

STORAGE NAME: h1955s1z.jud

DATE: October 6, 2000

****AS PASSED BY THE LEGISLATURE****

CHAPTER #: 2000-361, Laws of Florida

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
FINAL ANALYSIS**

BILL #: CS/HB 1955 (PCB JUD 00-07) [Passed as SB 2104]

RELATING TO: Ballot Summaries

SPONSOR(S): Committee on Election Reform, Committee on Judiciary, and Reps. Byrd and Flanagan

TIED BILL(S):

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

- (1) JUDICIARY YEAS 8 NAYS 0
- (2) ELECTION REFORM YEAS 7 NAYS 2
- (3)
- (4)
- (5)

I. SUMMARY:

THIS ANALYSIS APPLIES TO SB 2104

SB 2104 changes 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 exempts 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 also changes the ballot language requirements in elections where voters determine whether to select circuit and county court judges by election or by merit selection and retention. 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, appointed by the Governor, and retained by popular vote. The Florida Supreme Court found the ballot language created in this bill to determine the method of selection of circuit and county judges was not defective in Kainen v. Harris, Case No. SC00-1644 (Fla. October 6, 2000).

The bill changes the order in which circuit judges are listed on the ballot. Currently, candidates for circuit judge are listed alphabetically. The bill requires that the candidates be listed in the order determined by lot by the Division of Elections after the close of the qualifying period.

This bill may result in a minimal fiscal impact if the length of ballot summaries is significantly increased.

SB 2104 passed the House on May 3, 2000. (HJ 1509). It was signed by the Governor on June 23, 2000, and became Chapter 2000-361, Laws of Florida.

The bill is effective July 1, 2000.

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

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

Most constitutional amendments submitted to the voters must be approved by a majority of the electors voting on the specific amendment. Art X., s. 12(d), Fla. Const.; Art. XI, s. 5(c), Fla. Const. Constitutional amendments which impose a new state tax or fee, however, must be approved by two-thirds of the electors voting in the election in which the proposed amendment is considered. Art. XI, s. 7, Fla. Const.

In addition to constitutional amendments, various local referenda appear on ballots pursuant to special act, resolution, or ordinance.

Section 101.161(1), F.S., provides that whenever a constitutional amendment or other public measure is submitted to the voters, the substance of the amendment or measure shall be printed on the ballot in clear and unambiguous language, along with a ballot title. The substance of the amendment is an explanatory statement of the chief purpose of the amendment, which may not exceed 75 words in length. The ballot title, the caption by which the measure is commonly referred, may not exceed 15 words in length. The wording of the substance of the amendment and the ballot title are required to be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance.

In a number of cases, the Florida Supreme Court has kept constitutional amendments off the ballot, effectively striking down the proposed constitutional amendments, for failure to comply with s. 101.161, F.S. For example, 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 the 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. The court has explained that the purpose of the statute is "to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." Advisory Opinion to Atty. Gen. re Fee on Everglades Sugar Protection, 681 So.2d 1124, 1127 (Fla. 1996).

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).

After the bill passed, the Florida Supreme Court issued Armstrong v. Harris, Case No. 95,223 (Fla. September 7, 2000). In Armstrong, the court removed amendments from the state constitution made by HJR 3505 and approved by the voters in 1998 because it found the ballot summary to be misleading. The Attorney General filed a motion for rehearing and the case is currently pending.

In Florida, 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), F.S., 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 and retention, or by election. The statement is to read:

"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 what is meant by "merit selection and retention."

Following the 2000 general election, 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. The above ballot language would be used to determine whether to change from election to merit selection and retention. If the issue is to change from merit selection and retention to election, the following language is to be 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.

Currently, candidates for the office of circuit judge are placed on the ballot in alphabetical order. s. 105.041, F.S.

C. EFFECT OF PROPOSED CHANGES:

Current law requires the substance of the amendment or measure to be printed on the ballot in clear and unambiguous language, along with a ballot title, and for the substance of the amendment (an explanatory statement of the chief purpose of the amendment) not to exceed 75 words in length. SB 2104 provides an exception to the ballot summary requirements of s. 101.161, F.S., for amendments proposed by joint resolution of the Legislature. The ballot summary requirements in s. 101.161, F.S., would remain in effect for constitutional amendments proposed by other means and for local public measures.

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. For example, amendments proposed by initiative, pursuant to Article XI, Section 3 of the Florida Constitution, can only embrace one subject, while amendments proposed by the Legislature need not comply with the 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.

SB 2104 also amends s. 101.161(3), F.S. 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), F.S., contains the ballot language that is to be used in such referenda. While the statute uses the phrase "merit selection," this term is not defined. 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."

The bill also changes the order in which candidates for circuit judge will be listed on the ballot. Under the bill, the order for the first primary election will be determined by lot by the director of the Division of Elections after the close of the qualifying period. The order will remain the same throughout the election process.

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:

Each proposed 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 for advertising vary depending on the length of the amendment; however it is estimated that the cost per amendment averages about \$47,000.

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. However, this cost is expected to be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

Ballot production costs could increase for certain counties. With unlimited ballot summaries, those counties using a punch card voting system might have space problems with their ballots.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is an act relating to elections.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

See above statement.

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

See above statement.

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.

After the bill became law, Dennis Kainen and others petitioned the Florida Supreme Court for a writ of mandamus, arguing that the ballot language for circuits and counties to determine how to select judges was unclear and ambiguous. The Florida Supreme Court denied the petition, holding that the language was not clearly and conclusively defective. See Kainen v. Harris, Case No. SC00-1644 (Fla. October 6, 2000).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

THIS SECTION OF THE ANALYSIS DISCUSSES HB 1955

The Committee on Judiciary heard PCB JUD-07 on March 8, 2000. An amendment was offered that amended s.101.161(3), F.S., 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. The bill became HB 1955.

The Committee on Election Reform heard the bill on March 23, 2000. An amendment was offered that amended s. 101.161(1), F.S., to provide an exception from the "clear and unambiguous" standard for joint resolutions agreed to by three-fifths of the membership of each house of the Legislature. Under the amendment, the substance of the ballot language of a constitutional amendment or other public measure proposed by a joint resolution of the Legislature shall be deemed to be clear and unambiguous for purposes of s. 101.161, F.S. The amendment was adopted and the bill was made a committee substitute.

The bill was amended on the floor. (HJ 1208). On May 3, 2000, SB 2104 was substituted. (HJ 1509). The Senate bill added a provision to require the candidates for circuit judge appear on the ballot in a random order as determined by the Department of State, rather than alphabetically. The Senate bill did not contain the language deeming language proposed by the Legislature as clear and unambiguous. SB 2104 passed the House (HJ 1509) and was signed by the Governor. It became Chapter 2000-361, Laws of Florida.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

L. Michael Billmeier, J.D.

P.K. Jameson, J.D.

AS REVISED BY THE COMMITTEE ON ELECTION REFORM:

Prepared by:

Staff Director:

Dawn Kimmel Roberts, Esq.

Dawn Kimmel Roberts, Esq.

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

L. Michael Billmeier, J.D.

P.K. Jameson, J.D.