

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7101 PCB CVJS 11-08 Judicial Nominating Commissions

SPONSOR(S): Civil Justice Subcommittee, Gaetz

TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	10 Y, 5 N	Billmeier	Bond
1) Judiciary Committee	11 Y, 6 N	Billmeier	Havlicak

SUMMARY ANALYSIS

Trial court judgeships that become vacant during a judge's term and all appellate judgeships are filled by a system of nomination and appointment in which the Governor appoints a justice or judge from a list of nominees from a judicial nominating commission. There are separate judicial nominating commissions for the Supreme Court, each district court of appeal, and each of the twenty judicial circuits. Current law provides that five of the nine members of each judicial nominating commission are appointed solely by the Governor, while the other four members are appointed by the Governor from a list of nominees provided by The Florida Bar. Members of the judicial nominating commissions serve 4 year staggered terms.

This bill provides that:

- Judicial nominating commissions consist of 7 members.
- All members of each judicial nominating commission are appointed by the Governor.
- Members of a judicial nominating commission are appointed to a term concurrent with the term of the Governor.
- This bill takes effect upon becoming law, thus ending the terms of all current members.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Trial court judgeships that become vacant during a judge's term and all appellate judgeships are filled by the Governor from a list of nominees provided by a judicial nominating commission. (JNC).¹ The Constitution requires JNCs but the number of members and composition of each JNC is provided for by statute.² When an appellate judgeship becomes vacant, candidates submit their applications to the JNC for that court. The commission sends a list of three to six nominees to the Governor and the Governor fills the vacancy by selecting from that list.³ Circuit and county court judges are determined by election⁴ but vacancies on the circuit or county courts that occur between elections are filled in the same manner as vacancies on the appellate bench.⁵

Article V, s. 11(d), Fla. Const., provides that JNCs must be created by general law for the Supreme Court, each district court of appeal, and each judicial circuit for all trial court within that circuit. Section 43.291, F.S., implements the constitutional provisions. Each JNC consists of nine members appointed by the Governor.⁶ Members serve 4 year terms.⁷ All JNC members must be residents of the territorial jurisdiction serviced by the JNC to which the member is appointed.⁸

The Governor may appoint five of the nine members of each JNC without input from the Florida Bar. Two of those five appointees must be members of The Florida Bar who are engaged in the practice of law.⁹

At least four members of each JNC are appointed by the Governor from a list of nominees provided by the Board of Governors of The Florida Bar. The Board of Governors must submit three nominees for each position. Each of the nominees must be a member of The Florida Bar who is engaged in the practice of law. The Governor must either select an appointee from the list of nominees or reject all of the nominees and request that the Board of Governors submit a new list of three different recommended nominees.¹⁰ In making appointments, the Governor is required to "seek to ensure" that the membership of each JNC reflects the "racial, ethnic, and gender diversity" of the population within the territorial jurisdiction of the JNC.¹¹

A justice or judge may not be a member of a JNC but a JNC member may hold public office other than judicial office. A member of a JNC is not eligible for appointment, during his or her term of office and for a period of 2 years thereafter, to any state judicial office for which that JNC has the authority to make nominations.¹²

¹ See art. V, s.11, Fla. Const.

² See art. V, s 11(d), Fla. Const.

³ See art. V, s. 11(a), Fla. Const.

⁴ Circuits and counties may, by local option, choose to select judges in the same manner as appellate judges are selected. See art. V, s. 10, Fla. Const. No circuit or county has opted to change from election to nomination by the judicial nominating commission and appointment by the governor.

⁵ See art. V, s. 11(b), Fla. Const.

⁶ Section 43.291(1), F.S.

⁷ Section 43.291(3), F.S.

⁸ Section 43.291(1)(a), (b), F.S.

⁹ Section 43.291(1)(b), F.S.

¹⁰Section 43.291(1)(a), F.S.

¹¹ Section 43.291(4), F.S.

¹² Section 43.291(2), F.S.

Effect of the Bill

This bill provides that all members of each JNC will be appointed by the Governor. This bill also reduces the number of members on each JNC from nine to seven. Four of the members of each JNC must be members in good standing of The Florida Bar who are actively engaged in the practice of law. This bill provides that the Governor name the chair and vice chair of each commission and provides that the commissions may elect a temporary chair to serve in the absence of the appointed chair and vice chair.

This bill provides that all members are appointed to a term concurrent with the term of the Governor. Terms of office may begin at any time after the inauguration of the Governor, but must end at midnight on the evening prior to the next inauguration following a general election. If a JNC member is unable to complete the term, the Governor may appoint a new member to serve the remainder of the term.

This bill provides that terms of all current members of the JNCs are terminated. Current JNC members may be reappointed by the Governor.

This bill does not change current law relating to restrictions on future appointments to the bench, consideration of racial, ethnic, and gender diversity, and the requirement that the Executive Office of the Governor provide administrative support to the JNCs.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1 repeals s. 43.291, F.S., relating to judicial nominating commissions.

Section 2 creates s. 43.292, F.S., relating to judicial nominating commissions.

Section 3 provides that the office of any current member of a judicial nominating commission is abolished but that current members may be reappointed by the Governor.

Section 4 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.