

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 971 Judiciary

SPONSOR(S): Judiciary Committee; Civil Justice Subcommittee; Gaetz

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1570

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 5 N, As CS	Caridad	Bond
2) Government Operations Subcommittee	10 Y, 3 N	Meadows	Williamson
3) Judiciary Committee	14 Y, 4 N, As CS	Caridad	Havlicak

SUMMARY ANALYSIS

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). The number of members and composition of each JNC is provided for by statute.

There is also a separate statewide nominating commission for Judges of Compensation Claims (JCC). The number of members and the composition of the commission are provided for by statute.

A judicial candidate qualifying for election must pay a qualifying fee. Currently, the qualifying fees go to the Elections Commission Trust Fund.

The bill:

- Provides that certain members of the JNC serve at the pleasure of the governor;
- Provides that each expired term or vacancy on a JNC is filled by appointment in the same manner as the member whose position is being filled;
- Deletes an obsolete provision providing that the Executive Office of the Governor establish uniform rules of procedure consistent with the State Constitution when suspending for cause a member of the JNC.
- Eliminates the statewide nominating commission for JCC's and provides that JCC's be appointed by the Governor from a list of persons nominated by the JNC for the First District Court of Appeal.
- Requires that election qualifying fees for incumbent, unopposed circuit and county judges be moved from the Elections Commission Trust Fund to the Florida Bar Foundation for scholarships for female and minority law students who attend a Florida law school and are interested in seeking judicial office in the future.

This bill may have a fiscal impact on state government since it removes funds from the Elections Commission Trust Fund.

The bill provides for an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Judicial Nominating Commission

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 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 election,⁴ 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 a JNC must be created by general law for the Supreme Court, each district court of appeal, and each judicial circuit for all trial courts 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 The remaining four members are appointed by the Governor from a list of nominees selected and provided by the Board of Governors of the Florida Bar. The Governor may reject all of the nominees recommended for the position and request that the Board submit a new list of three different nominees who have not previously been recommended by the Board. These four members of the JNC must be members of the Florida Bar engaged in the practice of law.

The bill provides that members of the JNC, except the four members selected from a list provided by the Florida Bar, serve at the pleasure of the governor. The bill also:

- Updates provisions relating to the staggering of terms for members selected from the list provided by the Board of Governors of the Florida Bar;
- Provides that an appointment to a JNC of a member selected from a list of nominees provided by the Board of Governors of the Florida Bar — unless it is to a vacant, unexpired term — is for 4 years;
- Provides that each expired term or vacancy is filled by appointment in the same manner as the member whose position is filled; and
- Deletes an obsolete requirement that the Executive Office of the Governor establish uniform rules of procedure consistent with the State Constitution when suspending for cause a member of a JNC.

¹ See art. V, s.11, Fla. Const.

² See s. 43.291, F.S.

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.

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.

Statewide Nominating Commission for Judges of Compensation Claims (JCC)

There is a separate statewide nominating commission for JCC's.¹⁰ The number of members and the composition of the commission are provided for in s. 440.45, F.S. Under current law, the commission must be composed of:

- Five members appointed by the Board of Governors of the Florida Bar from among Florida Bar members engaged in the practice of law.
- Five electors appointed by the Governor.
- Five electors selected and appointed by a majority vote of the other ten members of the commission.

Each group of individuals must contain at least one member of a minority group as defined in statute. In addition, an individual from each five-member group must live in each territorial jurisdiction of one of the five district courts of appeal. The statute also provides for staggered terms.

The bill eliminates the current commission and provides that a JCC must be appointed by the Governor from a list of three persons nominated by the JNC for the First District Court of Appeal.

Minority Law Student Scholarship Funding

A candidate qualifying for election to judicial office must pay a qualifying fee.¹¹ This applies regardless of whether the judicial candidate is an incumbent judge running unopposed. Currently, the qualifying fees go to the Elections Commission Trust Fund for the operation of the Division of Elections.

The bill provides that the Division of Elections must determine the total qualifying fees paid for incumbent, circuit or county judges running unopposed in the state and transfer such funds from the Elections Commission Trust Fund to the Florida Bar Foundation to be used for scholarships. The scholarships must be awarded to promising female and minority law students who attend a Florida law school and are interested in seeking judicial office in the future.

B. SECTION DIRECTORY:

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

Section 2 amends s. 105.031, F.S., relating to qualification for election.

Section 3 amends s. 440.45, F.S., relating to the office of the judges of compensation claims.

Section 4 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

¹⁰ The Office of the Judges of Compensation Claims operates 17 district offices; there are 33 JCC's throughout the state. Office of the Judges of Compensation Claims, <http://www.jcc.state.fl.us/JCC/> (last visited Feb. 17, 2012).

¹¹ Section 105.031, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The creation of the minority law student scholarship program will lead to a reduction of funds in the Elections Commission Trust Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Civil Justice Subcommittee amended the bill to provide that members of the JNC appointed, except those selected from a list provided by the Florida Bar, shall serve at the pleasure of the governor. It also deleted provisions related to the term "normal retirement date" and made other conforming provisions to retirement law.

On February 16, 2012, the Judiciary Committee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Delete a section of the bill relating to retired judges and justices.
- Require that qualifying fees for incumbent, unopposed circuit and county judges be paid from the Elections Commission Trust Fund to the Florida Bar Foundation for minority scholarships for law students attending a Florida law school and are interested in seeking judicial office in the future.
- Eliminate the statewide nominating commission for judges of compensation claims and provide that the Governor must appoint a JCC from a list of three persons nominated by the JNC for the First District Court of Appeal.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.