

STORAGE NAME: h0437s2.go

DATE: March 31, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/CS/HJR 437

RELATING TO: Elected public officers

SPONSOR(S): Committees on Governmental Operations & Election Reform & Representative Miller

STATUTE(S) AFFECTED: Creates s. 10, Article II, Florida Constitution

COMPANION BILL(S):

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

- (1) ELECTION REFORM (GRC) YEAS 4 NAYS 3
- (2) GOVERNMENTAL OPERATIONS (GRC) YEAS 3 NAYS 2
- (3) RULES, RESOLUTIONS & ETHICS (PC)
- (4)
- (5)

I. SUMMARY:

CS/CS/HJR 437 provides that an elected public officer relinquishes his office upon the officer's failure to maintain registration as a member of the same political party in which the officer was registered when qualified and elected to office. However, this joint resolution provides that if an officer changes party affiliation within 60 days of qualifying for the same or a different office no vacancy in the office is created. The provisions of CS/CS/HJR 437 will not apply to officers elected in nonpartisan elections.

CS/CS/HJR 437 may raise certain constitutional issues regarding freedom of association (See Comments).

The fiscal impact of this bill on state and local governments is indeterminate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 3, Article X, Florida Constitution, provides that a “[v]acancy in office shall occur upon the creation of an office, upon the death of the incumbent or his removal from office, resignation, succession to another office, unexplained absence for sixty consecutive days, or failure to maintain the residence required when elected or appointed, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term.”

There are three methods by which an officeholder may be removed from office:

1. The governor, lieutenant governor, members of the cabinet, justices of the supreme court, judges of district courts of appeal, judges of circuit courts, and judges of county courts shall be liable to impeachment for misdemeanor in office. The House of Representatives has the power by two-thirds vote to impeach one of these officers. All impeached officials shall be tried by the Senate (See Art.III, Sec. 17, Florida Constitution).
2. The governor may by executive order impeach any state or county officer for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his official duties, or commission of a felony. Suspensions of state and county officers shall be referred to the senate for removal or reinstatement to office (See Art. IV, Sec. 7(a-b), Florida Constitution).
3. The governor may suspend any elected municipal officer indicted for a crime until acquitted (See Art. IV, Sec. 7(c), Florida Constitution).

Currently, no statutory or constitutional provision limits an elected public officer’s ability to change political parties before, during, or after the officer qualifies for and is elected to an office. Section 111.012, F.S., defines “elected public officer” as any individual who holds an elective state, county, municipal, or school or other district office or position.

B. EFFECT OF PROPOSED CHANGES:

This resolution appears to create a strong disincentive, in most situations, for elected public officers who wish to change political parties while in office. In general, if a person qualifies and is elected as a member of one party, that person automatically relinquishes their office upon failure to maintain registration with their original party.

CS/CS/HJR 437 provides an exception to the “automatic relinquishment” provision for elected public officers currently in office. Such a public elected officer may change party affiliation “within sixty days of qualifying” for reelection to the same office or election to a different office. In other words, an elected public official may change party affiliations if, within 60 days, that officer qualifies for reelection to the same office or election to a different office.

This resolution provides that no vacancy will occur when an officer changes parties if the office to which the officer was elected is an office that must be filled by nonpartisan

election. For example, judicial officeholders are not restricted from changing party affiliation because a judicial office is a nonpartisan office pursuant to s. 105.011, F.S.

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?

No.

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

No.

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

No.

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?

No.

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

CS/CS/HJR 437 creates a strong disincentive for certain officeholders wishing to change their political party while holding office — by virtue of the fact that they will lose that office if they change parties. This strong disincentive may infringe on the officeholder's freedom of association rights under the First Amendment to the U.S. Constitution (See Comments).

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?

Not applicable.

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. SECTION-BY-SECTION ANALYSIS:

Not applicable.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election. Costs of advertising vary depending on the length of the amendment; however, it is estimated that the cost per amendment averages \$35,000.

2. Recurring Effects:

Indeterminate. The only possible recurring cost of this provision would be the cost of holding special elections to fill vacancies in offices caused by this resolution. There is no way to project the number of such vacancies that may occur.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election. Costs of advertising vary depending on the length of the amendment; however, it is estimated that the cost per amendment averages \$35,000.

The only possible recurring cost of this provision would be the cost of holding special elections to fill vacancies in office caused by this resolution. There is no way to project the number of such vacancies that may occur; therefore, any recurring costs are indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The only possible recurring cost of this provision would be the cost of holding special elections to fill vacancies in offices caused by this resolution. There is no way to project the number of such vacancies that may occur; therefore, the recurring costs are indeterminate.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This resolution does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This resolution does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This resolution does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The First and Fourteenth amendments to the U.S. Constitution guarantee the freedom to associate with others for the common advancement of political beliefs and ideas. See NAACP v. Alabama, 357 U.S. 449 (1958). This freedom of association encompasses the right to associate with the political party of one's choice. See Kusper v. Pontikes, 414 U.S. 51 (1973); Buckley v. Valeo, 424 U.S. 1 (1976); Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986). Therefore, the state may not prohibit a person from changing his political party.

The government "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests." Perry v. Sinderman, 408 U.S. 593, 597 (1973). If the government

could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to "produce a result which [it] could not command directly."

Id. at 597; quoting, Speiser v. Randall, 357 U.S. 513, 526 (1958). It is not clear whether or not holding a publicly elected office is a "benefit" in the sense that the Court describes.

In the Kusper case, the United States Supreme Court held unconstitutional an Illinois law prohibiting a voter from voting in the primary election of one political party if that voter had voted in the primary of another party within the last 23 months. The Court held that this law unnecessarily placed a substantial restriction on a voter's freedom to change political parties — even though a state may have a legitimate interest in preventing voter "raiding" of political parties (i.e., allowing voters with sympathies for one party vote in an opposing party's primary to undermine that opposing party).

CS/CS/HJR 437 appears to limit the "raiding" of political parties by elected officers rather than voters. Although this may be a legitimate objective of state law, a court might follow the Kusper Court's reasoning and hold the provisions contained in CS/CS/HJR 437 violative of the U.S. Constitution. However, staff could find no Supreme Court case that specifically or definitively addresses the constitutionality of a restriction like that contained in CS/CS/HJR 437.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute adds a provision that allows an elected officeholder to change political party affiliation within 60 days of qualifying for election to the same or a different office without creating a vacancy in the office currently held.

The committee substitute for the committee substitute adds language clarifying that a publicly elected officer may change his or her party affiliation while in office if and only if that officer qualifies for reelection to the same office or election to a different office within 60 days of changing party affiliation.

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VII. SIGNATURES:

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