

**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.)

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Prepared By: The Professional Staff of the Judiciary Committee

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BILL: SJR 1672

INTRODUCER: Senator Flores

SUBJECT: Retention of Justices or Judges

DATE: March 25, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Maclure	JU	<b>Pre-meeting</b>
2.			EE	
3.			RC	
4.			BC	
5.				
6.				

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**I. Summary:**

The joint resolution proposes an amendment to the Florida Constitution to increase the vote required to retain a justice or judge in judicial office and to provide for an increased vote requirement to apply beginning with retention elections during the 2012 General Election. The joint resolution would require a vote of at least 60 percent rather than a majority of the qualified electors voting within the territorial jurisdiction of the court to vote to retain a justice or judge. If more than 40 percent of the qualified electors voting within the territorial jurisdiction of the court vote to not retain, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.

This joint resolution amends section 10, Article V of the Florida Constitution.

This joint resolution creates section 32, Article XII of the Florida Constitution.

**II. Present Situation:**

**Retention of Justices or Judges**

Currently in Florida, justices of the Florida Supreme Court and judges of the district courts of appeal hold office through a system of merit selection and retention, under which the Governor appoints justices and appellate judges from nominations submitted by judicial nominating commissions, and the justices and judges face a retention vote after an initial term of at least one

year and thereafter every six years.<sup>1</sup> Under the constitution, any justice or judge may qualify for retention by a vote of the electors in the general election next preceding the expiration of the justice's or judge's term in the manner prescribed by law.<sup>2</sup> If a justice or judge is ineligible or fails to qualify for retention, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.<sup>3</sup>

If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to retain, the justice or judge shall be retained for a term of six years.<sup>4</sup> The term of the justice or judge retained commences on the first Tuesday after the first Monday in January following the general election. If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to not retain, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.<sup>5</sup>

Meanwhile in Florida, county and circuit judges currently are elected to judicial office. Under the constitution, the election of county judges is preserved unless a majority of those voting in the in the jurisdiction of that county approve a local option to select county judges by merit selection and retention rather than by election.<sup>6</sup> Similarly, the election of circuit judges is preserved unless a majority of those voting in the jurisdiction of that circuit approve a local option to select circuit judges by merit selection and retention rather than by election.<sup>7</sup> The election of circuit judges or county court judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.<sup>8</sup> Thus far, no circuit or county has approved changing from election to merit selection and retention.<sup>9</sup>

### **Constitutional Amendments**

Section 1, Article XI, of the Florida Constitution authorizes the Legislature to propose constitutional amendments by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office, or at a special election held for that purpose.<sup>10</sup> Section 5(e), Article XI, of the Florida Constitution requires 60-percent voter approval for a constitutional amendment to take effect. An approved amendment will be effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.<sup>11</sup>

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<sup>1</sup> The Florida Bar, Bar Issue Paper, *Merit Selection and Retention* (revised October 2008), available at <http://www.floridabar.org/DIVCOM/PI/BIPS2001.nsf/BIP+List?OpenForm> (last visited Mar. 25, 2011).

<sup>2</sup> FLA. CONST. art. V, s. 10(a).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> FLA. CONST. art. V, s. 10(b)(2).

<sup>7</sup> FLA. CONST. art. V, s. 10(b)(1).

<sup>8</sup> FLA. CONST. art. V, s. 10(b)(1) and (2).

<sup>9</sup> See The Florida Bar, *supra* note 1.

<sup>10</sup> FLA. CONST. art. XI, s. 5(a).

<sup>11</sup> FLA. CONST. art. XI, s. 5(e).

### **III. Effect of Proposed Changes:**

The joint resolution modifies the requirements for retaining justices and judges in the Florida Constitution and provides for an increased vote requirement to apply beginning with retention elections during the 2012 General Election. Under the joint resolution, it would require a vote of at least 60 percent rather than a majority of the qualified electors voting within the territorial jurisdiction of the court to vote to retain a justice or judge. If more than 40 percent of the qualified electors voting within the territorial jurisdiction of the court vote to not retain, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge. The requirement for a 60-percent vote to retain will also apply to circuit and county judges if the circuit or county changes its method of selecting judges from a direct election to a merit selection and retention system.

The joint resolution amends the schedule to the Florida Constitution, Article XII, to provide that the proposed 60-percent threshold for retaining a justice or judge takes effect upon approval by the voters and applies to any retention vote during the same general election in 2012. Thus, the increased threshold for retaining a justice or judge would have immediate effect.

The joint resolution provides four different ballot summaries. The first ballot summary directs that it will be placed on the ballot, and each subsequent ballot summary provides that it will be placed on the ballot in the event that a court declares the preceding ballot summary defective and the decision of the court is not reversed. This feature appears to have the effect of allowing the proposed amendment to survive up to three successful challenges to the amendment for a defective ballot summary.

The amendment takes effect upon approval by the electors and applies beginning with any retention vote during the 2012 general election.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Department of State Division of Elections (department) is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county. The average cost per word to advertise an amendment is \$106.14 according to the department. If the joint resolution passes and the proposed constitutional amendment is placed on the ballot, the department will incur costs of \$85,018.14 to advertise the proposed amendment.<sup>12</sup>

**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.)

None.

**B. Amendments:**

None.

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

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<sup>12</sup> See Fiscal Note on SJR 1672 prepared by the Florida Department of State (March 9, 2011).