

**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: SB 2170  
 INTRODUCER: Judiciary Committee  
 SUBJECT: Judicial Nominating Commissions  
 DATE: April 11, 2011                      REVISED: \_\_\_\_\_

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

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**I. Summary:**

Currently, vacancies in judgeships are filled by appointment of the Governor, as directed by the Florida Constitution. The Governor makes these appointments from a list of not fewer than three and not more than six persons nominated by a judicial nominating committee. The membership of each judicial nominating committee is a creature of statute and has varied throughout Florida's history. Presently, each judicial nominating committee is composed of nine members, and five of those members are appointed to the commission at the sole discretion of the Governor. The remaining four commission positions are also appointed by the Governor; however, the Governor must make his appointment for each of those four positions from a list of nominees recommended to the Governor by the Board of Governors of The Florida Bar. The Board of Governors of the Florida Bar recommends three people for each position on the judicial nominating commission, and the Governor must make his selection from that list of three or reject all three recommendations and request that a new list of three be provided.

The bill amends the current statute controlling the appointment process for members of judicial nominating commissions. Specifically, the bill eliminates the role of The Florida Bar in the appointment of members to the commissions by removing statutory direction for the Board of Governors of The Bar to make recommendations to the Governor for the appointment of four members of each commission. Instead, the bill vests the authority to make recommendations for these four positions with the Attorney General. Furthermore, the bill amends the current statute to provide that the terms of all current members of a judicial nominating commission are terminated, and the Governor shall appoint two new members for terms ending July 1, 2012 (one of which shall be an appointment selected from nominations by the Attorney General), two new members for terms ending July 1, 2013, and two new members for terms ending July 1, 2014.

This bill substantially amends section 43.291, Florida Statutes.

## II. Present Situation:

When there is a vacancy on an appellate or trial court, the State Constitution directs the Governor to fill the vacancy by appointing one person from no fewer than three and no more than six persons nominated by a judicial nominating commission.<sup>1</sup> The commission shall offer recommendations within 30 days of the vacancy, unless the period is extended for no more than 30 days by the Governor, and the Governor shall make the appointment within 60 days of receiving the nominations.<sup>2</sup>

Article V, section 11(d) of the Florida Constitution provides for a separate judicial nominating commission, as provided by general law, for the Supreme Court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. The nine-member composition of each judicial nominating commission is a creature of statute.<sup>3</sup> The statute provides for the Governor to make all nine appointments. However, four of those appointments are based on nominees from The Florida Bar, while five are within the Governor's sole appointment discretion. The four commission members recommended by the Bar must be members of The Florida Bar, must be engaged in the practice of law, and must reside in the territorial jurisdiction where they are appointed. In that same regard, the Board of Governors of The Florida Bar submits three recommended nominees for each open position to the Governor. The Governor has the authority to reject all the nominees and request a new list of recommended nominees who have not been previously recommended. Of the five commission members appointed by the Governor under his or her sole discretion, at least two must be members of The Florida Bar engaged in the practice of law, and all must reside in the territorial jurisdiction where they are appointed. Members serve four-year terms and may be suspended for cause by the Governor.<sup>4</sup>

The Legislature enacted the current statutory framework governing membership of the judicial nominating commissions in 2001.<sup>5</sup> Immediately prior to that change, the Board of Governors of The Florida Bar had authority to directly appoint members of each commission. Specifically, prior to the 2001 changes:

- Three members were appointed by the Board of Governors of the Florida Bar, each of whom had to be a member of the Florida Bar and actively engaged in the practice of law in the applicable territorial jurisdiction;
- Three members were appointed by the Governor, each of whom had to be a resident of the applicable territorial jurisdiction; and
- Three members were appointed by majority vote of the other six members, each of whom had to be an elector who resided in the applicable territorial jurisdiction.<sup>6</sup>

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<sup>1</sup> FLA. CONST. art. V, s. 11(a).

<sup>2</sup> FLA. CONST. art. V, s. 11(c).

<sup>3</sup> Section 43.291, F.S.

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

<sup>5</sup> Chapter 2001-282, s. 1, Laws of Fla.

<sup>6</sup> See s. 43.29, F.S. (2000) (repealed by ch. 2001-282, s. 3, Laws of Fla.)

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

The bill eliminates The Florida Bar's statutory role in the recommendation of members of a judicial nominating commission and vests that function in the Attorney General. The bill provides that, in regard to four positions on each judicial nominating commission, the Attorney General shall submit to the Governor three recommended nominees for each position. The Governor shall select the appointee from the list of nominees recommended for that position, but the Governor may reject all of the nominees recommended for a position and request that the Attorney General submit a new list of three different recommended nominees for that position who have not been previously recommended by the Attorney General. The bill retains the provisions in current law under which the Governor is directed to appoint five additional members of each judicial nominating commission and each of those appointments remains within the Governor's sole discretion.

The bill removes the provision, currently in statute, that current members of a judicial nominating commission appointed directly by the Board of Governors of The Florida Bar shall serve the remainder of their terms. The bill provides that all current members of a judicial nominating commission are hereby terminated, and the Governor shall appoint new members to each judicial nominating commission in the following manner:

- Two appointments for terms ending July 1, 2012, one of which shall be an appointment selected from nominations submitted by the Attorney General;
- Two appointments for terms ending July 1, 2013; and
- Two appointments for terms ending July 1, 2014.

In setting the terms as shown above, the bill staggers the terms of six of the members of each judicial nominating commission. The bill maintains those staggered terms by providing that each expired term or vacancy shall be filled by appointment in the same manner as the member whose position is being filled. Additionally, it should be noted that the statute only enumerates conditions for the terms of six appointments on each judicial nominating commission, and only one of those appointments must be selected from nominations submitted by the Attorney General. Due to the bill's prior mandate that each judicial nominating commission be composed of nine members, four of which must be selected from nominations submitted by the Attorney General, each of the three subsequent appointments must be selected from nominations submitted by the Attorney General. The bill provides that each subsequent appointment, except an appointment to fill a vacant, unexpired term, shall be for four years.

The bill provides that this act shall take effect upon becoming a law.

### **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:**

This bill could have an impact on the Attorney General's office to the extent that the duty to recommend nominees to the Governor for appointment to judicial nominating commissions creates additional workload or expenses for the Attorney General or her or his staff.

**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.