

FLORIDA'S 1998 CONSTITUTION REVISION COMMISSION
Proposed Amendments to Article V

The 1998 CRC has prepared a revision to Article V which will appear on the November 1998 ballot, along with other constitutional amendments proposed by the CRC and the Legislature. The Article V revision contains several amendments to Article V, all of which must be voted on as a single revision known as "No. 7 Constitutional Revision."

This document, prepared by the Office of the State Courts Administrator, contains three items: (1) the ballot title and summary, (2) the actual amendment language, and (3) a statement of intent by CRC members Alan Sundberg and Jon Mills. (Sundberg sponsored the amendment regarding Article V funding, and Mills chaired the CRC Article V Subcommittee.)

Ballot Title and Summary

No. 7

CONSTITUTIONAL REVISION

Article V, ss. 10, 11(a)-(b), 12(a), (f), 14; Article XII, s. 22

Ballot Title: LOCAL OPTION FOR SELECTION OF JUDGES AND FUNDING OF STATE COURTS

Ballot Summary: Provides for future local elections to either retain current election of circuit and county judges or to choose merit selection by appointment and retention by vote to retain or not; provides for election procedure for subsequent changes to selection of judges; increases county judges' terms to six years; corrects judicial qualifications commission term of office; allocates state court system funding among state, counties, and users of the courts.

Amendment Language

ARTICLE V
JUDICIARY

SECTION 10. Retention; election and terms.--

(a) Any justice ~~or judge of the supreme court or any judge of a district court of appeal~~ may qualify for retention by a vote of the electors in the general election next preceding the expiration of ~~the justice's or judge's~~ his term in the manner prescribed by law. If a justice or judge is ineligible or fails to qualify for retention, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge. When a justice ~~of the supreme court or a judge of a district court of appeal~~ so qualifies, the ballot shall read substantially as follows:

"Shall Justice (or Judge) ... (name of justice or judge) ... of the... (name of the court) ... be retained in office?" If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to retain, the justice or judge shall be retained for a term of six years. ~~The term of the justice or judge retained shall commence commencing~~ on the first Tuesday after the first Monday in January following the general election. If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to not retain, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.

(b)(1) The election of circuit judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that circuit approve a local option to select circuit judges by merit selection and retention rather than by election. The election of circuit judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(2) The election of county court judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that county approve a local option to select county judges by merit selection and retention rather than by election. The election of county court judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(3)a. A vote to exercise a local option to select circuit court judges and county court judges by merit selection and retention rather than by election shall be held in each circuit and county at the general election in the year 2000. If a vote to exercise this local option fails in a vote of the electors, such option shall not again be put to a vote of the electors of that jurisdiction until the expiration of at least two years.

b. After the year 2000, a circuit may initiate the local option for merit selection and retention or the election of circuit judges, whichever is applicable, by filing with the custodian of state records a petition signed by the number of electors equal to at least ten percent of the votes cast in the circuit in the last preceding election in which presidential electors were chosen.

c. After the year 2000, a county may initiate the local option for merit selection and retention or the election of county court judges, whichever is applicable, by filing with the supervisor of elections a petition signed by the number of electors equal to at least ten percent of the votes cast in the county in the last preceding election in which presidential electors were chosen. ~~Circuit judges and judges of county courts shall be elected by vote of the qualified electors within the territorial jurisdiction of their respective courts. The terms of circuit judges and judges of county courts shall be for six years. The terms of judges of county courts shall be for four years.~~

SECTION 11. Vacancies.--

(a) Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill ~~the~~ each vacancy ~~on the supreme court or on a district court of appeal~~ by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission.

(b) The governor shall fill each vacancy on a circuit court or on a county court, wherein the judges are elected by a majority vote of the electors, by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.

SECTION 12. Discipline; removal and retirement.--

(a) JUDICIAL QUALIFICATIONS COMMISSION.

A judicial qualifications commission is created.

(1) There shall be a judicial qualifications commission vested with jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966, (without regard to the effective date of this section) demonstrates a present unfitness to hold office, and to investigate and recommend the discipline of a justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966 (without regard to the effective date of this section), warrants such discipline. For purposes of this section, discipline is defined as any or all of the following: reprimand, fine, suspension with or without pay, or lawyer discipline. The commission shall have jurisdiction over justices and judges regarding allegations that misconduct occurred before or during service as a justice or judge if a complaint is made no later than one year following service as a justice or judge. The commission shall have jurisdiction regarding allegations of incapacity during service as a justice or judge. The commission shall be composed of:

- a. Two judges of district courts of appeal selected by the judges of those courts, two circuit judges selected by the judges of the circuit courts and two judges of county courts selected by the judges of those courts;
- b. Four electors who reside in the state, who are members of the bar of Florida, and who shall be chosen by the governing body of the bar of Florida; and

c. Five electors who reside in the state, who have never held judicial office or been members of the bar of Florida, and who shall be appointed by the governor.

(2) The members of the judicial qualifications commission shall serve staggered terms, not to exceed six years, as prescribed by general law. No member of the commission except a judge shall be eligible for state judicial office while acting as a member of the commission and for a period of two years thereafter. No member of the commission shall hold office in a political party or participate in any campaign for judicial office or hold public office; provided that a judge may campaign for judicial office and hold that office. The commission shall elect one of its members as its chairperson.

(3) Members of the judicial qualifications commission not subject to impeachment shall be subject to removal from the commission pursuant to the provisions of Article IV, Section 7, Florida Constitution.

(4) The commission shall adopt rules regulating its proceedings, the filling of vacancies by the appointing authorities, the disqualification of members, the rotation of members between the panels, and the temporary replacement of disqualified or incapacitated members. The commission's rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. The commission shall have power to issue subpoenas. Until formal charges against a justice or judge are filed by the investigative panel with the clerk of the supreme court of Florida all proceedings by or before the commission shall be confidential; provided, however, upon a finding of probable cause and the filing by the investigative panel with said clerk of such formal charges against a justice or judge such charges and all further proceedings before the commission shall be public.

(5) The commission shall have access to all information from all executive, legislative and judicial agencies, including grand juries, subject to the rules of the commission. At any time, on request of the speaker of the house of representatives or the governor, the commission shall make available all information in the possession of the commission for use in consideration of impeachment or suspension, respectively.

(f) SCHEDULE TO SECTION 12.

(1) Except to the extent inconsistent with the provisions of this section, all provisions of law and rules of court in force on the effective date of this article shall continue in effect until superseded in the manner authorized by the constitution.

(2) After this section becomes effective and until adopted by rule of the commission consistent with it:

a. The commission shall be divided, as determined by the chairperson, into one investigative panel and one hearing panel to meet the responsibilities set forth in this section.

b. The investigative panel shall be composed of:

1. Four judges,
2. Two members of the bar of Florida, and
3. Three non-lawyers.

c. The hearing panel shall be composed of:

1. Two judges,
2. Two members of the bar of Florida, and
3. Two non-lawyers.

d. Membership on the panels may rotate in a manner determined by the rules of the commission provided that no member shall vote as a member of the investigative and hearing panel on the same proceeding.

e. The commission shall hire separate staff for each panel.

f. The members of the commission shall serve for staggered terms of six years.

g. The terms of office of the present members of the judicial qualifications commission shall expire upon the effective date of the amendments to this section approved by the legislature during the regular session of the legislature in 1996 and new members shall be appointed to serve the following staggered terms:

1. Group I.--The terms of five members, composed of two electors as set forth in s. 12(a)(1)c. of Article V, one member of the bar of Florida as set forth in s. 12(a)(1)b. of Article V, one judge from the district courts of appeal and one circuit judge as set forth in s. 12(a)(1)a. of Article V, shall expire on December 31, 1998.

2. Group II.--The terms of five members, composed of one elector as set forth in s. 12(a)(1)c. of Article V, ~~two members~~ ~~one member~~ of the bar of Florida as set forth in s. 12(a)(1)b. of Article V, one circuit judge and one county judge as set forth in s. 12(a)(1)a. of Article V shall expire on December 31, 2000.

3. Group III.--The terms of five members, composed of two electors as set forth in s. 12(a)(1)c. of Article V, one member of the bar of Florida as set forth in s. 12(a)(1)b., one judge from the district courts of appeal and one county judge as set forth in s. 12(a)(1)a. of Article V, shall expire on December 31, 2002.

h. An appointment to fill a vacancy of the commission shall be for the remainder of the term.

I. Selection of members by district courts of appeal judges, circuit judges, and county court judges, shall be by no less than a majority of the members voting at the respective courts' conferences. Selection of members by the board of governors of the bar of Florida shall be by no less than a majority of the board.

j. The commission shall be entitled to recover the costs of investigation and prosecution, in addition to any penalty levied by the supreme court.

k. The compensation of members and referees shall be the travel expenses or transportation and per diem allowance as provided by general law.

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 for 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 and 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.

Statement of Intent by Sundberg and Mills Regarding Amendment to Article V, Section 14

Note: *Commissioner Alan Sundberg sponsored the amendment and Commissioner Jon Mills chaired the CRC Article V Subcommittee.*

A. Section 14(a). Section 14(a) requires the state to fund the state courts system, state attorneys' offices, public defenders' offices and court-appointed counsel, except as provided in subsection (c). It is the intent of the proposers that the state be primarily responsible for funding the state courts system, state attorneys' offices and public defenders' offices, and wholly responsible for funding court-appointed counsel and related costs necessary to ensure the protection of due process rights. Subsection (a) requires the state to:

- (1) Provide all funding for the state courts system, except as provided in subsection (c). As used in section 14, it is the intent of the proposers that the term "state courts system" be construed to mean the supreme district, district courts of appeal, circuit courts, county courts as well as any additional courts hereafter constitutionally created, and all divisions thereof. The state's obligation includes, but is not limited to, funding for all core functions and requirements of the state courts system and all other court-related functions and requirements which are statewide in nature. It is further the intent of the proposers that the state fund all salaries, costs and expenses of the state courts system necessary to ensure the rights of people to have access to a functioning and efficient judicial system. The state's funding obligation pursuant to subsection (a) includes, but is not limited to funding for justices, judges, judicial assistants, law clerks, court administrators, and their respective staffs and related costs including, but not limited to, office expenses and equipment, telephone services, operating costs, legal research, information technology resources except as provided in subsection (c), transportation and travel. The state shall continue to provide all funding for construction or lease, utilities, maintenance and security of facilities for the supreme court and district courts of appeals;
- (2) Provide all funding for salaries, expenses and costs of the state attorneys' offices, public defenders' offices, except as provided in subsection (c), and court-appointed counsel including, but not limited to, office expenses and equipment, telephone services, operating costs, legal research, information technology resources except as provided in subsection (c), transportation and travel. As used in section 14, court-appointed counsel means counsel appointed in criminal and civil proceedings;
- (3) Provide all necessary funding for court reporting/recording and transcripts, deposition costs, experts and other witnesses, consultants, interpreters, investigative services, mental health, scientific medical or other necessary testing services and evaluations as required by the state attorneys, public defenders and indigent litigants, and all funding necessary to provide a trial guaranteed by either the United States Constitution or the Constitution of the State of Florida; and
- (4) Provide any other funding that may be required by the United States Constitution or the Constitution of the State of Florida for the administration of justice.

It is further the intent of the proposers that the legislature ensure that the state courts system as well as appropriations for costs that must be incurred to ensure the rights of people under the United States Constitution or the Constitution of the State of Florida are protected from the across-the-board reductions which have been the traditional response to revenue shortfalls. The proposers also recognize that costs necessary to ensure due process rights including, but not limited to, court-appointed counsel, expert witness fees, court reporting services, and court interpreters can vary unpredictably from year to year. Given this reality, it is the intent of the proposers that the legislature adopt a procedure to provide adequate supplemental funding for the state courts system, state attorneys and public defenders in the event that appropriations in a given year, notwithstanding diligent efforts to achieve efficiencies, are insufficient.

B. Section 14(b). Section 14(b) provides that all funding for the offices of the clerks of the circuit and county courts performing court-related functions shall, except as otherwise provided in subsections (b) and (c), be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions (hereinafter “filing fees, service charges and costs”) which are collected and retained by the offices of the clerks of the circuit and county courts. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees, service charges and costs sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, subsection (b) requires the state to provide adequate and appropriate supplemental funding from state revenues appropriated by general law.

It is the intent of the proposers that the legislature, when developing the schedule of filing fees, service charges and costs, adopt: (1) a procedure to fund the offices of the clerks of the circuit and county courts when filing fees, service charges and costs are insufficient to cover the court-related salaries, costs and expenses of the offices of the clerks of the circuit and county courts in a given fiscal year; and (2) a procedure for the disposition of filing fees, service charges and costs retained by the offices of the clerks of the circuit and county courts which, at the end of any fiscal year, exceed the court-related salaries, costs and expenses of the offices of the clerks of the circuit and county courts during the preceding fiscal year.

It is further the intent of the proposers that the legislature, when developing the schedule of reasonable and adequate filing fees, service charges and costs, review the court-related operations of the offices of the clerks of the circuit and county courts and make an independent determination as to what should be the reasonable cost to perform the court-related operations of the clerks’ offices. The drafters of subsection (b) recognize that there currently exists significant disparities among what the various clerks’ offices spend to perform the same functions. The determination by the legislature as to the appropriate level of spending should not entail an acceptance of the current level of spending by the clerks’ offices throughout the state to perform court-related functions. Rather, it is the intent of this proposal that the clerks be held accountable and responsible to a costs standard which is independently established by the legislature.

Subsection (b) also provides that 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. In this regard it is intended that the legislature provide certain types of funding for the state courts system from appropriate filing fees, service charges and costs. Some examples of current revenue streams to the state courts of this nature include civil fees that go into the Court Education Trust Fund and the Mediation and Arbitration Trust Fund or local option fees used for purposes not inconsistent with other provisions of the proposed amendment.

C. Section 14(c). Section 14(c) provides that no county or municipality shall, except as provided in subsection (c), be obligated 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. Pursuant to subsection (c), counties are required to fund the following costs:

- (1) Communication services. Subsection (c) requires counties to fund the costs of communications services. It is the intent of the proposers that communications services be limited to reasonable and necessary data communications-related cabling, hardware and software, and telephone system equipment and infrastructure not inconsistent with that utilized by each county within a given judicial circuit;

- (2) Existing radio systems. The counties' obligation to pay for radio systems is limited to those multi-agency radio systems in existence and funded by the counties on the date of adoption of this amendment;
- (3) Existing multi-agency criminal justice information system. With the exception of existing multi-agency criminal justice information systems in existence or being implemented on the date of adoption of this amendment and currently funded by counties, counties are not obligated to fund information systems. As used herein, a multi-agency criminal justice information system means network cabling, hardware and software infrastructure required for efficient and effective support and integration of information system, and the applications within which this information resides, serving elements of the criminal justice system at the local level in each county or judicial circuit;
- (4) Construction or lease, maintenance, utilities and security of facilities. Subsection (c) requires counties to fund the cost of adequate and necessary construction or lease, maintenance, utilities and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and offices of the clerks of the circuit and county courts. As used in subsection (c), it is the intent of the proposers that:
 - (a) "utilities" be limited to fuel, water and electricity;
 - (b) "maintenance" be interpreted to mean preventative and corrective facilities renovation, repair and upkeep, custodial services and waste collection services. Service levels shall not be less than those provided by each county for its own services and programs;
 - (c) "construction" shall include land acquisition, planning and design costs; construction costs for new facilities, the renovation or refurbishment of existing facilities, cabling or wiring for communications and technology, and fixtures and furnishings which are appropriate and customary for courtrooms, hearing rooms, jury facilities and other public areas in courthouses; and
 - (d) "security" shall mean all personnel, equipment and other costs reasonably necessary to secure the public and court-related personnel in leased and county-owned facilities for the trial courts, state attorneys, public defenders, and clerks of the circuit and county courts performing court-related functions; and
- (5) Local Requirements. Subsection (c) also requires counties to pay for the reasonable and necessary salaries, costs and expenses of the state courts system to meet local requirements. A local requirement exists where there are special circumstances in a given circuit or county which have resulted in or necessitate implementation of specialized programs or the commitment of resources which would not generally be required in other circuits such as where a county adopts a local program, enacts a local ordinance or pursues extraordinary activities which have a substantial financial or operational impact upon a given circuit. Examples may include, but are not limited to, specialized support personnel, staffing and resources for video arraignments, pretrial release programs or misdemeanor probation. Core functions and requirements of the state courts system and other court-related functions and requirements which are statewide in nature cannot be local requirements. Further, it is the intent of the proposers that any function or requirement of the state courts system which is mandated by general law of statewide application cannot be a local requirement.

The proposers recognize that over the years the counties have borne an increasingly large proportion of the costs of the state courts system as well as other costs such as court-appointed counsel, witness fees and court reporting services because of, among other reasons, shortfalls in revenues at the state level. It is the intent of the proposers that local needs which are caused by reduced or inadequate allocations by the state for the state courts system, either as a result of a decrease in the dollars allocated, an insufficient increase in the dollars allocated or a percentage reduction relative to other statewide allocations, do not create local requirements.

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