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House wants to give Scott sole power to appoint judges

By William March
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TALLAHASSEE-- A move to restructure the Florida court system, giving more power in choosing judges to Gov. Rick Scott, moved forward in the state House Thursday despite objections that the bills are an attempt to take control of the state judiciary.

"This is a very scary thing - we're supposed to have separation of powers," said Rep. Marty Kiar, D-Davie, during debate on one of three bills that passed through a House committee Thursday.

"These amendments are direct infringements on what's supposed to be a separate branch of government."

But Republicans backing three bills, two calling for constitutional amendments, deny they're trying to control the judicial branch. Instead, they said, it's an attempt to increase court efficiency and add accountability in selection of judges.

Rep. Matt Gaetz, R-Fort Walton Beach, backing one of the bills, called the Democrats' accusation "absurd."

He said House Speaker Dean Cannon, a Winter Haven Republican, "has instructed this body to focus on accountability, and that's what this bill does."

Rep. Charles McBurney, R-Jacksonville, backing another of the bills, added, "The accountable party is the governor. This put the entire onus on the executive branch... The governor is accountable to the people."

The House Civil Justice Committee passed the three bills Thursday afternoon, all opposed by the committee's five Democrats and backed by its 10 Republicans, including Shawn Harrison of Tampa.

Other committee stops and action by the full House and Senate would be needed to pass them. They are:

- An amendment to break the state Supreme Court in two, one court for criminal cases and one for civil cases, adding three justices so each would have five.
- An amendment to abolish the judicial nominating commissions that submit nominees for appeals court and Supreme Court justices.

The governor would then have sole power to name justices, but the state Senate would have to confirm them. Proponents said it models the federal process for naming justices.

- A bill not requiring an amendment that gives the governor sole power to appoint all members of the judicial nominating commissions that submit nominees for trial court seats.

The amendments would have to get at least 60 percent voter approval.

The proposal for a split Supreme Court comes from Cannon. He has tangled with the court over previous constitutional amendments proposed by the Republican

legislative majorities, which the court kicked off ballots as unclear or deceptive.

One was a response to the anti-gerrymandering amendments that voters approved in November -- an attempt to undo the effect of those amendments, their backers said. At Cannon's direction, the House is now joining a lawsuit to undo the amendments. Another would have sought to prevent national health care reform from taking effect in Florida.

Cannon has denied the court proposal is an attempt to rein in the court or add sympathetic judges, saying it's necessary because of a large backlog of death penalty cases.

Under the proposal, the three most senior justices, all dating from the Gov. Lawton Chiles era, would go on the criminal court.

Scott, meanwhile, reportedly has tangled at least once with a judicial nominating commission.

In Florida, judicial nominating commissions, or JNC's, produce lists of candidates for all vacant judgeships when a judge retires or dies. Under state law, the governor must choose from among those candidates.

The governor appoints all judicial nominating commission members, but the Florida bar nominates lists of candidates for four of each JNC's nine members. The bill would give Scott power to appoint all members of all trial court JNC's, with no involvement by the Bar.

Shortly after he took office, Scott rejected a list of four possible nominees for a 4th District Court of Appeals seat, but the JNC refused to provide any further nominees.

Other governors have also clashed with JNC's. The current system, in fact, results

from legislation backed by former Gov. Jeb Bush to take more control over them.

Former Florida Chief Justice Gerald Kogan said that under the system originally set up in the 1970's in an attempt to de-politicize judicial appointments, the governor chose three members of each JNC, the Bar chose three and those six chose the remaining three.

He called the moves "not necessary reforms at all," but "an attempt by the state Legislature and the governor's office to take control of the third and equal branch of government, to get back at the Supreme Court for ruling against them."

If the governor appointed JNC members, Kogan, a Democrat said, "He can simply appoint whoever will do his bidding. All he has to do is say, 'Send me this person's name.' "

Rep. Darren Soto, D-Orlando, called the bills "a power grab for the Scott administration and the Legislature," and "an attempt to eradicate all Crist nominees" on the JNC's.

The Supreme Court justices, Kiar said, haven't asked for more justices or two separate courts to help with their workload.

David Monaco, chief judge of the 5th District Court of Appeals in Daytona Beach, told the committee the JNC's perform a "vetting process" so regardless which candidate the governor picks or why, "The citizens can be assured that the person selected is qualified."

Florida Bar President Mayanne Downs of Orlando also opposed the changes, saying the system gives the Bar "a very light footprint" in the process, but also provides

"an opportunity for input and experienced knowledge" in choosing judges.

But Gaetz said the changes would "enhance accountability and ratify the role of the executive in serving as a check on the judicial.

"No one can vote against the Florida Bar. No one can vote against a JNC member. But they sure can vote against the governor."

Committee Chairman Eric Eisnaugle, R-Orlando, said the Supreme Court faces an insurmountable backlog of death row appeals.

"In the last few years, more death row inmates have died of natural causes than executions," and 34 inmates have lived on death row more than 30 years, he said.

The fate of the bills may be uncertain. While they're a priority of Cannon and the House, there has been no sign of similar zeal for court changes in the Senate.

"I'm not aware of anything exactly like this moving in the Senate," said Soto. "They could turn into bargaining chips between the two houses."