

**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 Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL:               SJR 408

INTRODUCER:    Senator Simmons

SUBJECT:         Revising Age Limits for Judges and Justices

DATE:            January 20, 2012         REVISED:         \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Cibula	JU	<b>Favorable</b>
2.	Harkness	Sadberry	BJA	<b>Favorable</b>
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Joint Resolution 408 proposes an amendment to the Florida Constitution which increases the general mandatory retirement age of judges and justices from 70 to 75.

This joint resolution amends Article 5, section 8 of the Florida Constitution.

**II. Present Situation:**

**Judicial Eligibility Requirements Generally**

Most state constitutions 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.<sup>1</sup> 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.<sup>2</sup>

<sup>1</sup> See Memorandum from John Sylvia of the West Virginia Legislative Auditor's Office, Performance Evaluation and Research Division to Honorable Edwin J. Bowman, Chairman (Jan. 5, 2005) (on file with the Senate Committee on Judiciary).

<sup>2</sup> G. Alan Tarr, *Designing an Appointive System: The Key Issues*, 34 FORDHAM URB. L.J. 291, 308 (Jan. 2007).

## Florida Age Requirements for Judicial Office

Florida currently does not have a minimum age requirement for judicial office, but generally precludes a person from serving as a justice or judge of any court after attaining 70 years of age.<sup>3</sup> A justice or judge may serve after 70 years of age on a temporary assignment or to complete a term, one-half of which has been served.<sup>4</sup> Florida's previous constitution, the Constitution of 1885, did not provide a mandatory retirement age, but did require that justices and judges be at least 25 years old and attorneys at law.<sup>5</sup> This provision was removed from the Constitution effective in 1973 as part of a revision of Article V<sup>6</sup> and replaced with the current eligibility requirements, including the mandatory retirement age.

## Constitutionality of Mandatory Retirement

A group of state court judges in Missouri challenged the Missouri Constitution's mandatory retirement provision, which required judges to retire at the age of 70.<sup>7</sup> The judges alleged that the provision, which was very similar to Florida's analogous requirement, violated the Federal Age Discrimination in Employment Act (ADEA)<sup>8</sup> and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.<sup>9</sup> The Court held that the ADEA excluded judges from its definition of employees because of their status as policymakers.<sup>10</sup> Additionally, the Court upheld Missouri's constitutional provision despite the judges' argument that it violated the Equal Protection Clause because it served the legitimate government purpose of enabling the people of Missouri to establish "a qualification for those who would be their judges."<sup>11</sup>

## 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.<sup>12</sup> Any such proposal must be submitted to 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.<sup>13</sup> 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

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<sup>3</sup> FLA. CONST. art. V, s. 8.

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

<sup>5</sup> FLA. CONST. art. V, s. 3 (1885).

<sup>6</sup> SJR 52-D (1971), adopted in 1972 and effective Jan. 1, 1973.

<sup>7</sup> MO. CONST. art. V, s. 26.

<sup>8</sup> 29 U.S.C. ss. 621-34.

<sup>9</sup> *Gregory v. Ashcroft*, 501 U.S. 452, 456 (1991).

<sup>10</sup> *Id.* at 467.

<sup>11</sup> *Id.* at 473.

<sup>12</sup> FLA. CONST. art. XI, s. 1.

<sup>13</sup> FLA. CONST. art. XI, s. 5(a).

Monday in January following the election, or on such other date as may be specified in the amendment.<sup>14</sup>

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

Senate Joint Resolution 408 proposes an amendment to Article V, section 8 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 75 rather than 70. However, a judge who has attained the age of 75 years of age may continue to serve on a temporary assignment or to complete a judicial term.

This joint resolution will take effect on January 7, 2013, if approved by the electors at 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.

#### **D. Other Constitutional Issues:**

In order for the Legislature to submit SJR 408 to the voters for approval, the joint resolution must be agreed to by three-fifths of the membership of each house.<sup>15</sup> If SJR 408 is agreed to by the Legislature, it will be submitted to the voters at the 2012 General Election. In order for SJR 408 to take effect, it must be approved by at least 60 percent of the voters voting on the measure.<sup>16</sup>

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

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

None.

#### **B. Private Sector Impact:**

None.

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<sup>14</sup> FLA. CONST. art. XI, s. 5(e).

<sup>15</sup> FLA. CONST. art. XI, s. 1.

<sup>16</sup> FLA. CONST. art. XI, s. 5(e).

**C. Government Sector Impact:**

According to the Office of the State Courts Administrator, this joint resolution has no fiscal or workload impact on the judiciary.<sup>17</sup>

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.<sup>18</sup> Costs for advertising vary depending upon the length of the amendment.

**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>17</sup> Office of the State Courts Administrator, *2012 Judicial Impact Statement, SJR 408* (Oct. 26, 2011) (on file with the Senate Committee on Judiciary).

<sup>18</sup> FLA. CONST. art. XI, s. 5(d).