



The Florida Senate

Interim Project Report 98-32

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Committee on Judiciary

Senator Fred R. Dudley, Chairman

IMPLEMENTATION OF ARTICLE V COST SHIFTING

SUMMARY

As a result of the efforts of the 1997 Constitutional Revision Commission, Florida voters will have the opportunity to vote on nine proposed amendments to the Florida Constitution on the November ballot. Proposed Revision 7 would shift the major costs of Florida's judicial system from the counties to the state. State revenues would fund the state courts system, state attorneys' and public defenders' offices, and court-appointed counsel. Revenues from filing fees and service charges would be used to fund the clerks' offices with state funds to supplement these to the extent necessary pursuant to a phase-in schedule established by general law to be fully effectuated by July 1, 2004. In addition to the available reports and records of the 1998 Constitutional Revision Commission, the issue of Article V cost shifting is examined in both The Article V Task Force Final Report (December 1995) and *Article V Funding: Historical Perspective, Legal Questions, and Local Reporting Systems*, Advisory Council on Intergovernmental Relations, Report No. 95-2 (March 1995). An in-depth review of this issue, its history and ramifications has been conducted by the Legislative Committee on Intergovernmental Relations. *Review of Costs Associated with Article V*, Report No. 98-3 (June 1998). Further, a 1998 interim project by the Senate Committees on Ways and Means Subcommittee D has attempted to develop strategies for increasing the percentage of obligations actually collected in order to minimize the cost impact on the state for future court system costs. the narrow purpose of this report is to address what, if any, amendments to substantive law passage of Proposed Revision 7 could necessitate.

BACKGROUND

A. The Florida Constitutional Revision Commission

Once every twenty years Florida's Constitution provides for the creation of a thirty-seven member revision commission for the purpose of reviewing Florida's Constitution and proposing changes for voter consideration. The Commission meets for approximately one year, it will travel the State of Florida, identify issues, perform research, and possibly recommend changes to the Constitution. The last comprehensive review of Florida's Constitution occurred approximately twenty years ago (1977-1978). Since 1978, Florida's population has grown by 63 percent. Equally significant is the projection that Florida's population will exceed 17 million by the year 2010. This astronomical population growth will impact the state in such areas as transportation, education, health care, natural resources, pollution and crime. The state's treatment of such important issues rests primarily in the Constitution, and the Revision Commission will be looking to the citizens of this state for direction and suggestions.

Our Purpose, CRC website, <http://www3.law.fsu.edu/crc/>

The Constitution Revision Commission (CRC) consisted of 37 members appointed by: the governor (15 members including the chair); the Senate President (9 members); the Speaker of the House (9 members); the Chief Justice (3 members); and the Attorney General (himself). Throughout the summer of 1997, the CRC held public meetings throughout the state to hear various proposals for changes to Florida's Constitution. CRC committee meetings were then held throughout the fall with the full CRC meeting through December 1997 and January 1998 to consider, debate, and vote on proposals. More public hearings were held throughout the spring of 1998 to hear public input on the proposals being considered by the CRC. When the work of the CRC was completed in May 1998, it had determined that 9 proposed revisions to Florida's

Constitution would be placed on the November ballot for the citizens of Florida to vote upon.

B. Proposed Revision 7

Proposed Revision 7 if adopted:

- Shifts the major costs of Florida's judicial system from the counties to the state. State revenues would fund the state courts system, state attorneys' and public defenders' offices, and court-appointed counsel. Revenues from filing fees and service charges would be used to fund the clerks' offices.
- Allows voters to decide whether to maintain the election system for trial judges in their county and judicial circuit or whether they want to opt in to the merit selection system. It also allows them to later opt out.
- Increases county court judges' terms from 4 to 6 years, consistent with the terms of circuit judges.
- Corrects a glitch in the staggering of terms for members of the Judicial Qualifications Commission.

Analysis of the Proposed Revisions, Revision 7 at a Glance, CRC website, <http://www3.law.fsu.edu/crc/>

This report focuses upon the portion of Proposed Revision 7 that would shift the cost of Florida's judicial system from the counties to the state. The actual text in pertinent part reads:

SECTION 14. Funding Judicial salaries.--

(a) All justices and judges shall be compensated only by state salaries fixed by general law. Funding for the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel, except as otherwise provided in subsection (c), shall be provided from state revenues appropriated by general law.

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of

the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.

(c) No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

(d) The judiciary shall have no power to fix appropriations.

ARTICLE XII

SCHEDULE

SECTION 22. Schedule to Article V Amendment.--

(a) Commencing with fiscal year 2000-2001, the legislature shall appropriate funds to pay for the salaries, costs, and expenses set forth in the amendment to Section 14 of Article V pursuant to a phase-in schedule established by general law.

(b) Unless otherwise provided herein, the amendment to Section 14 shall be fully effectuated by July 1, 2004.

The following have been cited and pros and cons of the adoption of Proposed Revision 7:

PRO: Relieves counties of more than \$200 million in costs of operating the state courts system, freeing up those funds for local uses.

CON: The Legislature can resolve this issue without having to place it in the Constitution.

PRO: Promotes uniformity of the state courts system, making justice less dependent on a county's size and wealth.

CON: This is an overly complicated method of allocating the costs to run our state courts.

Analysis of the Proposed Revisions, Revision 7 at a Glance, CRC website, <http://www3.law.fsu.edu/crc/>

METHODOLOGY

Numerous reports containing information regarding the shifting of Article V funding were studied in the preparation of this report. The majority of those sources are cited within the body of this report. Both the Article V Task Force and Constitutional Revision Commission documents and proceedings regarding the issue were reviewed. In addition, discussions with representatives from various entities including OSCA, The Association of Counties, The Association of County Clerks, and the Comptroller were useful in the compilation of this report. Applicable portions of the Florida Constitution, statutes, court rules and budgetary process were also reviewed.

FINDINGS

A. Article V Costs

1. The Uniform Chart of Accounts

The first step to shifting any of the costs of the court system from the counties to the state is to determine what the costs are and the actual source of the funds. Chapter 95-400, Laws of Florida created the Uniform Chart of Accounts Development Committee to "develop and implement a uniform chart of accounts." s. 218.325(1), F.S.(1997). A "detailed, uniform chart of accounts and financial reporting system for court and justice related agency expenditures and revenues" was to be developed by the committee. s. 218.325(2), F.S.(1997). The Uniform Chart of Accounts was to be implemented by rule by the Comptroller by July 1, 1996. s. 3, Chapter 95-400, Laws of Florida. The Uniform Chart of Accounts has been developed and

the first data from the implementation of this methodology is expected to be available in December 1998.

2. The Article V Task Force

The Article V Task Force was established by the Florida Legislature with a mandate to review the judicial article of the constitution of the State of Florida. Chapters 94-138 and 95-110, Laws of Florida. The Task Force was composed of 23 members who held 18 public hearings and workshops and ultimately made 18 recommendations to "improve the administration of justice in Florida." *Article V Task Force Final Report*, Preface (December 1995). Recommendation 18 supported shifting Article V. Costs from the counties to the state. In doing so it specifically stated that: "The Task Force, however, does *not* recommend the adoption of a constitutional amendment to implement this recommendation." *Article V Task Force Final Report*, Executive Summary, p. 10-11 (December 1995)(emphasis supplied).

3. The Legislative Committee on Intergovernmental Relations

The Legislative Committee on Intergovernmental Relations has issued a report containing a historical perspective of the Article V issue and estimates of the potential costs of Proposed Revision 7 to both state and local governments. *Review of Costs Associated with Article V*, Report No. 98-3, (June 1998). This comprehensive report summed up the shift in funding responsibility as follows:

According to LAIR projections, the shift in costs to the state by the FY 2005-2005, would mean an additional expense of \$320 million dollars if there were no revenue offset, through a transfer of fines and fees currently going to local governments. The amount would be approximately \$130 in new expenses to the state if such fines and fees currently going to local governments were shifted to the state coffers. In addition, if the state is required to provide supplemental funding to the Clerks of Court office performing court-related functions this amount could be much larger. For example, if there were no difference in the percentage of fees and service charges collected compared to the clerk expense in FY 95/96, then the projected expense to the state would

potentially be an additional \$200 million in FY 2004-2005. No matter the magnitude of these scenarios, the state will still be required to pay much more for the judicial system than it has previously.

Review of Costs Associated with Article V, Report No. 98-3 at 46 (June 1998)(emphasis in original).

Using the most recent data available, FY 1995-1996, the percentage of more than \$1 billion Article V costs provided by the state, local governments and system users would shift as follows in the event Proposed Revision 7 passes:

	STATE	LOCAL	USERS
current	45.5%	36.4%	18.1%
under rev. 7	51.8%	17.0%	31.1%

B. The Need to Amend Substantive Law

Proposed Revision 7 includes a phase-in schedule established by general law to be fully effectuated by July 1, 2004. It has been recommended that the Legislature work with other groups to develop a plan structured to take on the fiscal responsibility in annual increments. *Review of Costs Associated with Article V*, Report No. 98-3 at 46 (June 1998). The recommendation includes a suggestion that the areas in which there is the highest accountability as to current expenditure such as the cost of court appointed counsel or court reporters be shifted first. *Id.* The process could include development of a list of specific judicial areas to examine prior to the state’s assuming related financial costs. *Id.* It was noted that “[p]otentially such an examination may lead to finding more efficient methods of operating the current system as well as developing “benchmarks” for future evaluations.” *Id.*

If Proposed Revision 7 passes and an incremental shift of Article V costs begins, any plan developed and adopted would be based upon fiscal policy and would be handled through the state’s budgetary process. Amendments to substantive law will be attendant in this process. For example, sections of Chapters 925 and 927, F.S., related to the reimbursement of appointed counsel in conflict cases, should be adjusted

to reflect these as a state expense. Most of the substantive changes necessitated by the cost shifting will be of this purely technical nature changing the term county to state. Some changes will need to be made in general law to clarify exactly what functions and positions are to be funded by state revenues. However, any such amendments would be directly tied to the particular incremental change determined by fiscal policy. Further, there has been no specific determination by the Legislature as to what is and is not an “Article V cost” for purposes of implementing Proposed Revision 7. As such, it cannot be determined in this report what substantive changes should be made prior to those fiscal policy determinations.

RECOMMENDATIONS

Creation of a task force of key legislatures, court and county personnel to assist in development of a plan for incremental implementation of Proposed Revision 7.

- Development and adoption of a detailed, inclusive definition of “Article V Costs” to be assumed by the state to clarify which current expenses are to be included in the phase-in schedule established by general law to be fully effectuated by July 1, 2004.
- Development of an inclusive list of general laws to be amended and a timetable for the amendment of those laws based upon the plan for implementation of Proposed Revision 7 and the definition of Article V costs developed.
- Determination of those expenditures included in the definition of “Article V costs” developed for purposes of implementing Proposed Revision 7 where accurate fiscal information is currently available and accountability is highest.
- Development and implementation of a methodology for determining fiscal information and increasing accountability for those expenditures included in the definition of “Article V costs” developed for purposes of implementing Proposed Revision 7 for which dependable fiscal data is not readily available.