

STORAGE NAME: h0827.jo.doc
DATE: March 5, 2001

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

BILL #: HJR 827
RELATING TO: Selection of Judges
SPONSOR(S): Representative Brummer
TIED BILL(S): None

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

- (1) JUDICIAL OVERSIGHT
 - (2) SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HJR 827 changes the method for filling vacancies on the supreme court or district courts of appeal and vacancies that occur during a term for circuit or county court judges. Under the joint resolution, the Governor, with the advice and consent of the Senate, fills the vacancy from the list of all eligible applicants submitted by the appropriate judicial nominating commission.

The joint resolution changes the role of the judicial nominating commission. Rather than submitting a list of nominees to the Governor, the commission determines whether an applicant is eligible, pursuant to the Constitution, and, if so, certifies that applicant to the Governor. All eligible applicants will be submitted to the Governor, rather than a list as determined by the judicial nominating commission. The commission also sends to the Governor any information required by the commission rules and any information that the commission deems useful to the Governor in filling the vacancy.

The Governor shall transmit his or her nomination to the Senate within sixty days of receiving the list from the commission. If the Senate is not in session when the Governor transmits the nomination, it may be convened in special session. If the Senate is not in session or is not convened in special session within thirty days after transmission of the nomination, the nomination shall be deemed confirmed. If the Senate is in session or is convened in special session within thirty days of transmission of the nomination and the majority of the senators voting do not consent to the nomination prior to adjournment, the nomination is rejected. A person nominated to judicial office and rejected is not eligible for nomination again until after the next general election.

The joint resolution requires the Governor to establish rules for the judicial nominating commissions. Those rules may be repealed by a majority vote of each house of the legislature. The joint resolution removes the ability of the Supreme Court to repeal judicial nominating commission rules.

The joint resolution makes all JNC proceedings and records open to the public. Currently, all proceedings except for deliberations are open to the public.

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:

In Florida, vacancies in judgeships are filled by a system of nomination and appointment in which power is divided between the Governor and constitutionally created bodies called judicial nominating commissions (JNCs). See Art. V, s.11, Fla. Const. Rules for judicial nominating commissions are created by the commissions. See Art. V, s. 11(d), Fla. Const. When a judgeship determined by a retention election becomes vacant or an elected judgeship becomes vacant during a term of office, candidates submit their applications to the JNC for that court.¹ The proceedings of JNCs, except for deliberations, are open to the public. See Art. V, s. 11, Fla. Const. The commission sends a list of three to six nominees to the Governor and the Governor fills the vacancy by selecting from that list. See Art. V, s. 11, Fla. Const. The Legislature is not involved in this process.

The Constitution sets forth eligibility requirements for justices and judges. All justices and judges must be residents of the territorial jurisdiction of the court on which they serve. Justices of the supreme court and the district courts of appeal must have been members of the Florida Bar for the ten years preceding their appointment. No person is eligible to serve as a circuit court judge unless he or she has been a member of the Florida Bar for the preceding five years. A county court judge must have been a member of the Florida Bar for the preceding five years unless the judge lives in a county with fewer than 40,000 people. If so, the judge must only be a member of the Florida Bar. See Art. V, s. 8, Fla. Const., s. 34.021, F.S.

The JNCs establish their own rules at each level of the court system. The rules can be repealed by general law or by the supreme court. See Art. V, s. 11(d), Fla. Const.

C. EFFECT OF PROPOSED CHANGES:

The joint resolution changes the method for filling vacancies on the supreme court or district courts of appeal or vacancies that occur during a term for circuit or county court judges. Under the joint resolution, the Governor, with the advice and consent of the Senate, fills the vacancy from the list of all eligible applicants submitted by the appropriate JNC.

¹ Currently, supreme court justices and district court of appeal judges stand for retention election and circuit and county judges compete in contested elections. The Constitution permits individual circuits and counties to change the method of selecting circuit and county judges from contested election to merit selection and retention. See Art. V, s. 10, Fla. Const.

The joint resolution changes the role of the JNC. Rather than submitting a list of three to six nominees to the Governor, the commission determines whether an applicant is eligible and, if so, certifies that applicant to the Governor. All eligible applicants will be submitted to the Governor, rather than a list as determined by the judicial nominating commission. The commission also sends to the Governor any information required by the commission rules and any information that the commission deems useful to the Governor in filling the vacancy.

The Governor shall transmit his or her nomination to the Senate within sixty days of receiving the list from the commission. If the Senate is not in session when the Governor transmits the nomination, it may be convened in special session by its president or as otherwise provided in its rules. If the Senate is not in session or is not convened in special session within thirty days after transmission of the nomination, the nomination shall be deemed confirmed. If the Senate is in session or is convened in special session within thirty days of transmission of the nomination and the majority of the senators voting do not consent to the nomination prior to adjournment, the nomination is rejected. A person nominated to judicial office and rejected is not eligible for nomination again until after the next general election.

The joint resolution requires the Governor to establish rules for the judicial nominating commissions. Those rules may be repealed by a majority vote of each house of the legislature. The joint resolution removes the ability of the Supreme Court to repeal judicial nominating commission rules.

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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:

N/A

D. FISCAL COMMENTS:

There could be a fiscal impact on state government if the Senate were to routinely convene in special session to consider judicial nominations.

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.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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