

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 197 Term Limits for Appellate Courts
SPONSOR(S): Civil Justice Subcommittee; Wood, Sullivan and others
TIED BILLS: None **IDEN./SIM. BILLS:** SJR 322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	8 Y, 5 N, As CS	Bond	Bond
2) Appropriations Committee	13 Y, 6 N	Lloyd	Leznoff
3) Judiciary Committee			

SUMMARY ANALYSIS

Justices of the Florida Supreme Court and judges of the Florida district courts of appeal are appointed to office by the Governor and serve six year terms. There are no limits on the number of terms a justice or judge may serve, but each justice or judge is subject to the merit retention process and a mandatory retirement age.

Merit retention is the system of retaining justices and judges established by the voters when they amended the Florida Constitution in the 1970s. Newly appointed justices or judges face their first merit retention vote in the next general election that occurs more than one year after their appointment, but before the completion of a full six-year term. If retained in office by a majority of voters, the justice or judge serves a full six-year term. Thereafter, the justice or judge is subject to a merit retention election every six years. No Florida justice or judge has ever lost a merit retention election.

This joint resolution provides that a justice or judge appointed after the effective date may serve no more than two full terms of office.

A joint resolution to amend the constitution must be passed by a three-fifths vote of the membership of each house of the Legislature. The proposed joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 8, 2016.

The joint resolution appears to require a nonrecurring expense for the publication of a proposed constitutional amendment in newspapers of general circulation in each county. The Department of State estimates a minimum of \$58,875 payable from the General Revenue Fund in FY 2016-17 for this purpose. The necessary appropriation will be included in the FY 2016-17 House proposed General Appropriation Act. The bill has no fiscal impact on the State Courts System. The minimal impacts related to judge turnover will not be experienced until FY 2030-31 based on historical judicial retention elections. This joint resolution does not appear to have a fiscal impact on local governments.

If adopted at the 2016 general election, the effective date of this resolution is January 3, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Appointment of Justices and Judges

Where there is a judicial vacancy in the Florida Supreme Court or a Florida district court of appeal, the Governor must appoint a replacement justice or judge from a list of nominees provided by a judicial nominating commission (JNC).¹ When a judgeship becomes vacant, candidates submit an application 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.² At the next general election occurring at least a year after appointment, the newly appointed justice or district court judge sits for a retention election. If a majority of voters choose to retain the justice or judge, the justice or judge is retained for a six year term.³ Thereafter, the justice or judge will sit for a retention election every six years.

Retention in Office

While the state does have term limits applicable to the Governor, cabinet members, and legislators, no term limits apply to justices or judges. A justice or judge can serve an unlimited number of terms of office, limited only by a failure to be retained or a mandatory retirement age.

Mandatory Retirement Age

The Florida Constitution establishes a mandatory retirement age for justices and judges on or after their 70th birthday. The exact date of retirement depends upon when the 70th birthday occurs. If it occurs during the first half of a six-year term, then the mandatory retirement age is the same as the birthday. If the 70th birthday occurs in the second half of a six-year term, then the justice or judge can remain on the bench until the full term expires.⁴

Past Retention Election Results

Forty-two Supreme Court justices have appeared on the ballot for retention between 1980 and 2014. All 42 were retained by a majority of the voters. For the general elections from 2004 through 2014, all 125 district court of appeal judges that appeared on the ballot were retained.

Effect of the Bill

The joint resolution limits Supreme Court justices and judges of the district courts of appeal to two full terms of office. Given that terms are 6 years each, and that the time from appointment to first retention election ranges from one to three years, the effect of the bill is to create an effective term limit of between 13 and 15 years depending upon the date of appointment.

Term limits apply to the office that a justice or judge is appointed to, meaning that a district court of appeal judge promoted to the Supreme Court starts a new term limit.

The joint resolution does not provide an effective date.⁵ Therefore, 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,⁶ which is January 3, 2017.

¹ art. V, s.11, Fla. Const.

² art. V, s. 11(a), Fla. Const.

³ art. V, s. 10, Fla. Const.

⁴ art. V, s. 8, Fla. Const.

⁵ While an amendment can specify its effective date, it is common practice in constitutional amendments to simply allow the default effective date to apply.

⁶ art. XI, s. 5, Fla. Const.

The joint resolution is prospective only. Term limits will only apply to a justice or judge appointed to office after the effective date of the amendment.

B. SECTION DIRECTORY:

n/a

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:

Current Fiscal Impact

Article XI, s.5(d) of the state constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The Department of State provided the following fiscal analysis for HJR 197 as originally filed:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments. The cost to advertise constitutional amendments for the 2014 general election was \$135.97 per word. Using 2014 rates, the cost to advertise this amendment for the 2016 general election could be \$58,331 at a minimum.⁷

The amended resolution has 433 words, changing the estimate to \$58,875. These funds must be spent regardless of whether the amendment passes, and are payable from the General Revenue Fund in FY 2016-17. The necessary appropriation will be included in the FY 2016-17 House proposed General Appropriations Act.

Future Fiscal Impact

This bill may increase judicial workload due to more frequent gaps in service, and increased staff turnover.⁸ This bill would increase training costs, as all judges new to the bench are required to take in-person training. Based on historical judicial retention elections, the potential fiscal impacts to the court system would not occur until FY 2030-31 at the earliest.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

⁷ Department of State analysis dated October 26, 2015, on file with the Civil Justice Subcommittee.

⁸ "Because justices and appellate judges hire their own staff, increased turnover of justices and appellate judges may result in increased turnover of law clerks and judicial assistants, thereby requiring additional staff work for administrative items relating to a new staff person." Office of the State Courts Administrator, *2016 Judicial Impact Statement for PCS/HJR 197*, dated November 1, 2015, on file with the Civil Justice Subcommittee.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This section does not apply to proposed constitutional amendments.

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.⁹ 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.¹⁰ 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.¹¹

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

For the current Supreme Court Justices, assuming that none lose a retention election and that all serve until mandatory retirement:

- The average length of service will be 17 years.
- If this term limit had been in place when appointed, it would have had no effect on 2 of the 7.
- The longest term would be 22 years.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 3, 2015, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed in that it is prospective only, having no effect on current justices and judges. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

⁹ art. XI, s. 1, Fla. Const.

¹⁰ art. XI, s. 5(a), Fla. Const.

¹¹ art. XI, s. 5(e), Fla. Const.