



# Dispute may end system for picking judges

## Bredesen and Ramsey push proposals to reform panel that is set to die July 1

By Tom Humphrey  
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NASHVILLE - The current system for appointing Tennessee judges may be in jeopardy amid escalating arguments in the Legislature that involve Gov. Phil Bredesen, Lt. Gov. Ron Ramsey and influential lawyers.

Both Bredesen and Ramsey are pushing separate proposals to change the Judicial Selection Commission, the sometimes controversial 17-member panel that is the centerpiece of the present system.

But the governor's idea of reform - requiring the commission to meet in public when deciding on who should become a judge - was killed by a lawyer-dominated House subcommittee last week. The vote came after a commission member said secrecy is essential to candid discussions on qualifications of judicial candidates.

In turn, Ramsey has called - so far without success - for giving the speakers of the House and Senate more latitude in appointing members of the commission.

The current rules are too restrictive, he said, requiring that commission members represent legal special-interest groups. That tilts the selection process toward choosing more liberal judges, he said.

If there is no reform of the commission, Ramsey said last week that he would prefer terminating the panel.

Bredesen, who has feuded with the commission in the past, has not gone that far. But the governor said he is "very, very disappointed" in the killing of his bill to require open commission meetings.

As a backdrop to bills that would change the commission operations, there is a real possibility that the commission will cease to exist.

State law requires that the Legislature periodically renew all government boards, agencies and commissions. The JSC came up for renewal last year in the "sunset" process with supporters calling for a new four-year lifespan and opponents calling for termination.

The commission wound up getting only a one-year extension of life as a compromise and is now scheduled to cease to exist July 1 - although the relevant law gives a dying commission an automatic one-year "wind-down" period to wrap up its affairs before actually closing operations.

"I hope that's what happens," said Rep. Mike Bell, R-Riceville. "It would force the Legislature to look at

this issue seriously."

Bell and Sen. Duane Bunch, R-Cleveland, sponsored a bill to abolish the commission outright. But they never actively pushed it, realizing that to do so "would be tilting at windmills," Bell said.

Bell said the current system is "blatantly unconstitutional," violating Article VI, Section 3 of the Tennessee Constitution. That provision states that state Supreme Court judges "shall be elected by the qualified voters of this state."

Under the present system, when a judicial vacancy occurs - whether at the Supreme Court level or in lower-level state courts - the JSC accepts applications from aspiring successor judges and meets with them privately. Members also deliberate about choosing among the applicants behind closed doors.

The commission then submits three nominees to the governor, who picks one for appointment to fill the vacancy. In situations involving the Supreme Court and appeals courts, he can reject all three on the first panel of nominees and ask for three more nominees. But he must pick one of the second slate of three candidates.

When the judge's term expires, Supreme Court justices and appeals court judges then go on the ballot for a "retention election." Voters simply cast a ballot "yes" or "no" on whether each judge should get a new eight-year term.

In effect, the judges are appointed by the governor and the Judicial Selection Commission. The follow-up "yes or no" vote does not pass muster as an "election" under the state constitution, according to Bell and other critics. But the system has been upheld as valid in court challenges.

"This retention vote violates not only the spirit but the letter of the law in the constitution," said Bell, contending that proponents of the system should have adopted it in the form of a constitutional amendment.

Should the JSC cease to exist, the state would go back to the previous system wherein the governor can fill a vacancy with anyone he wishes with no screening process, provided the person meets other criteria in the state constitution.

Under the old system, which would revert to active status with the commission dead, the state's top judges would face partisan, contested elections when up for a new term.

State judges serve eight-year terms, and all went through their retention election in 2006, meaning they are not up for re-election again until 2014. Bell says a new and valid retention system could be in place by then if proponents pushed the idea through constitutional amendment.

Rep. Kent Coleman, D-Murfreesboro, a lawyer and chairman of the House Judiciary Committee, says the current system has proven its worth overall and should remain in place - though with some changes.

Coleman sponsored the Bredesen administration bill to require open meetings of the JSC, arguing before the subcommittee that it is needed to restore public confidence in the system's fairness.

"I can't imagine why they think a process as important as selecting judges to present to the governor - public officials with enormous power - ought to be conducted in secret," Bredesen said after the bill was killed.

During the subcommittee hearing, Bill Farmer, a Nashville lawyer who has served on the JSC since 1994 as a representative of criminal defense lawyers, said the commission reviews TBI background information, credit reports, medical reports and other information on applicants that should remain confidential.

Reps. Frank Buck, D-Dowelltown, and Rob Briley, D-Nashville, both lawyers, said it would be unfair for the commission to be required to meet in public while the governor could have private interviews with nominees.

A bill to keep the commission alive, sponsored by Rep. Mike Kernell, D-Memphis, and Sen. Thelma Harper, D-Nashville, has yet to be brought up for a hearing in either the House or Senate.

In general, Democrats are more supportive of the JSC and the status quo than Republicans. Since Republicans control the Senate, Coleman said they do have leverage to seek changes or simply let the renewal bill die, triggering the year of wind down.

That may be the most likely scenario this year, Coleman said, and would mean a more intense effort to revive the commission next year.

Ramsey noted that, when it does come up, the renewal bill could be amended to change the restrictions on appointments to commission. Ramsey said he would like to see geographic balance - requiring a balance of members from the state's grand divisions - but elimination of current restrictions.

Currently, eight members of the JSC are appointed by the speaker of the House and eight by the speaker of the Senate. One is appointed jointly by the two speakers.

The speakers, in most cases, must select from candidates recommended by various legal interest groups. For example, the Tennessee Trial Lawyers Association, the Tennessee Criminal Defense Lawyers Association and the Tennessee District Attorneys General Conference get three members each.

Only three members are nonlawyers.

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