

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 47 Judicial Qualifications  
**SPONSOR(S):** Porth  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SJR 140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Woodburn	Bond
2) Judiciary Committee			

### SUMMARY ANALYSIS

The Florida Constitution requires that a person must have been a member in good standing of the Florida Bar for the previous 5 years to be eligible for election or appointment to the office of circuit court judge or county judge. In a county of a population of 40,000 or less, however, a candidate for county judge simply must be a member of the Florida Bar.

The joint resolution proposes an amendment to the Florida Constitution that would change the requirement from 5 years to 10 years of membership in the Florida Bar to be eligible for the office of circuit court or county court judge. The amendment would also delete the exception for a county with 40,000 people or less.

If this joint resolution is passed by a three-fifths vote of both houses of the legislature, it will be submitted to the voters in the general election in November of 2012.

This proposed committee bill appears to require a nonrecurring expense payable from General Revenue in FY 2012-13 for required advertising estimated at \$50,000. This proposed committee bill does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Judicial Qualifications Generally**

Most state constitutions and general laws prescribe qualifications to serve as a judicial officer, including residence, age, and legal experience. In some states, the judicial qualifications may vary depending on the court on which the judge serves, and a judge may be required to meet more stringent qualifications if he or she is serving on an appellate court.<sup>1</sup> For example, in New Mexico, a trial court judge must have six years of active legal practice in New Mexico, while an appellate judge must have 10 years of legal practice in New Mexico or be a current state judge.<sup>2</sup> In other states, the same legal experience is required for both trial and appellate judges.<sup>3</sup> A few states only require that the judge be a member of or licensed with the state bar.<sup>4</sup>

##### **Florida Qualifications for Judicial Office**

Florida has no minimal age requirement for circuit judges, but does preclude a judge from serving after attaining 70 years of age.<sup>5</sup> The Florida Constitution requires that a judge must be an elector of the state and reside in the territorial jurisdiction of the court.<sup>6</sup> With regard to legal experience, a person is eligible for the office of circuit court judge only if he or she is a member of The Florida Bar for the preceding five years.<sup>7</sup> The constitutional requirement for eligibility relating to bar membership refers to eligibility at the time of assuming office and not at the time of qualification or election to office.<sup>8</sup>

Identical to circuit court judges, there is no minimal age requirement for county court judges, and county court judges are precluded from serving after attaining 70 years of age.<sup>9</sup> The county court judge must also be an elector of the state and reside in the territorial jurisdiction of the court.<sup>10</sup> The Florida Constitution provides that, unless otherwise provided by general law, a person is eligible for the office of county court judge only if he or she is a member of The Florida Bar and has been for the preceding five years.<sup>11</sup> The Florida Constitution also provides that, unless otherwise provided by general law, in counties having populations of 40,000 or fewer, a person is eligible for election or appointment to the office of county court judge if he or she is a member in good standing of The Florida Bar.<sup>12</sup>

##### **Article V Task Force**

A legislatively created task force – the Article V Task Force – examined judicial qualifications in preparation for the 1997-98 Constitution Revision Commission.<sup>13</sup> The task force recommended an increase in the experience level for circuit and county judges, to 10 years from 5 years.

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<sup>1</sup> G. Alan Tarr, *Symposium on Rethinking Judicial Selection: A Critical Appraisal of Appointive Selection for State Court Judges*, 34 FORDHAM URB. L.J. 291, 308 (Jan. 2007).

<sup>2</sup> N. M. CONST. art. VI, ss. 8 and 14.

<sup>3</sup> California, Hawaii, Idaho, and New York, among other states, all require 10 years of membership in the state bar or active practice for both trial and appellate judges. CAL. CONST. art. VI, s. 15; HAW. CONST. art. VI, s. 3; IDAHO CODE s. 1-2404 (2); N.Y. CONST. art. VI, s. 20.

<sup>4</sup> Alabama requires that a judge be a “licensed” attorney. ALA. CONST. art. VI, amend. 328, s. 6.07. Missouri and Pennsylvania require that the judge be a member of the state bar. MO. CONST. art. V, s. 21; PA. CONST. art. V, s. 12.

<sup>5</sup> FLA. CONST. art. V, s. 8.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *In re Advisory Opinion to the Governor*, 192 So. 2d 757 (Fla. 1966).

<sup>9</sup> FLA. CONST. art. V, s. 8.

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

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

<sup>12</sup> *Id.*

<sup>13</sup> The task force was created by the Florida Legislature in ch. 94-138, Laws of Fla., to review the judicial article of the Constitution.

## **Effect of the Bill**

House Joint Resolution 47 proposes an amendment to art. V, s. 8, of the State Constitution to increase the period of time that a person must be a member of The Florida Bar before becoming eligible for the offices of circuit court or county court judge. The resolution, if adopted by the voters, would increase the number of years a person must be a bar member before serving as a circuit court or county court judge to 10 years from 5 years. This change would make the circuit and county court judicial requirements the same as the requirements for District Court of Appeal judges and Supreme Court justices.

The resolution also deletes the provision allowing a member of The Florida Bar to serve as a county court judge regardless of the number of years of membership in a county having a population of 40,000 or fewer. As a result, the 10-year requisite experience would apply to all county court judges.

The joint resolution is silent regarding an effective date for the constitutional amendment. Therefore, in accordance with art. XI, s. 5, of the state Constitution, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate.

### **B. SECTION DIRECTORY:**

n/a

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The State Constitution requires the proposed amendment to be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published.<sup>14</sup> The Department of State executes the publication of the Joint Resolution if placed on the ballot. The Florida Department of State estimates that required publication of a proposed constitutional amendment costs \$106.14 per word. At approximately 467 words, the amendment would require an estimated expenditure of \$49,567.38. These funds must be spent regardless of whether the amendment passes, and would be payable in FY 2012-2013 from the General Revenue Fund.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

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<sup>14</sup> Article XI, s. 5(d), FLA. CONST.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. A mandate analysis is inapplicable as this bill is a proposed constitutional amendment.

##### 2. Other:

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>15</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>16</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 Monday in January following the election, or on such other date as may be specified in the amendment.<sup>17</sup>

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Although constitutional amendments are generally applied prospectively, unless expressly stated otherwise,<sup>18</sup> the eligibility of circuit and county court judges satisfying the present qualifications may be questioned. Furthermore, it is unclear whether a current circuit or county court judge satisfying the current qualifications could seek re-election if he or she does not satisfy the new requirements at the time of the election. The amendment may also prohibit a person elected in the same election as the ballot amendment from taking office if he or she has not been a member of the bar for the last ten years. The Legislature could consider providing a definitive effective date at a future time after the election and expressly stating that the amendment may not be construed to affect any circuit court or county court judge in office on the effective date of the amendment, or the judge's ability to seek re-election in the future.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

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

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

<sup>17</sup> FLA. CONST. art. XI, s. 5(e).

<sup>18</sup> *In re Advisory Opinion to the Governor-Terms of County Court Judges*, 750 So. 2d 610 (Fla.1999) (advising that constitutional amendments are given prospective effect only, unless the text of the amendment or the ballot statement clearly indicates otherwise).