

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CVJS 11-04 Judicial Retention Elections

SPONSOR(S): Civil Justice Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Billmeier	Bond

SUMMARY ANALYSIS

Justices of the Florida Supreme Court, judges of the district courts of appeals, circuit judges, and county judges serve six year terms. Before the expiration of each term, Supreme Court justices and judges on the district courts of appeal appear on the ballot for a retention election. If a majority of voters approve, the justice or judge is elected to another term. No Florida justice or judge has ever failed to receive a majority. Circuit and county judges compete in contested elections but circuits and counties have the option to change to the retention election system used for the appellate courts.

This joint resolution changes the retention requirements for Supreme Court justices and judges of the district courts of appeal that are on the ballot in retention elections to 60%. If a justice or judge is not approved by at least 60% of the voters in an election, a vacancy exists in the office effective at the end of the justice or judge's term. This 60% requirement will apply to circuit and county judges in any circuit or county that changes to a retention election system for selecting and retaining judges.

The proposed joint resolution appears to require a nonrecurring expense payable from the General Revenue Fund in FY 2012-13 for required advertising of the joint resolution. This joint resolution does not appear to have a fiscal impact on local governments.

The proposed joint resolution, if passed by the Legislature, would be considered by the electorate at the November, 2012, general election. A joint resolution must be passed by a three-fifths vote of the membership of each house of the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Article V, Fla. Const., provides for four categories of justices and judges: justices of the Supreme Court and judges on the district courts of appeal, the circuit courts, and the county courts. Justices and judges serve for terms of six years.¹

To become a justice of the Supreme Court or a judge on the district court of appeals, one applies to the appropriate judicial nominating commission. The judicial nominating commission selects three to six applicants and submits that list of nominees to the Governor. The Governor must select the justice or judge from that list. At the general election prior to the expiration of each term, Supreme Court justices and judges on the district courts of appeal whose terms of office are expiring appear on the ballot for a retention election. If a majority of voters approve, the justice or judge is elected to another term.² Florida enacted this system, sometimes called "merit retention," in 1972. No Florida justice or judge has ever failed to achieve a majority vote.

Circuit and county judges compete in contested elections.³ If there is no opposition when a judge runs for reelection, a judge is reelected to the seat. Each judicial circuit and each county has had the option since 2000 of changing from the contested election method of selecting judges to the "merit retention" method but, thus far, no circuit or county has done so. Every circuit and county held a referendum on the issue in 2000.

Past Election Results

According to information gathered from the Division of Elections website, 39 supreme court justices have appeared on the ballot since 1980. All 39 were approved by a majority of the voters. Two of those justice received less than 60% of the vote. During the 2004-2010 general elections, 81 of the 88 district court of appeal judges that appeared on the ballot received more than 60% of the vote.

Effect of Proposed Changes

This joint resolution changes the retention requirements for justices and judges that are on the ballot in retention elections from a majority to 60%. If a justice or judge is not approved by at least 60% of the voters in an election, a vacancy exists in the office effective at the end of the justice or judge's term. Vacancies are filled by a nominee appointed by the Governor from a list provided by the appropriate judicial nominating commission. The 60% retention requirement will also apply to circuit and county judges if the circuit or county changes its method of selecting judges from a direct election to a merit selection system.

B. SECTION DIRECTORY:

n/a

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

¹ See Art. V, ss. 10(a), 10(b)(3), Fla. Const.

² See Art. V, s. 10(a), Fla. Const.

³ See Art. V, s. 10(b), Fla. Const.

None.

2. Expenditures:

Article XI, s. 5(d), Fla. Const., requires that a proposed constitutional amendment be published twice in one newspaper of general circulation in each county in which a newspaper is published prior to the election in which the voters will consider it. The Department of State has not yet analyzed this proposal to determine the estimated costs but has previously indicated the average cost to advertise a proposed constitutional amendment is \$106.14 per word.

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:

A mandates analysis is inapplicable as this bill is a proposed constitutional amendment.

2. Other:

A joint resolution must be passed by a three-fifths vote of the membership of each house of the Legislature before it can be proposed to the voters. It must be approved by 60% of the voters in order to be adopted as part of the Constitution. See Art. XI, ss. 1, 5 Fla. Const.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a