

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SJR 140

INTRODUCER: Judiciary Committee and Senator Ring

SUBJECT: Eligibility of Justices and Judges

DATE: January 13, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Senate Joint Resolution 140 proposes an amendment to the Florida Constitution modifying the eligibility of justices and judges to hold judicial offices. More specifically, the joint resolution increases the age after which a justice or judge may no longer serve in a judicial office to seventy-five years of age rather than seventy years of age.

The joint resolution also provides that circuit court and county court judges must be members of The Florida Bar for the preceding 10 years, rather than 5 years. However, in counties having a population of 40,000 or fewer, a person continues to be eligible to serve as a county court judge if he or she is a member in good standing of The Florida Bar. The increased requirements do not apply to county court or circuit court judges in office on January 8, 2013, or to those seeking to be elected in the 2012 election.

This joint resolution amends article 5, sections 8 and 20, of the Florida Constitution.

II. Present Situation:

Judicial Eligibility Requirements Generally

Most state constitutions and general laws prescribe eligibility requirements to serve as a judicial officer, including residence, age, and legal experience. Some states have no mandatory retirement age for judges, while other states' age limitation provisions range from 70 to 75 years of age. In some states, the judicial eligibility requirements may vary depending on the court on which the judge serves, and a judge may be required to meet more stringent requirements if he or she is serving on an appellate court.¹ For example, in New Mexico, a trial court judge must have six years of active legal practice in New Mexico, while an appellate judge must have 10 years of legal practice in New Mexico or be a current state judge.² In other states, the same legal experience is required for both trial and appellate judges.³ A few states only require that the judge be a member of or licensed with the state bar.⁴

Florida Eligibility Requirements for Judicial Office

Circuit Court Judges

Florida has no minimal age requirement for circuit judges, but does preclude a judge from serving after attaining 70 years of age.⁵ The Florida Constitution requires that a judge must be an elector of the state and reside in the territorial jurisdiction of the court.⁶ With regard to legal experience, a person is eligible for the office of circuit court judge only if he or she is a member of The Florida Bar for the preceding five years.⁷ The constitutional requirement for eligibility relating to bar membership refers to eligibility at the time of assuming office and not at the time of qualification or election to office.⁸

County Court Judges

Identical to circuit court judges, there is no minimal age requirement for county court judges, and county court judges are precluded from serving after attaining 70 years of age.⁹ The county court judge must also be an elector of the state and reside in the territorial jurisdiction of the court.¹⁰ The Florida Constitution provides that, unless otherwise provided by general law, a person is eligible for the office of county court judge only if he or she is a member of The Florida Bar and

¹ G. Alan Tarr, *Symposium on Rethinking Judicial Selection: A Critical Appraisal of Appointive Selection for State Court Judges*, 34 *FORDHAM URB. L.J.* 291, 308 (Jan. 2007).

² N. M. CONST. art. VI, ss. 8 and 14.

³ California, Hawaii, Idaho, and New York, among other states, all require 10 years of membership in the state bar or active practice for both trial and appellate judges. CAL. CONST. art. VI, s. 15; HAW. CONST. art. VI, s. 3; IDAHO CODE s. 1-2404 (2); N.Y. CONST. art. VI, s. 20.

⁴ Alabama requires that a judge be a "licensed" attorney. ALA. CONST. art. VI, amend. 328, s. 6.07. Missouri and Pennsylvania require that the judge be a member of the state bar. MO. CONST. art. V, s. 21; PA. CONST. art. V, s. 12.

⁵ FLA. CONST. art. V, s. 8.

⁶ *Id.*

⁷ *Id.*

⁸ *In re Advisory Opinion to the Governor*, 192 So. 2d 757 (Fla. 1966).

⁹ FLA. CONST. art. V, s. 8.

¹⁰ *Id.*

has been for the preceding five years.¹¹ The Florida Constitution also provides that, unless otherwise provided by general law, in counties having populations of 40,000 or fewer, a person is eligible for election or appointment to the office of county court judge if he or she is a member in good standing of The Florida Bar.¹²

The Legislature has prescribed certain eligibility requirements for county court judges. Under Florida law, a county court judge is eligible to seek reelection even if he or she is not a member in good standing of The Florida Bar if, on the first day of the qualification period for election to such office, the judge is actively serving in the office and is not under suspension or disqualification.¹³ As a result, a non-attorney county court judge is qualified to seek office under the statute and is qualified to serve on temporary assignment in any county without regard to population where he or she is actively serving in office on the first day of the qualification period for reelection.¹⁴ The Honorable Woodrow W. Hatcher and Honorable Hugh Blair, county court judges for Jackson County and Madison County respectively, are currently the only non-attorney county judges in Florida.

Any county judge who is not a member of the bar in any county having a population of 40,000 or less, according to the last decennial census, and who has successfully completed a law-training program approved by the Supreme Court for the training of county court judges who are not members of The Florida Bar is entitled to serve as a county court judge in any county encompassed in the circuit in which the judge has been elected or retained in a retention vote.¹⁵

Article V Task Force

A legislatively created task force – the Article V Task Force – examined judicial eligibility requirements in preparation for the 1997-98 Constitution Revision Commission.¹⁶ The task force recommended an increase in the experience level for circuit and county judges, to 10 years from 5 years of membership in the bar of Florida. The Florida Bar supported this recommendation from 1994 through 1998, with support for allowing membership in another state bar to count toward 5 of the 10 years of requisite experience. Currently, this issue has not been brought before the full Board of Governors of The Florida Bar and the bar has no position on this issue.¹⁷

Constitutional Amendment Process

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.¹⁸ Any such proposal must be submitted to

¹¹ *Id.*

¹² *Id.*

¹³ Section 34.021(2), F.S.

¹⁴ *Damron, In and For Citrus County v. Wehausen*, 435 So. 2d 416 (Fla. 5th DCA 1983).

¹⁵ Section 34.021(4), F.S.

¹⁶ The task force was created by the Florida Legislature in ch. 94-138, Laws of Fla., to review the judicial article of the Constitution.

¹⁷ Correspondence with The Florida Bar (Jan. 4, 2011) (on file with the Senate Committee on Judiciary).

¹⁸ FLA. CONST. art. XI, s. 1.

the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.¹⁹ If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.²⁰

III. Effect of Proposed Changes:

Age-Eligibility Requirement

Senate Joint Resolution 140 proposes an amendment to section 8, article V, of the State Constitution to increase the age at which a justice or judge may no longer serve in a judicial office. Under the joint resolution, a justice or judge may no longer serve after attaining the age of seventy-five rather than seventy. However, a judge who has attained the age of seventy-five years of age may continue to serve upon temporary assignment or to complete a judicial term.

Although constitutional amendments are generally applied prospectively, unless expressly stated otherwise,²¹ it may be unclear under the proposed amendment whether a justice or judge currently holding a judicial office would be allowed to continue to serve until the age of seventy-five. Moreover, the new provisions addressing the application of the bar-membership requirements (discussed below) added in the Schedule to Article V may create additional confusion as to whether the new age limitation applies to justices and judges currently holding office. The Legislature could consider amending the Schedule to Article V to clarify whether it intends for the new age limitation to apply to current justices and judges.

Bar-Membership Requirement

The joint resolution also increases the period of time that a person must be a member of The Florida Bar before becoming eligible for the offices of circuit court or county court judge. The resolution, if adopted by the voters, would increase the number of years a person must be a bar member before serving as a circuit court or county court judge to 10 years from 5 years. This change would make the circuit and county court judicial requirements the same as the requirements for District Court of Appeal judges and Supreme Court justices.

The resolution preserves the current provision allowing a member of The Florida Bar to serve as a county court judge regardless of the number of years of membership in a county having a population of 40,000 or fewer.

¹⁹ FLA. CONST. art. XI, s. 5(a).

²⁰ FLA. CONST. art. XI, s. 5(e).

²¹ *In re Advisory Opinion to the Governor-Terms of County Court Judges*, 750 So. 2d 610 (Fla.1999) (advising that constitutional amendments are given prospective effect only, unless the text of the amendment or the ballot statement clearly indicates otherwise).

The joint resolution amends the Schedule to Article V to provide that the changes to section 8 increasing the period of time that a person must be a member of The Florida Bar before becoming eligible for the offices of circuit court or county court judge will take effect on January 9, 2013, the day after a judge would take office after being elected in the 2012 General Election. The joint resolution specifies that the amendment does not affect any judge in office on the effective date of the amendment. Any judge eligible to hold office and in office on January 8, 2013, will remain in office and be eligible to seek reelection in the future regardless of whether the judge has been a member of The Florida Bar for the previous 10 years. As a result, the increased bar-membership eligibility requirements do not apply to county or circuit court judges in office on January 8, 2013, or to persons seeking to be elected to the office of county court or circuit court judge during the election in which the joint resolution is adopted.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In order for the Legislature to submit SJR 140 to the voters for approval, the joint resolution must be agreed to by three-fifths of the membership of each house.²² If SJR 140 is agreed to by the Legislature, it will be submitted to the voters at the next general election held more than 90 days after the amendment is filed with the Department of State.²³ As such, SJR 140 would be submitted to the voters at the 2012 General Election. In order for SJR 140 to take effect, it must be approved by at least 60 percent of the voters voting on the measure.²⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²² FLA. CONST. art. XI, s. 1.

²³ FLA. CONST. art. XI, s. 5(a).

²⁴ FLA. CONST. art. XI, s. 5(e).

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) does not anticipate that the heightened bar-membership requirements for circuit and county court judges will impact the courts' workload. In addition, OSCA reports that the new bar-membership requirements will have no estimated fiscal impact on the judiciary.²⁵ It is unknown at this time how the increased age at which a justice or judge may no longer serve will impact the judiciary.

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.²⁶ Costs for advertising vary depending upon the length of the amendment. The average cost per word is \$106.14.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on January 11, 2011:

The committee substitute:

- Increases the age after which a justice or judge may no longer serve in a judicial office to seventy-five years of age rather than seventy years of age;
- Restores the provision in the State Constitution that allows a person to be eligible to serve as a county court judge if he or she is a member in good standing of The Florida Bar in counties having a population of 40,000 or fewer;
- Provides that the proposed amendment will take effect on January 9, 2013;
- Specifies that the amendment does not affect any judge in office on the effective date of the amendment; and
- Provides that any judge eligible to hold office and in office on January 8, 2013, will remain in office and be eligible to seek reelection in the future regardless of whether the judge has been a member of The Florida Bar for the previous 10 years.

²⁵ Office of the State Courts Administrator, *2011 Judicial Impact Statement – SJR 140* (Jan. 6, 2011).

²⁶ FLA. CONST. art. XI, s. 5(d).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
