

**STORAGE NAME:** h1955.jud  
**DATE:** March 14, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
JUDICIARY  
ANALYSIS**

**BILL #:** HB 1955 (PCB JUD 00-07)  
**RELATING TO:** Ballot Summaries  
**SPONSOR(S):** Committee on Judiciary and Rep. Byrd  
**TIED BILL(S):**

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

- (1) JUDICIARY YEAS 8 NAYS 0
  - (2)
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

This bill would change the requirements regarding ballot summaries for constitutional amendments proposed by the Legislature. Section 101.161(1), Florida Statutes, requires that the substance of the amendment "shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." This bill would exempt constitutional amendments and ballot language proposed by the Legislature by joint resolution from those requirements. The substance of the amendment would still be printed on the ballot but the Legislature would be free to draft the language as appropriate to state the substance of the amendment.

The bill would also change the ballot language requirements in elections where voters determine whether to select circuit and county court judges by election or by merit selection. Rather than using the phrase "merit selection," the bill explains that voters can choose between directly electing judges or allowing judges to be selected by the judicial nominating commission, appointment by the governor, and retention by popular vote.

The bill would be effective upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Article 11 of the Florida Constitution provides the following methods for amending the state constitution:

- (1) a joint resolution passed by three-fifths of the members of each house of the legislature, Article 11, Section 1, Fla. Const.;
- (2) a proposal by the constitutional revision commission, Article 11, Section 2, Fla. Const.;
- (3) a proposal by a citizen's initiative, Article 11, Section 3, Fla. Const.;
- (4) a revision by constitutional convention, Article 11, Section 4, Fla. Const.; or
- (5) a proposal by the taxation and budget reform commission, Article 11, Section 6, Fla. Const.

Proposals to amend the constitution are placed on the ballot and are effective if approved by the voters. Art. 11, Section 5, Fla. Const.

Section 101.161(1), Florida Statutes, requires the "substance of such amendment" to be printed in "clear and unambiguous language" on the ballot. The statute requires that the substance of the amendment "be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." s. 101.161(1), F.S.

In a number of cases, the Florida Supreme Court has struck down proposed constitutional amendments for failure to comply with section 101.161, Florida Statutes. In Advisory Opinion to Atty. Gen. re Term Limits Pledge, 718 So. 2d 798, 803 (Fla. 1998), the court explained that the ballot title and summary must "state in clear and unambiguous language the chief purpose of the measure." The court said that a proposed constitutional amendment could not be placed on the ballot because it found the ballot title and summary did not clearly describe the scope of the amendment. It is not uncommon for the court to prevent proposed constitutional amendments from being placed on the ballot due to ballot summary problems. See e.g. Advisory Opinion to the Atty. Gen. re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563 (Fla. 1998); Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Commission, 705 So. 2d 1351 (Fla. 1998); Advisory Opinion to the Attorney General re People's Property Rights Amendments Providing Compensation for Restricting Real Property Use may Cover Multiple Subjects, 699 So. 2d 1304 (Fla. 1997); Advisory Opinion to Attorney General Limited Political Terms in Certain Electric Offices, 592 So. 2d 225 (Fla. 1991).

Currently, the amendment placed on the ballot by HJR 3505 and approved by the voters in 1998 is being challenged in the Florida Supreme Court. In Armstrong v. Harris, Case No. 95,223, the plaintiffs argue that the ballot summary for Amendment 2, passed in November, 1998, is misleading because it fails to disclose that it may affect citizens' rights in non-capital

as well as capital cases, that the title is misleading because the amendment is not necessary to preserve the death penalty, and that the amendment may alter the constitutional separation of powers. See Initial Brief of Appellant, Case No. 95,223. Briefing was completed in June, 1999, and the Court heard oral argument in September, 1999. The Court has not yet issued an opinion.

The bill also amends ballot language relating to the selection and retention of circuit and county court judges. Currently, circuit and county court judges are elected by popular vote. In 1998, Article V of the Florida Constitution was amended to allow a local option in each county or circuit to select and retain circuit or county court judges by merit selection and retention. Merit selection and retention is the method currently used to select and retain justices of the Florida Supreme Court and judges of the District Courts of Appeals. Art. V, ss. 10, 11, Fla. Const. If a vacancy occurs on one of those courts, a list of candidates is submitted to the governor by the appropriate judicial nominating commission. Art. V, s. 11, Fla. Const. The governor selects the justice or judge and that justice or judge is subject to a "yes/no" retention vote every six years. Art. V, s. 10, Fla. Const.

Section 101.161(3)(a), Florida Statutes, requires that ballots for the general election in the year 2000 contain a statement allowing voters to determine whether to select judges by merit selection or by election. The statement reads:

"Shall [circuit or county] court judges in the [appropriate circuit or county] be selected through merit selection and retention?"

ss. 101.161(3)(c), 101.161.(3)(e), F.S.

The statute does not define "merit selection."

After the method of selecting judges is determined in the 2000 general election, a referendum to change the method may be placed on the ballot if ten percent of the voters in the county or circuit sign a petition to place the issue on the ballot. Art. V, s. 10(3), Fla. Const. Currently, the above ballot language would be used to determine whether to change from election to merit retention. If the issue is to change from merit selection to election, the following language is used:

"Shall [circuit or county] court judges in the [appropriate circuit or county] be selected by vote of the electorate of the [circuit or county]?"

ss. 101.161(3)(d), 101.161(3)(f), F.S.

#### C. EFFECT OF PROPOSED CHANGES:

Section 1 of the bill amends s. 101.161(1), F.S. Currently, s. 101.161(1), F.S., requires that the substance of the amendment "shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." This bill would exempt constitutional amendments proposed by the Legislature by joint resolution from those requirements. The substance of the amendment would still be printed on the ballot but the Legislature would be free to draft the language as appropriate to state the substance of the amendment. Since the court has used this language to strike proposed constitutional amendments, this bill should limit the court's ability to strike constitutional amendments proposed by joint resolution. The requirements would remain in effect for amendments proposed by other means.

This bill would treat constitutional amendments proposed by the Legislature differently from amendments proposed by other means. However, it would not be the only instance where amendments proposed by the Legislature are treated differently. Amendments proposed by initiative, pursuant to Article 11, Section 3 of the Florida Constitution, can only embrace one subject while amendments proposed by the Legislature need not comply with that single subject limitation. The Florida Supreme Court has explained this difference:

[T]he single-subject limitation exists because section 3 [authorizing amendments by initiative] does not afford the same opportunity for public hearing and debate that accompanies the proposal and drafting processes of sections 1, 2, and 4.

Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Commission, 705 So. 2d 1351, 1353 (Fla. 1998).

The constitution also requires a three-fifths majority in each house of the legislature before a joint resolution can be placed on the ballot.

The bill also amends section 101.161(3), Florida Statutes. The constitution requires that a vote to determine whether circuit and county court judges be elected or selected by merit selection be held during the general election in 2000. Art. V, s. 10(3), Fla. Const. Whatever the outcome of the vote in 2000, voters in each county or circuit may place the election/merit selection issue on the ballot in future elections by obtaining petitions signed by ten percent of the applicable electorate. *Id.* Section 101.161(3), Florida Statutes, contains the ballot language used in such referenda. While the statute uses the phrase "merit selection," it does not define it. This bill would change the ballot language as follows:

- (a) In cases where a circuit or county elects judges, the ballot language to change the method to merit selection would read, "Shall the method of selecting [circuit or county] judges in the [appropriate circuit or county] be changed from election by a vote of the people to selection by the judicial nominating commission and appointment by the governor with subsequent terms determined by a retention vote of the people?"
- (b) In cases where a circuit or county selects judges by merit selection, the ballot language to change the method to election would read, "Shall the method of selecting [circuit or county] judges in the [appropriate circuit or county] be changed from selection by the judicial nominating commission and appointment by the governor with subsequent terms determined by a retention vote of the people to election by a vote of the people?"

Under this bill, the ballot language explains the merit selection and retention process rather than only using the phrase "merit selection and retention".

Section 2 of the bill provides that it will take effect upon becoming law.

#### D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

Article 11, Section 5 of the Florida Constitution requires that each proposed amendment be published in a newspaper of general circulation in each county twice prior to the general election. In 1998, 13 proposed amendments were advertised at a cost of approximately \$615,000, or approximately \$47,300 per amendment, according to the Division of Elections. If the length of ballot summaries were to increase, advertising costs could increase.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

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

The bill does not reduce the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

According to the Division of Elections, 27 counties use a punch card voting system. If ballot summaries are significantly longer, some counties could have a space problem with their ballots.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judiciary heard the bill on March 13, 2000. An amendment was offered that amended section 101.161(3), Florida Statutes, to change the ballot language used in referenda to decide whether to change the method of selecting circuit and county judges from election to merit selection or from merit selection to election. The amendment eliminated the phrase "merit selection" and rewrote the ballot question so that voters would choose between "election by a vote of the people" and "selection by the judicial nominating commission and appointment by the governor with subsequent terms determined through a retention vote of the people." The amendment was adopted and the bill was reported favorably.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

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L. Michael Billmeier, J.D.

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P.K. Jameson, J.D.