacancy occurs during a term.

The joint resolution eliminates the requirement that one supreme court justice be selected from each appellate district. Under the joint resolution, supreme court justices may be from anywhere in the state.

The joint resolution changes the term for supreme court justices, district court of appeal judges, circuit court judges, and county court judges from six years to four years.

The joint resolution would take effect January 7, 2003 and apply to elections held in 2004. All justices and judges in office on January 7, 2003 shall retain their offices for the remainder of their terms.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes

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:

Indeterminate. See Section III.D. Fiscal Comments

D. FISCAL COMMENTS:

The fiscal impact of the joint resolution is indeterminate. It would require supreme court justices and district court of appeal judges to participate in contested elections. This could increase the cost of obtaining and retaining those offices. Prohibiting county and circuit judges from appearing on the ballot after serving eight years may increase the number of contested elections for those seats.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

A mandates analysis is unnecessary to an analysis of a proposed constitutional amendment.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

A mandates analysis is unnecessary to an analysis of a proposed constitutional amendment.

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

A mandates analysis is unnecessary to an analysis of a proposed constitutional amendment.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Article XI, section 1 of the Florida Constitution provides that a constitutional amendment may be proposed by joint resolution of the Legislature. Final passage in the House and Senate requires a three-fifths vote in each house; passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, Article XI, section 5 of the Florida Constitution provides that the proposed amendment would be placed before the electorate at the 2002 general election. Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published. If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election.

In Armstrong v. Harris, 2000 WL 1260014 (Fla. 2000), the court removed the Constitution an amendment approved by the voters in 1998 because the court found that the ballot summary was misleading. Part of the reason that the court struck down the change in Armstrong was that it found the ballot summary did not explain to the voters that they were changing a state constitutional right. See Armstrong, 2000 WL 1260014 at 8-11.

The ballot summary on the joint resolution does not explain to the voters that they are giving up the local option to select and retain trial court judges by merit selection and retention. The summary clearly tells the voters that future judges will be selected by direct election but does not state that voters will give up the option to change the method of selection. Arguably, Armstrong created a rule that requires ballot summaries to explain to voters what rights they are potentially giving up.

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Changing the ballot summary at the first committee of reference might be inefficient since the language of the joint resolution may change in each committee. Once the bill is ready for the floor, the final language of the ballot summary should be considered in light of Armstrong.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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