

STORAGE NAME: h2163.er

DATE: April 9, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELECTION REFORM
ANALYSIS**

BILL #: HB 2163 (PCB ER 99-06)

RELATING TO: Judicial Selection

SPONSOR(S): Committee on Election Reform and Rep. Flanagan

COMPANION BILL(S): CS/SB 1210

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) ELECTION REFORM (PRC) YEAS 10 NAYS 0

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I. SUMMARY:

HB 2163 provides for the local option for selection of circuit and county court judges by election or merit selection and retention. This bill is drafted pursuant to the amendment to Article V, Subsections 10, 11(a)-(b), Florida Constitution, which was approved by the electorate at the 1998 General Election, commonly referred to as "Constitutional Revision No. 7".

Specifically, this bill provides that the voters of each judicial circuit or county must be provided the opportunity to determine if judges within the circuit or county will be elected by the voters or appointed through judicial selection and retention. The bill establishes the process by which the issue will be placed on the ballot. Pursuant to Constitutional Revision No. 7, the bill requires that the 2000 general election ballot present to the voters the opportunity to change from election of judges to merit selection and retention. After the 2000 general election, the method of selection of circuit or county court judges may be placed on the ballot through the petition process.

The fiscal impact of this bill has not yet been determined.

This bill has an effective date of January 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Effective January 5, 1999, Constitutional Revision No. 7, as proposed by the Constitution Revision Commission, revises the provisions of Article V of the Florida Constitution relating to the election of county and circuit court judges and to the funding of the state court system. This bill does not address the issue of funding.

Constitutional Revision No. 7 allows citizens to determine at the general election in the year 2000 whether circuit and county court judges will be elected or appointed. At the general election the electorate will determine by circuit or county, whether their circuit and county court judges will continue to be elected or whether they will be selected through the merit selection process, with the electorate provided the opportunity to vote for retention at the end of the judge's term.

After each circuit or county determines the method of selection of judges in the year 2000, the selected method, whether election or merit retention, can be presented to the voters after two years and the filing of a petition with the Secretary of State. The petition must be signed by the number of electors equal to at least 10 percent of the votes cast in the circuit or county in the last presidential election. This will allow the citizens of a county or a circuit to change the method of selection of judges, but only every two years.

Constitutional Revision No. 7 also extends the terms for county court judges from four years to six years.

Chapter 105, F.S., establishes the process for election of judicial officers. The chapter provides for the election of circuit and county court judges and the retention votes for justices of the Supreme Court and judges of the District Courts of Appeal.

Section 34.021, F.S., establishes the qualifications of county court judges who are elected.

Section 101.151, F.S., provides for the placement on the ballot of the names of justices of the Supreme Court or judges of the District Courts of Appeal seeking retention.

Section 105.031, F.S., sets the filing fee and oaths for judges qualifying for election as a circuit or county court judge.

Section 105.041, F.S., describes the form of the ballot for judges qualifying for election and judges and justices placed on the ballot for retention votes.

Section 105.051, F.S., establishes the process for determining the outcome of a judicial election and a retention vote.

Section 105.061, F.S., describes those voters eligible to vote in a judicial election for circuit and county court judges or a retention election for a justice of the Supreme Court or a judge of a District Court of Appeal.

Section 105.08, F.S., provides for reporting of campaign contributions, including campaign contributions for justices of the Supreme Court or judges of a District Court of Appeal campaigning in a retention election.

Section 106.011, F.S., provides definitions for chapter 106, F.S., regarding campaign financing, including the definition of "unopposed candidate." The definition provides that justices of the Supreme Court or judges of a District Court of Appeal seeking retention are not unopposed candidates for purposes of campaign financing.

Section 106.08, F.S., describes the limitations on campaign financing, including how much may be contributed to justices of the Supreme Court or judges of the District Court of Appeal seeking retention.

Section 25.021, F.S., sets out the terms of office for justices of the Supreme Court when they are elected.

Section 35.06, F.S., specifies the organization of the District Courts of Appeal and provides for election of the judges and terms of office for the elected judges.

B. EFFECT OF PROPOSED CHANGES:

HB 2163 amends only those sections in chapters 34, 101, 105 and 106, F.S., which specifically address the election of circuit or county court judges or to the retention of justices of the Supreme Court and judges of the District Court of Appeal to conform with the changes implemented in Constitutional Revision No. 7. Specifically, this bill amends current law to allow for the local option of how circuit and county court judges are to be selected: by election or by merit selection and retention.

The bill directs the Secretary of State to place on the ballot for the year 2000 general election the questions regarding circuit and county court judges being selected through merit selection and retention, rather than election. Under the provisions of this bill, the method of selection of circuit and county court judges may be placed on the ballot in any general election subsequent to the year 2000 general election through the petition process. The bill establishes the process by which political committees may be formed for the collection of petitions to place the question of the selection of circuit and county court judges on the ballot. This process provides for registration as a political committee, the petition form to be developed by the Secretary of State, and the process by which the Secretary of State and supervisors of elections will verify signatures and certify the ballot position of the question.

Further, the bill specifies the ballot language for the selection of circuit and county court judges. The Secretary of State is directed to notify the Supreme Court after each general election of those counties and circuits where the method of judicial selection has been changed.

Circuit and county court judges holding office at the time of a change in the selection process will not be affected by the change until the end of their term. At the election prior to the end of a judge's term of office, the judge will be required to stand for election or a retention vote depending on what process is to be used for selection of judges at that election.

The provisions in current law related to the term of office for elected Supreme Court justices and District Court of Appeals judges are repealed.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The Secretary of State will be responsible for adopting rules prescribing the style and requirements of the circuit court and county court forms for collection of signatures. Further, the Department of State has the authority to promulgate rules to carry out the provisions of this bill outlining the initiative method of selection for circuit and county court judges and procedures for placement on the ballot.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Secretary of State will be responsible for the certification process as it relates to the ballot position for circuit court judges. Local supervisors of elections will be responsible for the certification process as it relates to the ballot position for county court judges.

- (3) any entitlement to a government service or benefit?

Not applicable.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not applicable.

- (3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Not applicable.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not applicable.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Not applicable.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

Not applicable.

- (2) service providers?

Not applicable.

- (3) government employees/agencies?

Not applicable.

D. STATUTE(S) AFFECTED:

This bill substantially amends ss. 34.021, 35.06, 101.151, 101.161, 105.031, 105.041, 105.051, 105.061, 105.08, 106.011, and 106.08, F.S. This bill repeals s. 25.021, F.S. Three new sections are created.

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Undetermined at this time.

2. Recurring Effects:

Undetermined at this time. There will be some cost to the Secretary of State's office associated with verifying signatures on petitions and certifying the ballot position of circuit court judges, if any petitions are filed.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Undetermined at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Undetermined at this time.

2. Recurring Effects:

There will be some cost to the local Supervisors of Elections associated with verifying signatures on the petitions and certifying the ballot position of county court judges, if any petitions are filed.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Those persons wanting to place a change to the process for selection of judges on the ballot in a general election, other than in the year 2000, will be required to register as a political committee, pay the cost of printing petitions and pay for other costs associated with the petition process.

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2. Direct Private Sector Benefits:

Not applicable.

3. Effects on Competition, Private Enterprise and Employment Markets:

Not applicable.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

To the extent that this is an elections law, it is exempt from the mandates provision of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

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