

Tennessee's Attorney General Selection Process

Key Takeaways

- Since 1870, the Tennessee Attorney General and Reporter is selected by the state Supreme Court as described by Article VI, Section 5 of the constitution.
- For many years, lawmakers have had several discussions about how or if to change the process which the Tennessee Attorney General and Reporter is selected.
- The most recent proposal which has gained some traction is to change the process of the selection of the AG is through nomination by the supreme court and confirmation by the General Assembly.
- Farm Bureau policy supports an independent judiciary.

Questions

1. Do you see any need to for the process of selecting the Attorney General to change?
2. Should Farm Bureau specifically policy address the Attorney General selection process? If yes, how?

Background

The Tennessee Attorney General and Reporter, colloquially referred to as the AG, has the authority to investigate and prosecute civil actions for environmental enforcement, antitrust violations, Medicaid fraud, and consumer fraud. The position is solely responsible for representing the state in criminal appellate cases. As the chief legal officer of the state, the AG represents state officers and agencies through a staff of approximately 340 employees working in five offices across Tennessee.

Tennessee is the only state in which the state Supreme Court names the AG. In Maine, the Attorney General is appointed by the legislature. The Attorney General is appointed by the governor in five states. The remaining forty-four (44) state attorneys general are elected.

The current method of appointing the AG has been in place since 1870, over 150 years. The Tennessee Constitution allocates powers among the three branches of government in a manner designed to create a careful balance. The legislature confirms each Justice of the Supreme Court. The Justices, who appoint the AG, face a yes/no vote by the people every eight years.

To begin the process of changing the state constitution, a resolution must pass in two separate General Assemblies. In the second General Assembly in which the resolution passes, it must pass by 2/3 majority in both chambers. Whenever a constitutional amendment resolution makes it to the floor in both chambers, after completing the committee process, the resolution is read three times in its entirety before a vote is taken. Finally, the voters then decide whether to amend the constitution through a question on the ballot to approve the change in the next gubernatorial election.

There have been several legislative efforts to change how the AG is selected, ranging from statewide election to selection by the General Assembly.

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The most recent idea which has gained some traction is to provide for the selection of the AG through nomination by the supreme court and confirmation by the General Assembly. This legislation has passed the 111th General Assembly and has passed the Senate by over 2/3 majority in 2021, the first year of the 112th General Assembly. The House did not discuss the item in the first year of the 112th General Assembly.

Proponents of this proposal believe this change will give the public, through the General Assembly, more say over the Attorney General. Additionally, this approach does not create an AG who is hyper-politicized because those seeking the position would not have to run for election as is what happens in many states. Proponents believe this would establish a more transparent process for the selection of the AG.

Opponents of this proposal believe the change politicizes the office and opens the door to outside influence and monetary pressure. The proposal could alter the balance of powers among the three branches. There is also a concern there could be a day where the Supreme Court’s nominee, and subsequent nominees, would be rejected by the General Assembly creating a long term vacancy to Tennessee’s chief legal officer.

Farm Bureau policy supports an independent judiciary but is not specific to the selection process of the AG. Farm Bureau’s 2021 Resolutions states, *“We believe in an independent judiciary, impartial administration of the law without special privilege, and government by law rather than by men.”*

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