

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 Rules Committee

BILL: CS/SB 2170

INTRODUCER: Rules Committee and Judiciary Committee

SUBJECT: Judicial Nominating Commissions

DATE: April 26, 2011 REVISED: 04/27/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Boland</u>	<u>Maclure</u>	<u>JU</u>	Favorable
2.	<u>Boland/Maclure</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Currently, judicial vacancies 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 commission.

The membership of each judicial nominating commission is a creature of statute. Presently, each judicial nominating commission is composed of nine members. 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 or her appointment for each of those four positions from a list of nominees recommended by the Board of Governors of The Florida Bar. The Board of Governors of The Florida Bar recommends three people for each of those positions on the commission, and the Governor must make his or her selection from that list or reject all three recommendations and request that a new list of three be provided.

The committee substitute retains the current membership-selection process but provides that the terms of all current nine members of each judicial nominating commission are terminated. The bill provides for the Governor to appoint new members to each commission for staggered terms:

two appointments for terms ending July 1, 2012 (one of which shall be an appointment selected from nominations by the Board of Governors of The Florida Bar); two appointments for terms ending July 1, 2013; and two appointments for terms ending July 1, 2014. The final three appointees would serve four-year terms.

This bill substantially amends section 43.291, Florida Statutes.

II. Present Situation:

When there is a judicial 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.¹ 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.²

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.³ 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 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.⁴

The Legislature enacted the current statutory framework governing membership of the judicial nominating commissions in 2001.⁵ Immediately prior to that change, the Board of Governors of The Florida Bar had authority to directly appoint some 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

¹ FLA. CONST. art. V, s. 11(a).

² FLA. CONST. art. V, s. 11(c).

³ Section 43.291, F.S.

⁴ *Id.*

⁵ Chapter 2001-282, s. 1, Laws of Fla.

- 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.⁶

III. Effect of Proposed Changes:

The committee substitute provides that the terms of all current nine members of each judicial nominating commission (JNC or commission) are terminated, and it directs the Governor to appoint new members to each judicial nominating commission for staggered terms 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 Board of Governors of The Florida Bar;
- Two appointments for terms ending July 1, 2013; and
- Two appointments for terms ending July 1, 2014.

The three remaining appointments would be for four-year terms.

The bill retains the process prescribed in current law under which the Governor makes five appointments to each JNC directly and makes four appointments to each JNC from nominees recommended by the Board of Governors of The Florida Bar. As under current law, each expired term or vacancy shall be filled by appointment in the same manner as the member whose position is being filled.

The bill removes the provision in existing statute which specifies 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.⁷

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.

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

⁷ This language appears to be obsolete and relate back to when the Florida Statutes provided for the Board of Governors of The Florida Bar to make *direct* appointments to the JNCs. The Legislature changed the law in 2001 to provide for the Bar to recommend individuals to the Governor for membership on the JNCs. See s. 43.29, F.S. (2000) (repealed by ch. 2001-282, s. 3, Laws of Fla.)

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The expiration of the terms of all existing members of the judicial nominating commissions will cause the Governor and the Board of Governors of The Florida Bar to activate the appointment process for each commission.

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 Rules on April 26, 2011:**

The committee substitute differs from the original bill by:

- Removing provisions that authorized the Attorney General to make recommendations to the Governor for the appointment of four members of each judicial nominating commission.
- Restoring existing statutory provisions that direct the Board of Governors of The Bar to make recommendations to the Governor for the appointment of four members of each commission.

B. Amendments:

None.