The Constitution Revision Commission

COMMITTEE MEETING EXPANDED AGENDA

JUDICIAL
Commissioner Schifino, Chair
Commissioner Gamez, Vice Chair

MEETING DATE: Friday, January 12, 2018
TIME: 8:00 a.m.—12:00 noon
PLACE: 37 Senate Office Building, Tallahassee, Florida

MEMBERS: Commissioner Schifino, Chair; Commissioner Gamez, Vice Chair; Commissioners Bondi, Cerio, Coxe, Joyner, Lee, Martinez, and Timmann

TAB	PROPOSAL NO. and INTRODUCER	PROPOSAL DESCRIPTION and COMMITTEE ACTIONS	COMMITTEE ACTION
1	**P 23** Thurlow-Lippisch	GENERAL PROVISIONS, Natural resources and scenic beauty; Section 7 of Article II of the State Constitution to establish that every person has a right to a clean and healthful environment. JU 12/12/2017 Temporarily Postponed JU 01/12/2018 Unfavorable GP	Unfavorable Yeas 0 Nays 7
2	**P 38** Stemberger	JUDICIARY, Retention; election and terms; Vacancies; Sections 10 and 11 of Article V of the State Constitution to revise the date on which the term of office begins for judicial offices subject to election for retention in order to avoid the ambiguity and litigation that may result by having the terms of judicial officers and the Governor end and begin on the same day. JU 01/12/2018 Temporarily Postponed EE	Temporarily Postponed
3	**P 55** Kruppenbacher	JUDICIARY, Funding; Section 14 of Article V of the State Constitution to require the Legislature to provide by general law for the payment of filing fees, service charges, and other costs for certain judicial proceedings; to require the clerks of the circuit and county courts to submit an annual cumulative budget for performing court-related functions to the Legislature; and to authorize the clerks of the circuit and county courts to appeal to the Governor and Cabinet if the Legislature fails to take certain action regarding a budget deficit. JU 01/12/2018 Temporarily Postponed LO	Temporarily Postponed
4	**P 58** Kruppenbacher	JUDICIARY, Eligibility; Retention; election and terms of office; Vacancies; Sections 8, 10, and 11 of Article V of the State Constitution to remove authority for the election of circuit judges and county court judges and to make such judicial offices subject to merit retention. JU 01/12/2018 Unfavorable EE	Unfavorable Yeas 0 Nays 7

TAB	PROPOSAL NO. and INTRODUCER	PROPOSAL DESCRIPTION and COMMITTEE ACTIONS	COMMITTEE ACTION
5	**P 101** Smith	JUDICIARY, Retention; election and terms; Vacancies; Sections 10 and 11 of Article V of the State Constitution to provide that circuit judges and county court judges must qualify for retention for any terms of office that are subsequent to the term of office that a judge initially assumes by election. JU 01/12/2018 Temporarily Postponed EE	Temporarily Postponed
6	**P 102** Heuchan	JUDICIARY, District courts of appeal; Vacancies; SCHEDULE, creates new section; Sections 4 and 11 of Article V and to create a new section in Article XII of the State Constitution to revise the minimum amount of judges for each district court of appeal, to require that each district court of appeal have at least one judge from each judicial circuit in the court's territorial jurisdiction, and to require that each judicial nominating commission of a district court of appeal have at least one member from each judicial circuit in the court's territorial jurisdiction. JU 01/12/2018 Temporarily Postponed EE	Temporarily Postponed

Constitution Revision Commission
Judicial Committee
Proposal Analysis

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 23

Relating to: GENERAL PROVISIONS, Natural resources and scenic beauty

Introducer(s): Commissioner Thurlow-Lippisch

Article/Section affected:

Date: December 11, 2017

	REFERENCE	ACTION
1.	JU	**Pre-meeting**
2.	GP	

I. SUMMARY:

The proposal states that "natural resources of the state are the legacy of present and future generations." The proposal creates rights to a "clean and healthful environment" and substantive rights to clean air, water, pollution control and conservation. The proposal creates a cause of action and gives standing to anyone to enforce these rights "subject to reasonable limitations as provided by law."

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Constitution currently has a provision that declares state policy on conservation and protection of the environment and mandates that there be "adequate provision in law" for pollution control and conservation of natural resources.[1] Under state law the Department of Legal Affairs (DLA), any political subdivision or municipality of the state, or a citizen of the state may maintain an action for injunctive relief against any governmental agency or authority charged by law with the duty of enforcing laws, rules, and regulations for the protection of the air, water, and other natural resources of the state to compel such governmental authority to enforce such laws, rules, and regulations.[2] They may also maintain an action for injunctive relief against any person, natural or corporate, or governmental agency or authority to enjoin such persons,

[1] Fla. Const. Art II § 7.
[2] Fla. Stat. § 403.412(2)(a)1.

agencies, or authorities from violating any laws, rules, or regulations for the protection of the air, water, and other natural resources of the state.[3]

However, as a condition precedent to the institution of an action against a governmental agency or authority, the complaining party shall first file with the governmental agencies or authorities charged by law with the duty of regulating or prohibiting the act or conduct complained of a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected.[4] Upon receipt of a complaint, the governmental agency or authority shall forthwith transmit, by registered or certified mail, a copy of such complaint to those parties charged with violating the laws, rules, and regulations for the protection of the air, water, and other natural resources of the state.[5] The agency receiving such complaint shall have 30 days after the receipt thereof within which to take appropriate action.[6] If such action is not taken within the time prescribed, the complaining party may institute the judicial proceedings for injunctive relief.[7] However, failure to comply with the statutory process shall not bar an action for a temporary restraining order to prevent immediate and irreparable harm from the conduct or activity complained of.[8]

The court, in the interest of justice, may add as party defendant any governmental agency or authority charged with the duty of enforcing the applicable laws, rules, and regulations for the protection of the air, water, and other natural resources of the state.[9] The DLA may intervene to represent any interest of the state in any suit filed.[10]

Venue of any causes brought under this law shall lie in the county or counties wherein the cause of action is alleged to have occurred.[11]

No action may be maintained if the person (natural or corporate) or governmental agency or authority charged with pollution, impairment, or destruction of the air, water, or other natural resources of the state is acting or conducting operations pursuant to currently valid permit or certificate covering such operations, issued by the appropriate governmental authorities or agencies, and is complying with the requirements of said permits or certificates.[12]

In such action, other than an action involving a state National Pollutant Discharge Elimination System (NPDES) permit authorized under s. 403.0885, F.S., the prevailing party or parties shall be entitled to costs and attorney's fees.[13] Any award of attorney's fees in an action involving such a state NPDES permit shall be discretionary with the

[3] Fla. Stat. § 403.412(2)(a)2.
[4] Fla. Stat. § 403.412(2)(c).
[5] Id.
[6] Id.
[7] Id.
[8] Id.
[9] Fla. Stat. § 403.412(2)(d).
[10] Fla. Stat. § 403.412(2)(b).
[11] Fla. Stat. § 403.412(8).
[12] Fla. Stat. § 403.412(2)(e).
[13] Fla. Stat. § 403.412(2)(f).

court.[14] If the court has reasonable ground to doubt the solvency of the plaintiff or the plaintiff's ability to pay any cost or judgment which might be rendered against him or her in an action brought under this section, the court may order the plaintiff to post a good and sufficient surety bond or cash.[15]

The court may grant injunctive relief and impose conditions on the defendant which are consistent with and in accordance with law and any rules or regulations adopted by any state or local governmental agency which is charged to protect the air, water, and other natural resources of the state from pollution, impairment, or destruction.[16] The doctrines of res judicata and collateral estoppel shall apply.[17] The court shall make such orders as necessary to avoid multiplicity of actions.[18]

In any administrative, licensing, or other proceedings authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction, DLA, a political subdivision or municipality of the state, or a citizen of the state shall have standing to intervene as a party on the filing of a verified pleading asserting that the activity, conduct, or product to be licensed or permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the state.[19]

A citizen whose substantial interests will be determined or affected by a proposed agency action from initiating a formal administrative proceeding under s. 120.569 or s. 120.57, F.S.[20] A citizen's substantial interests will be considered to be determined or affected if the party demonstrates it may suffer an injury in fact which is of sufficient immediacy and is of the type and nature intended to be protected by chapter 403, F.S.[21] No demonstration of special injury different in kind from the general public at large is required.[22] A sufficient demonstration of a substantial interest may be made by a petitioner who establishes that the proposed activity, conduct, or product to be licensed or permitted affects the petitioner's use or enjoyment of air, water, or natural resources protected by chapter 403, F.S.[23]

Any Florida corporation not for profit which has at least 25 current members residing within the county where the activity is proposed, and which was formed for the purpose of the protection of the environment, fish and wildlife resources, and protection of air and water quality, may initiate a hearing pursuant to s. 120.569 or s. 120.57, F.S., provided that the Florida corporation not for profit was formed at least 1 year prior to the date of

[14] Id.
[15] Id.
[16] Fla. Stat. § 403.412(3).
[17] Fla. Stat. § 403.412(4).
[18] Id.
[19] Fla. Stat. § 403.412(5). The term "intervene" means to join an ongoing s. 120.569 or s. 120.57 proceeding; this section does not authorize a citizen to institute, initiate, petition for, or request a proceeding under s. 120.569 or s. 120.57, F.S.
[20] Fla. Stat. § 403.412(5).
[21] Id.
[22] Id.
[23] Id.

the filing of the application for a permit, license, or authorization that is the subject of the notice of proposed agency action.[24]

In a matter pertaining to a federally delegated or approved program, a citizen of the state may initiate an administrative proceeding under this subsection if the citizen meets the standing requirements for judicial review of a case or controversy pursuant to Article III of the United States Constitution.[25]

B. EFFECT OF PROPOSED CHANGES:

The proposal provides that the natural resources of the state are the legacy of present and future generations. The proposal gives every person a right to a clean and healthful environment, including clean air and water; control of pollution; and the conservation and restoration of the natural, scenic, historic, and aesthetic values of the environment as provided by law. The proposal allows any person to enforce this right against any party, public or private, subject to reasonable limitations, as provided by law.

The proposal appears to expand the parties that may have legal standing to initiate or intervene in civil or administrative legal actions.[26] It may create a new legal cause of action that previously did not exist.[27] It also could have the effect of allowing a legal action against "an entity that is impacting the environment in accordance with law."[28]

The proposal provides that enforcement is subject to "reasonable limitations as provided by law." The phrase by law means by act of the legislature.[29] The exact extent or nature of such enforcement is unknown, but may include administrative, civil, or criminal legal actions.[30].

C. FISCAL IMPACT:

Indeterminate.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

[24] Fla. Stat. § 403.412(6).
[25] Fla. Stat. § 403.412(7).
[26] Department of Environmental Protection Analysis on file with the CRC.
[27] Analysis by Kai Su on file with the CRC.
[28] Department of Environmental Protection Analysis on file with the CRC.
[29] *See, Holzendorf v. Bell* 606 So.2d 645, 648 (Fla. 1st DCA 1992). Under the Constitution, the phrase "as provided by law" means as passed "by an act of the legislature."
[30] Department of Environmental Protection Analysis on file with the CRC.

B. Amendments:

Amendment 367752 was adopted limiting the right of enforcement to residents of Florida not including corporations from any person.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

367752

CRC ACTION

Commissioner .
Comm: FAV .
01/16/2018 .
.
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.

The Committee on Judicial (Gamez) recommended the following:

CRC Amendment

Delete lines 30 - 31
and insert:
the natural environment as provided by law. A resident of this state, not including a corporation, may enforce this

By Commissioner Thurlow-Lippisch

thurlowlj-00038-17 201723__

A proposal to amend
Section 7 of Article II of the State Constitution to establish that every person has a right to a clean and healthful environment.

Be It Proposed by the Constitution Revision Commission of Florida:

Section 7 of Article II of the State Constitution is amended to read:

ARTICLE II
GENERAL PROVISIONS

SECTION 7. Natural resources and scenic beauty.—

(a) It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.

(b) Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. For the purposes of this subsection, the terms "Everglades Protection Area" and "Everglades Agricultural Area" shall have the meanings as defined in statutes in effect on January 1, 1996.

(c) The natural resources of the state are the legacy of present and future generations. Every person has a right to a clean and healthful environment, including clean air and water; control of pollution; and the conservation and restoration of the natural, scenic, historic, and aesthetic values of the environment as provided by law. Any person may enforce this right against any party, public or private, subject to

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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reasonable limitations, as provided by law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Effects of proposed "Right to a Clean and Healthful Environment" (PUB 700540)

I. IS THE PROVISION SELF-EXECUTING?

The first question is whether the right to a clean environment provided by our provision is self-executing, or whether it requires legislative action to be effective. Self-executing means the provision is "complete in itself" and does not require further legislative action. *County of Hawaii v. Ala Loop Homeowners*, 235 P.3d 1103, 1124 (Haw. 2010).

1. Courts review language of the provision.

Courts (at least in Hawaii) review the plain language of the provision to determine whether adoption of legislation is required; any reference to exercising a right "as provided by law" indicated implementing legislation to enforce the provision. *Id.* Our proposal uses this exact language in subsection (c) ("…subject to reasonable limitations, as provided by law."), so it will most likely be self-executing. http://www.flcrc.gov/Proposals/Public/700540.

2. However, this language is not dispositive.

Even though this language suggests self-execution, it does not mean legislation is *required* before the right can be enforced. *Id.* at 1125. It simply preserves the legislature's ability to reasonably limit exercise of the right, but "the right exists and can be exercised even in the absence of such limitations." *Id.* So it seems that even with this plain language in our proposal, legislation would not necessarily be *required* for the right to be enforced.

I believe Professor Long and I discussed how a non-self-executing provision would be preferable to business and development people who are concerned about this amendment being too restrictive; a possible response to this criticism is that our amendment would provide long-term protection of their interests by ensuring Florida's environmental prosperity and vibrant tourism industry for generations to come.

II. WHAT DOES ENFORCEMENT OF THE PROVISION LOOK LIKE?

The two most apparent effects of this amendment are (1) making it easier for parties to bring environmental claims to court because they now have a legal cause of action that previously did not exist and (2) making it easier for plaintiffs to challenge parties who violate their right to a clean environment by providing constitutional support for this right.

1. Looser standing for plaintiffs bring environmental claims.

It is accurate that this provision would loosen standing requirements, as Professor Henderson mentioned in one of his emails. *See Sierra Club v. Dept. of Transp.*, 167 P.3d 292, 313 (Haw. 2007), as corrected (Oct. 10, 2007) (recognizing that public interest concerns warrant lowering standing barriers in environmental cases). I believe this would be an example of a non-self-executing provision because it appears that the provision was used in conjunction with the Hawai'i Environmental Policy Act (HEPA).

Parties bringing environmental actions will have a better chance of their claims surviving in court if this environmental provision is added to Florida's Constitution. *See Pennsylvania Envtl. Def. Found. v. Cmmw.*, 161 A.3d 911, 916 (Pa. 2017) (holding that laws unreasonably impairing the right to clean air and water and environmental preservation are unconstitutional). For example, in this Pennsylvania case, the state Supreme Court ruled for an environmental organization in its suit against the Commonwealth, finding budget-related decisions that led to additional oil-and-gas lease sales was unconstitutional.

2. Greater support for enforcing existing environmental regulations.

Based on the cases from the six other states with environmental provisions, another effect of this proposed amendment would be greater support for enforcing existing environmental regulations by giving parties a legal cause of action. Riley v. Rhode Island Dept. of Envtl. Mgt.,

941 A.2d 198, 201 (R.I. 2008) (finding the General Assembly and Department of Environmental Management restriction of commercial licenses to regulate the state's fisheries was constitutional; the restriction did not implicate the public's fundamental right of fishery found in the state Constitution). In this case, the Department of Environmental Management successfully defended its constitutional duty to regulate the fisheries by relying on the state's environmental provision; the court said the Department's power to regulate is "broad and plenary." *Id.* at 206. The provision was not used in conjunction with any other legislation (in other words, it was self-executing).

Public Proposal

Florida Constitution Revision Commission

Title: Right to a Clean and Healthful Environment

Article II Section 7(c) is created to read:

(c) The natural resources of the State are the legacy of present and future generations. Every person has a right to a clean and healthful environment, including clean air and water, control of pollution, and the conservation and restoration of the natural, scenic, historic, and esthetic values of the environment as provided by law. Any person may enforce this right against any party, public or private, subject to reasonable limitations as provided by law.

Discussion.

Florida's Constitution contains broad policy statements, financial authorization, and a unique government structure to support agencies, programs, and actions geared toward environmental protection. This includes a policy to "conservation and protect natural resources and scenic beauty," financial commitments for land and water conservation and environmental restoration, and creation of an independent wildlife agency. These constitutional provisions have been proposed by the Legislature, Constitution Revision Commission, Budget and Tax Reform Commission, and citizen initiatives. Time and again Florida voters have ratified amendments to the Constitution by significant majorities which signifies that Floridians consider protection of the environmental as a fundamental value.

Even though Florida's Constitution gives policy-makers multiple tools to protect natural resources, there is evidence that these resources are under continued stress as evidenced by impaired waters, algae blooms, wildlife mortality, loss of habitat, and billions of dollars of need for restoration of degraded systems such as the Florida Keys, Everglades, Indian River Lagoon, and springs. As recently as 2014, Florida citizens utilized the initiative process of the Constitution to overwhelmingly ratify the largest environmental funding measure in our nation's history, but the Legislature diverted those funds to management and administration rather than land and water conservation. What is missing from the Florida Constitution is the right to a clean environment.

Florida's Constitutional Framework for Environmental Protection. Florida's Constitution contains a number of provisions which set forth policies, authorize funding, and jurisdiction for a range of programs and agencies to protect the environment.

The 1968 Florida Constitutional Revision contained a policy statement in the General Provisions article which addressed "natural resources and scenic beauty," which for the times was fairly new. It provided:

> Section 7. Natural Resources and Scenic Beauty. It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise.

This provision was expanded by initiative in 1994 and further by the 1998 Constitution Revision Commission. Art. 2 Sec. 7(a) Fla. Const. now provides as follows:

> It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.

Art. 2 Sec. 7(b) Fla. Const. was added by Initiative in 1994 and is generally referred to as the "polluter pays" clause and is specific to the Everglades. The courts determined the clause was not self-executing and the Legislature has taken no steps to implement this provision.

Other constitutional provisions provide governmental structure, finance, and policy to implement the broad policy of Article 2. Article 4 Sec. 9 establishes the Fish and Wildlife Conservation Commission as an independent agency " with "the regulatory and executive powers of the state with respect to wild animal life… fresh water aquatic life, and … marine life."

Article 7 provides authorization for specific funding for conservation programs. Section 9 authorizes ad valorem taxes for "water management purposes" which is the constitutional basis for the five water management districts. Section 11(e) provides authorization for state bonds for conservation, outdoor recreation, water resource development, restoration of natural systems, and historic preservation.

Article X is a hodgepodge that contains several amendments which strengthen environmental protection. Section 11 entitled "sovereignty lands" was proposed by Legislature to codify the "public trust doctrine" in Florida for beaches and lands under navigable waters to be held "in trust for all the people." Section 16 contains the gill net restrictions placed in the Constitution by initiative in 1994. The amendment also contains a broad policy statement that "the marine resources of the State of Florida belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people, and future generations."

Right to a Clean Environment. A constitutional right to a clean environment has been adopted by many nations and several states within the United States as a fundamental human right. The United Nations Conference on the Human Environment was convened in Stockholm, Sweden in 1972, and has been referred to since as the Stockholm Declaration. There were 26 principles established including a formal declaration of a fundamental right to a quality environment:

> Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

Recent surveys indicate that 172 nations have adopted as part of their constitution a "right to a clean environment." In 1976, Portugal became the first nation to adopt a provision as part of their constitution. Article 66 provides in part: "Everyone shall possess the right to a healthy and ecologically balanced human living environment and the duty to defend it."

Since the Stockholm Declaration six states have amended their state constitution to include some form of environment right. Some of these states include the provision within their declaration of rights section while others have a separate article relating to environmental protection. Those provisions are set forth as follows:

Hawaii: Article 11 Section 9

ENVIRONMENTAL RIGHTS. Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

Illinois Article 11 Section 2

RIGHTS OF INDIVIDUALS
Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

Montana Article 2 Section 3

Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Massachusetts Article 97

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

Pennsylvania Article 1 Section 27

§ 27. Natural resources and the public estate.
The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Rhode Island Article 1 Section 17

Section 17. Fishery rights — Shore privileges — Preservation of natural resources.
The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values; and it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state.

Florida has no such "right to a clean environment" within its Constitution. The 1998 Constitution Revision Commission held public hearings around the state where many citizens came forth an urged the commission to include such a right in the state constitution. Two proposals were introduced and reviewed by the CRC. Each is a little different in its placement and form.

1998 CRC proposal 36 Amendment to Article 2 Section 7

(c) The natural resources of the state are the heritage of present and future generations. The right of each person to clean and healthful air and water and to the protection of the other natural resources of the state shall not be infringed by any person.

1998 CRC proposal 36 Amendment to Article 1 Section 26

SECTION 26. Environmental Bill of Rights.--Every person has a right to live in an environment that is free from the toxic pollution of manufactured chemicals; to protect and preserve pristine natural communities as God made them; to ensure the existence of the scarce and fragile plants and animal species that live in the state; to outdoor recreation; and to sustained economic success within our natural resources capacity.

Ultimately, the CRC combined the two proposals but significantly revised it to become the broadened policy statement now in Art. 2 Sec 7(a).

A review of case law from the six states which have adopted some form of "clean and healthful environment" show the proposal to be a mainstream constitution provision. The Legislature and appropriate agencies still set the standards for environmental protection. What the constitutional provision does is authorize a private right of action when environmental degradation either violates the adopted standard or causes special injury. This is not unlike the private right of action available under the Clean Water Act and Clean Air Act.

Respectfully submitted: Clay Henderson, Lance Long, Traci Deen

Richard Grosso, Esq.
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December 11, 2017

Commissioner, Jacqui Thurlow-Lippisch
CRC 2017-2018

Re: CRC Proposal 23

Dear Commissioner Thurlow-Lippisch,

I have reviewed Proposal 23 that would amend article II, Section 7 of the Florida Constitution, which would read as follows:

> *SECTION 7. Natural resources and scenic beauty.— (c) The natural resources of the state are the legacy of present and future generations. Every person has a right to a clean and healthful environment, including clean air and water; control of pollution; and the conservation and restoration of the natural, scenic, historic, and aesthetic values of the environment as provided by law. Any person may enforce this right against any party, public or private, subject to reasonable limitations, as provided by law.*

I have practiced environmental and land use law in Florida for over 30 years and taught Florida Constitutional Law for six years. I briefly explain my interpretation of the proposal below.

Initially, I would point out that Florida's Constitution is interpreted by Florida courts based on its language, history, ballot summary and supporting information, not judicial interpretations of similar language in other states. How other state courts have interpreted their constitutions will not control the interpretation of a Florida constitutional amendment.

Moving to the actual language of your proposal, the proposed policy statements seem hard to oppose. I cannot imagine that any interest would think it wrong for Florida's Constitution to espouse this language as the official policy of the state of Florida. The language would support enhanced environmental laws and ordinances by the Legislature or local governments. The claim, however, that it would "wipe the slate [of existing laws] clean" and make it difficult to enact new laws, rules and ordinances, is hard to glean from the either its language or intent. It is difficult to find support in any of the language for the claims that the proposal would create chaos and uncertainty and render state agencies unable to reasonably administer their respective laws and rules.

The qualifying phrase "as provided by law" appears to leave the specifics of what those policy statements would mean in terms of legally – binding and enforceable permit or government approval standards to the Legislature. The law has been clear for decades that the Legislature's interpretation (via the adoption of statutes) of constitutional language will be given deference by

the Courts and laws enacted by the Legislature are presumed to be constitutional unless the challenger carried the heavy burden of demonstrating clear unconstitutionality. Where the constitution is susceptible of more than one reasonable interpretation, the one chosen by the Legislature must prevail in a court challenge. *Carroll v. State,* 361 So.2d 144, 146 (Fla. 1978). Nothing about that would be changed by this proposal. It surely does not hand over the writing of environmental standards to the courts.

In 1997, the Florida Supreme Court of Florida ruled, in *Advisory Opinion to the Governor-1996 Amendment 5 (Everglades),* 706 So.2d 278 (Fla.1997), that Article II, Section 7(b) of the Florida Constitution was not self-executing and thus that the courts could not use it to overturn the Legislature's adopted funding mechanism for pollution abatement in the Everglades Agricultural Area. The constitutional language at issue there stated that "[t]hose in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area *shall be primarily responsible for paying the costs* of the abatement of that pollution…." (emphasis added). The Court explained the enforcement of ambiguous constitutional language:

> "whether a constitutional provision should be construed to be self-executing, or not self-executing, is whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment."

The court ruled that the constitutional language "is not self-executing and cannot be implemented without the aid of legislative enactment because it fails to lay down a sufficient rule for accomplishing its purpose." Where, the Court wrote, constitutional language leaves "too many policy determinations … unanswered", including "the means by which the purposes may be accomplished", constitutional language cannot be enforced on its own unless sufficient details are provide by legislative acts. In that case, the language raised "a number of questions such as what constitutes 'water pollution'; how will one be adjudged a polluter; [and] how will the cost of pollution abatement be assessed…", and was thus not self-executing.

A 1998 Florida Supreme Court decision, in *St. Johns Medical Plans, Inc. v. Gutman*, 721 So. 2d 717 (Fla. 1998) found the "public trust" provision in article II, § 8 (c) of the Florida Constitution to not be self-executing. It explained that in order to be enforceable without the need for implementing legislation, constitutional language has to establish a "sufficient rule" that needs no aid of legislation to be enjoyed or enforced. In other words, where definitions and procedures are not set forth in the constitution, implementing legislation is required to give it "teeth".

Finally, it seems clear that many of the opponents are especially concerned about the language that would recognize the right of "any person" to "enforce this right against any party, public or private". This right is, however, "subject to reasonable limitations, as provided by law." First, the argument against this right is an argument that violations of environmental standards should go unenforced where the violator is lucky enough that no one with a "special injury" and the money to fund litigation stepped forward to bring a challenge. Florida's generally strict current limitation on standing to challenge environmental decisions is a major hindrance to enforcement. Challengers must typically show special injury to themselves that exceeds that of the general

public. *Agrico Chemical Company vs. Dept. of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981). Organizations must prove that a "substantial number" of their members would experience such an injury. *Fla. Home Builders Ass'n v. Dep't of Labor & Emp. Sec.*, 412 So.2d 351 (Fla. 1982). Those current standards are themselves vague and rife with uncertainty. Every Florida citizen should have the right to enforce environmental standards without the excessive cost and uncertainty posed by Florida's current limiting standing law.

The claimed spectre of excessive, frivolous litigation that would supposedly be spawned by this proposal is wholly unwarranted, and completely precluded by the explicit language that enforcement would be "subject to reasonable limitations, as provided by law." One opponent raised the prospect of duplicative, simultaneous legal challenges to government approvals. It is hard to see how that would ever be allowed by any court of law. It is however easy to expect that the Legislature would simply maintain reasonable limitations against frivolous, premature, or duplicative litigation, with defined, reasonable, deadlines for initiating legal challenges.

The cost, difficulty and uphill climb (for example, courts regularly defer to agency decisions) involved in bringing suit to defend environmental policies is a major limitation on enforcement, even where a citizen is fortunate enough to be able to secure the services of one of the relative handful of courtroom lawyers who work on the side of "third parties" in Florida. This propose amendment would, at most, reduce some of the currently overly strict limits on who can bring such challenges, where they are valid and timely. Anyone claiming that it will open up a floodgate of unwarranted litigation to enforce environmental standards may possess inadequate experience counselling or representing people seeking to oppose government approvals.

In closing, the Supreme Court decisions above and otherwise about non self-executing constitutional provisions is a result in large part of Florida's strict "separation of powers" constitutional limitation on the judicial branch intruding into the Legislature's powers. In the case of this current proposal, given the judicial approaches discussed above, the lack of definitions and details in the language is far more of a challenge for those seeking new, stronger environmental protections than for those who would oppose them. It surely does not give the courts the ability to write the state's environmental laws. The qualifying phrase "as provided by law" could not be clearer. This proposal leaves much discretion to the Legislature.

I hope that this brief analysis is helpful to the discussion about the merits of your proposal.

Sincerely,

/s/ Richard Grosso /s/

Richard Grosso

By Commissioner Thurlow-Lippisch

thurlowlj-00038-17 201723__

A proposal to amend
Section 7 of Article II of the State Constitution to establish that every person has a right to a clean and healthful environment.

Be It Proposed by the Constitution Revision Commission of Florida:

Section 7 of Article II of the State Constitution is amended to read:

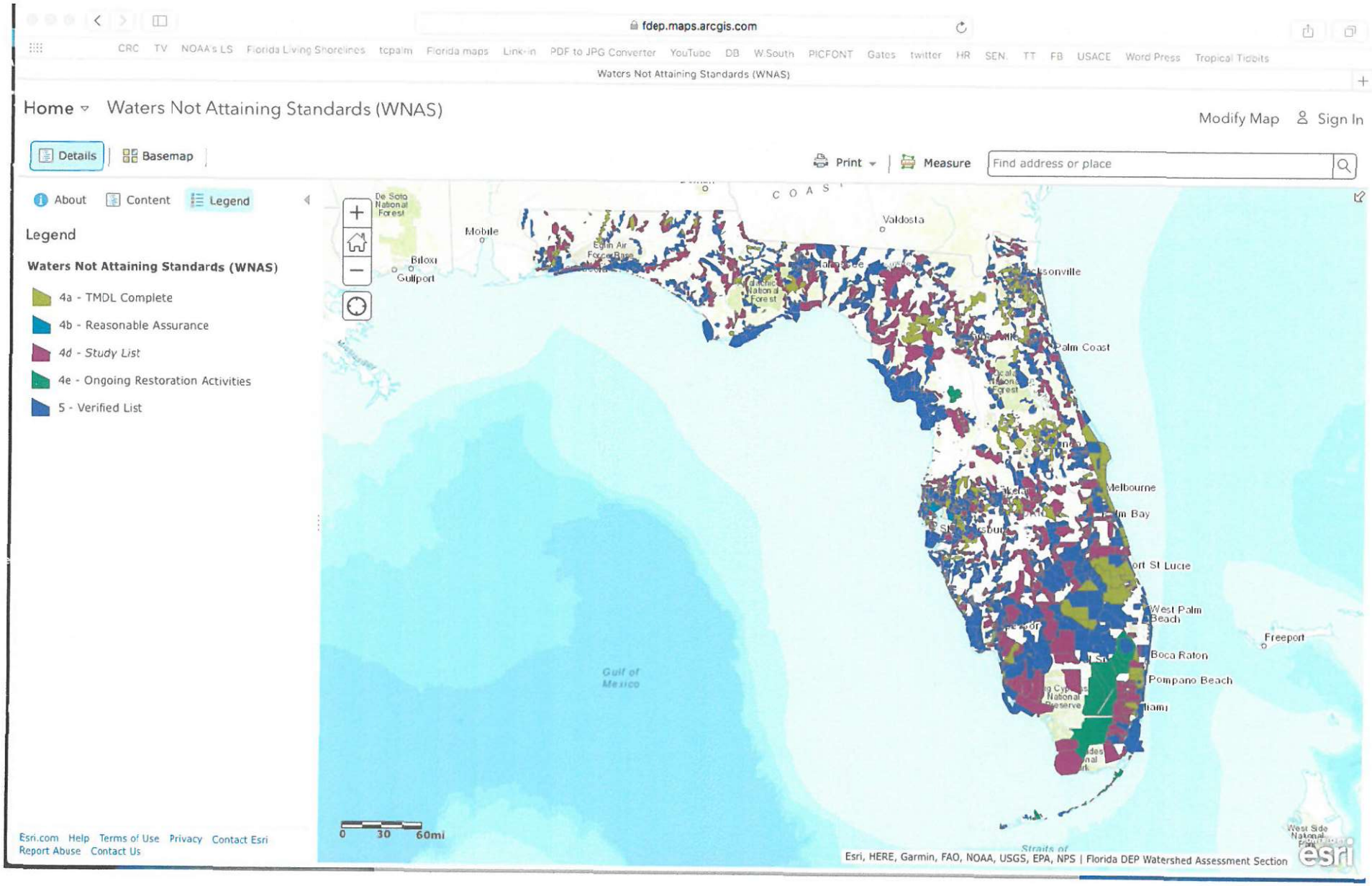
ARTICLE II
GENERAL PROVISIONS

SECTION 7. Natural resources and scenic beauty.—

(a) It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. ~~Adequate~~ provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources. → 1968 → 1998 CRC

(b) Those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution. For the purposes of this subsection, the terms "Everglades Protection Area" and "Everglades Agricultural Area" shall have the meanings as defined in statutes in effect on January 1, 1996.

(c) The natural resources of the state are the legacy of present and future generations. Every person has a right to a clean and healthful environment, including clean air and water; control of pollution; and the conservation and restoration of the natural, ~~scenic, historic, and aesthetic values of the~~ environment as provided by law. ~~Any person~~ may enforce this right against any party, public or private, subject to reasonable limitations, as provided by law. → 2018 A resident of this state, not including a corporation,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4a - TMDL Complete
4b - Reasonable Assurance
4d - Study List
4e - Ongoing Restoration Activities
5 - Verified List
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Gulfport
Valdosta
Palm Coast
Melbourne
West Palm Beach
Freeport
Boca Raton
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esri

IRL Bottle-nosed Dolphins up to 70% sickly. Here lobomyosis due to lowered immunity from poor water quality. Cases through out entire IRL but most extreme observations in southern IRL, Photo credits: Elizabeth Howell,FAU Harbor Branch & Nic Mader, Dolphin Ecology Project. Above, 2007/Mother and calf, below, 2015

Fig. 1

Fig. 2

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-12-18
Meeting Date

~~PP~~ 23
Proposal Number (if applicable)

Amendment Barcode (if applicable)

***Topic** Proposal ~~PP~~ 23

***Name** Greg Munson

Address 215 S. Monroe St, Ste 601
Street

Tallahassee, FL 32308
City *State* *Zip*

Phone

Email

***Speaking:** ☐ For ☑ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☑ Yes ☐ No

If yes, who? Associated Industries of Florida

Are you a registered lobbyist? ☑ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☑ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

Constitution Revision Commission
Judicial Committee
Proposal Analysis

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 38

Relating to: JUDICIARY, Retention; election and terms; Vacancies

Introducer(s): Commissioner Stemberger

Article/Section affected:

Date: January 8, 2018

	REFERENCE	ACTION
1.		
2.		
3.		
4.		
5.		
6.		

I. SUMMARY:

The proposal amends Sections 10 and 11 of Article V of the State Constitution to change the beginning and ending day of judicial terms from the first Tuesday after the first Monday in January of the year following the general election to the first Monday in January of the year following the general election. This proposal will be effective on January 8, 2019.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The proposal amends Sections 10 and 11 of Article V of the State Constitution to change the beginning and ending day of judicial terms from the first Tuesday after the first Monday in January of the year following the general election to the first Monday in January of the year following the general election. This proposal will be effective on January 8, 2019 The Florida Constitution currently provides that the term of the justice or judge retained in a retention election shall commence on the first Tuesday after the first Monday in January following the general election.[1]

Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill the vacancy by appointing for a term ending on the first Tuesday after

[1] Fla. Const. Art. V, § 10.

the first Monday in January of the year following the next general election occurring at least one year after the date of appointment. [2]

The governor's term also ends beginning on the first Tuesday after the first Monday in January of the succeeding year of the state wide general election.[3] There have been instances where this constitutionally mandated timing has led to a question as to whether the incoming or incumbent governor has the power to appoint a justice or judge whose term is coming to an end at the same time as the incumbent governor's term.[4]

B. EFFECT OF PROPOSED CHANGES:

The proposed amendment will end the question as to whether the incoming or incumbent governor has the power to appoint a justice or judge whose term is coming to an end at the same time as the incumbent governor's term and clarify that it is the incumbent governor that makes the selection. This proposal is prospective and will not affect any current case or controversy and is effective on January 8, 2019.[5]

C. FISCAL IMPACT:

None.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

[2] Fla. Const. Art. V, § 11.
[3] Fla. Const. Art. IV, § 5.
[4] See the appointment of Justice Peggy Quince signed by both Incumbent governor Buddy McKay and incoming governor Jeb Bush on file with CRC staff.
[5] Fla. Const. Art. XI, § 5.

647238

CRC ACTION

Commissioner .
Comm: WD .
01/16/2018 .
.
.
.

The Committee on Judicial (Coxe) recommended the following:

CRC Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

ARTICLE V
JUDICIARY

SECTION 8. Eligibility.—

No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. No justice or judge shall serve after attaining the age of seventy years

647238

except upon temporary assignment ~~or to complete a term, one-half of which has been served~~. No person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida. No person is eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, no person is eligible for the office of county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a person shall be eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or less if the person is a member in good standing of the bar of Florida.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A proposal amend

Section 8 of Article V of the State Constitution to revise the date on which the term of office ends for judicial offices in order to avoid the ambiguity and litigation that may result by having the terms of judicial officers and the Governor end and begin on the same day.

By Commissioner Stemberger

stembergj-00036B-17 201738__

A proposal to amend

Sections 10 and 11 of Article V of the State Constitution to revise the date on which the term of office begins for judicial offices subject to election for retention in order to avoid the ambiguity and litigation that may result by having the terms of judicial officers and the Governor end and begin on the same day.

Be It Proposed by the Constitution Revision Commission of Florida:

Sections 10 and 11 of Article V of the State Constitution are amended to read:

ARTICLE V

JUDICIARY

SECTION 10. Retention; election and terms.—

(a) Any justice or judge 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 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 or judge 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 on the ~~first Tuesday after the~~ first Monday in January following the general election. If a majority of the

CRC - 2017 P 38

stembergj-00036B-17 201738__

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 approves 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 approves 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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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. The terms of circuit judges and judges of county courts shall be for six years.

SECTION 11. Vacancies.—

(a) Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill the vacancy 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

CRC - 2017 P 38

stembergj-00036B-17 201738__

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.

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to the governor.

(d) There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system. Such 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. Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records shall be open to the public.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Proposal 38: Regarding Judicial Terms and Vacancies

John Stemberger

Florida CRC Commissioner

CRC Judicial Committee, January 12, 2018

Bottom Line:

- Proposal 38 is about solving a unique, “mini, constitutional-crisis” or challenge that takes place in Florida during some gubernatorial inaugurations.

What is a Constitutional Crisis?

"To me, a constitutional crisis is when the *branches of government in their ordinary functioning cease to resolve that conflict…*"

- Linda Monk, author of The Words We Live By: Your Annotated Guide to the Constitution.

Florida's official mandatory judicial retirement age is 70

BUT many of judges serve beyond their 70th birthday because of this language…

"No justice or judge shall serve after attaining the age of seventy years *except upon temporary assignment* ***or to complete a term, one-half of which has been served****."* - Article V, Section 8

Florida's mini crisis occurs because of this combined language in our Constitution…

Article V, Section 10:

"The term of the justice or judge retained shall commence *on the first Tuesday after the first Monday* in January following the general election."

Art. IV, Section 5:

"the electors shall choose a governor… for a term of four years beginning on the first Tuesday after the first Monday in January of the succeeding year.

We are aware at least four of these incidents in Florida's history...

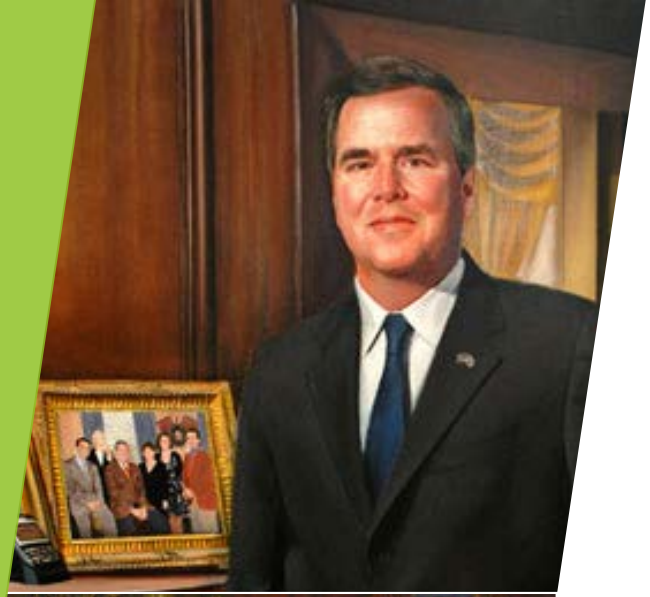
In 1955
Governor Charlie Johns vs Governor Leroy Collins

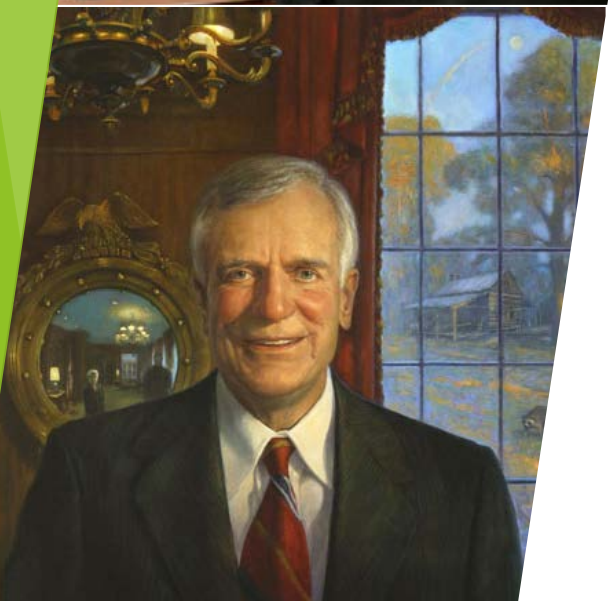
- Court upheld the judicial appointment made by outgoing Governor Johns to fill a county court vacancy that became effective on the same day incoming Governor Collins took office.

- See Tappy v. State ex rel. Byington, 82 So. 2d 161, 166 (Fla. 1955)

In 1987
Governor Bob Graham vs Governor Bob Mixon vs Governor Bob Martinez

- Disputes regarding end-of-term vacancies on the Court following the terms of Florida Supreme Court Justices **Boyd**, and **Adkins** were likewise resolved without judicial intervention.





In 1998
Governor Lawton Chiles vs. Governor Jeb Bush

- On December 11, 1998, Governor **Lawton Chiles** appointed then-Judge **Peggy Quince** to fill the vacancy on the Florida Supreme Court that would exist on January 5, 1999, upon the expiration of the final term in office of Justice **Ben Overton**.
- After Governor Chiles died in office, Justice Peggy Quince was then commissioned by Lt Governor **Buddy MacKay** on December 30, 1998.
- Governor **Jeb Bush**, who assumed office the same day as Justice Quince, did not contest the appointment and signed the commission issued by Governor MacKay.

In 2019
Governor Rick Scott vs
Governor ??????? ????????

- Who will replace Justices
- Peggy Quince
- Fred Lewis and
- Barbara Parientie?

Original Proposal vs Strike All:

- Original language in Proposal 38 “changes the beginning and ending day of judicial terms from the first Tuesday after the first Monday in January of the year following the general election to the first Monday in January of the year following the general election.”

- The new language in the Commissioner Coxe strike all amendment changes the ***ending of the judicial terms to their actual birthday*** without regarding to temporary assignments or to complete a term, one-half of which has been served.

Effective Date of Proposal 38 is January 8, 2019 therefore…

- Proposal 38 Analysis reports: "This proposal is prospective and will not affect any current case or controversy and is effective on January 8, 2019…"

- STRIKE ALL: It corrects future similar situations by changing *the retirement date of the Judge to their actual birthday.*

Thank you for your service to the state of Florida and for your consideration of this proposal….

Constitution Revision Commission
Judicial Committee
Proposal Analysis

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 55

Relating to: JUDICIARY, Funding

Introducer(s): Commissioner Kruppenbacher

Article/Section affected:

Date: January 8, 2018

	REFERENCE	ACTION
1.	JU	**Pre-meeting**
2.	LO	

I. SUMMARY:

The proposal amends section 14 of Article V to require the legislature to provide funding sufficient to offset the Clerks costs in providing services in criminal and other court cases in which the parties do not pay fees and costs. The proposal creates a requirement for the Clerks to submit an annual cumulative budget to the legislature that would include any projected deficit. If the legislature fails to address the deficit, the Clerks may appeal to the governor and cabinet who may request additional funding to the legislature from unobligated moneys in the state treasury.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Constitution proscribes how the offices of the Clerks of Court are funded when they are performing court-related functions. It requires that Clerks' court-related functions be funded by filing fees, service charges, and costs, as provided by general law.[1] However, the Legislature must provide adequate and appropriate supplemental funding to offset costs for performing court-related functions where the state or federal constitution preclude the imposition of filing fees in an amount determined by the legislature.[2] Certain case types are filed and processed by the Clerks without the payment of any fees or cost being imposed or collected.[3] Criminal, domestic violence, juvenile, and other filing fees and costs are waived for parties who are determined indigent.[4] Those

[1] Art. V, § 14, Fla. Const.
[2] Id.
[3] Comments from the Clerks of Circuit Courts on file with the CRC
[4] Id.

costs are offset by excess revenues derived from traffic cases which require less resources, however those cases have been declining.[5] Clerks across the state have seen a cumulative budget reduction of over $62 million since 2012.[6]

B. EFFECT OF PROPOSED CHANGES:

This proposed amendment requires that the legislature provide, by law, funding for the payment of all filing fees, services charges and other costs for judicial proceedings in criminal and other cases where the parties do not pay filing fees.

The proposal requires that the clerks of the courts submit a collective annual budget for performing court-related functions to the legislature that includes any projected deficit. Should the legislature fail to address any deficits or shortfalls in revenue for court related services, the clerks of courts may file an appeal by petitioning the governor and cabinet for a budget hearing. Should the governor and cabinet determine the existence of a revenue deficit, they may recommend additional funding from the legislature from unobligated moneys in the state treasury. However, this would not be a mandate.

C. FISCAL IMPACT:

Indeterminate negative fiscal impact.

III. Additional Information:

A. Statement of Changes:
(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

[5] Id.
[6] Id.

By Commissioner Kruppenbacher

kruppenbf-00073-17 201755__

A proposal to amend

Section 14 of Article V of the State Constitution to require the Legislature to provide by general law for the payment of filing fees, service charges, and other costs for certain judicial proceedings; to require the clerks of the circuit and county courts to submit an annual cumulative budget for performing court-related functions to the Legislature; and to authorize the clerks of the circuit and county courts to appeal to the Governor and Cabinet if the Legislature fails to take certain action regarding a budget deficit.

Be It Proposed by the Constitution Revision Commission of Florida:

Section 14 of Article V of the State Constitution is amended to read:

ARTICLE V

JUDICIARY

SECTION 14. Funding.—

(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.

By general law, the legislature shall provide for the payment of filing fees, service charges, and other costs for judicial proceedings in criminal and other cases where the parties participating do not pay filing fees. Such payment must be sufficient to offset the cost of the clerks' services in those cases. 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. The clerks of the circuit and county courts shall annually submit a cumulative budget for performing court-related functions to the legislature, including any projected deficit based on the most recent official consensus estimate of fines and service charges set by general law that are available to fund the budgets of the clerks. If the legislature fails to address such deficit during the next regular legislative session following submission of the budget, the clerks of the circuit and county courts may file an appeal by petitioning the governor and cabinet to conduct a budget hearing, to determine the amount of any deficit, and to request relief from the legislature from unobligated moneys in the state

treasury.

(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.

Constitution Revision Commission
Judicial Committee
Proposal Analysis

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 58

Relating to: JUDICIARY, Eligibility; Retention; election and terms of office; Vacancies

Introducer(s): Commissioner Kruppenbacher

Article/Section affected:

Date: January 8, 2018

	REFERENCE	ACTION
1.	JU	**Pre-meeting**
2.	EE	

I. SUMMARY:

The proposal amends sections 8, 10, and 11 of Article V to end the election of county and circuit judges and require that all judges be subject to gubernatorial appointment and subsequent merit retention like Supreme Court Justices and District Court of Appeal Judges.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida's current system of retention of some of the judges began with amendments to Article V of the Florida Constitution adopted in 1972 and 1976.[1] As it currently reads, the Constitution requires that county and circuit court judges are selected by nonpartisan elections.[2] If there is a vacancy during a term the governor selects a candidate from a list provided by the particular judicial nominating commission for that county or circuit.[3]

B. EFFECT OF PROPOSED CHANGES:

This proposed amendment requires all county and circuit judgeships to be filled through the judicial nominating process. The proposal eliminates elections for circuit and county

[1] Talbot D'Alemberte, *The Florida State Constitution*, 175-79 (2nd ed. 2017).
[2] Art. V, § 10, Fla. Const. Fla. Stat. § 105.071
[3] Art. V, § 11, Fla. Const.

judges but requires circuit and county judges to face a merit retention election after six years.

Article V, Section 10(b), Florida Constitution is deleted. That section allows county and circuit voters the option of selecting trial judges by merit selection and retention instead of election. The deletion of that specific local option is not likely to have any effect because no jurisdiction has adopted the local option.[4]

The prosed amendment will likely increase the workload of the judicial nominating commissions for the county and circuit courts by some measure.

C. FISCAL IMPACT:

None.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

[4] Office of the State Court Administrator Analysis (on file with CRC staff).

By Commissioner Kruppenbacher

kruppenbf-00068-17 201758__

A proposal to amend
Sections 8, 10, and 11 of Article V of the State Constitution to remove authority for the election of circuit judges and county court judges and to make such judicial offices subject to merit retention.

Be It Proposed by the Constitution Revision Commission of Florida:

Sections 8, 10, and 11 of Article V of the State Constitution are amended to read:

ARTICLE V
JUDICIARY

SECTION 8. Eligibility.—No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which has been served. No person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida. No person is eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, no person is eligible for the office of county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a person is ~~shall be~~ eligible for ~~election or appointment to~~ the office of county court judge in a county having a population of 40,000 or less if the person is a member in good standing of the bar of Florida.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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SECTION 10. Retention~~; election~~ and terms of office.—

~~(a)~~ All justices and judges shall ~~Any justice or judge 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 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 or judge 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 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 approves 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~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that county approves 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. The terms of circuit judges and judges of county courts shall be for six years.~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

SECTION 11. Vacancies.—

(a) Whenever a vacancy occurs in a judicial office ~~to which election for retention applies~~, the governor shall fill the vacancy 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.~~

(b) ~~(c)~~ The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to the governor.

(c) ~~(d)~~ There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. Uniform rules of procedure shall be established by the judicial nominating commissions at

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each level of the court system. Such 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. Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records shall be open to the public.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/12/2018
Meeting Date

58
Proposal Number (if applicable)

Amendment Barcode (if applicable)

***Topic** Judicial Retention

***Name** G.C. Murray, Jr.

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

***Speaking:** ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? FL Justice Ass'n

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

Constitution Revision Commission
Judicial Committee
Proposal Analysis

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 101

Relating to: JUDICIARY, Retention; election and terms; Vacancies

Introducer(s): Commissioner Smith

Article/Section affected:

Date: January 8, 2018

	REFERENCE	ACTION
1.	JU	**Pre-meeting**
2.	EE	

I. SUMMARY:

This proposal amends Sections 10 and 11 of Article V of the Florida Constitution to provide that circuit and county court judges must qualify for retention for any terms of office that are subsequent to the term of office that the judges initially assume by election.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, trial judges are chosen in non-partisan elections,[1] with vacancies on the trial courts being filled by the governor from candidates recommended by a judicial nominating commission.[2] Under this system, a judge must run for election, opposed or unopposed, for each six-year term.[3]

The Constitution currently allows for local jurisdictions to adopt a merit selection and retention system rather than by election. However, as of January 5, 2018, no jurisdiction has elected to adopt the local option.[4]

B. EFFECT OF PROPOSED CHANGES:

The proposed amendment creates a hybrid election/retention system for circuit and county court judges. The proposal preserves the initial election of circuit and county

[1] Fla. Stat. § 105.071.
[2] Fla. Const. Art. V §11(b).
[3] Fla. Const. Art. V §10(a).
[4] Judicial Impact Statement prepared by the Office of the State Court Administrator (on file with CRC staff).

judges. However, circuit and county judges would thereafter face a merit retention vote every six years, instead of facing a potential adversarial election after every term. Circuit and county court judge vacancies would continue to be filled through the judicial nominating process, as they are currently.[5]

The proposal deletes the provisions in Article V, §10(b), Fla. Const. that allow a local vote to authorize appointment and merit retention of circuit and county court judges. The deletion of that specific local option is not expected to have an effect because no jurisdiction has adopted the local option.[6]

C. FISCAL IMPACT:

The proposal is not expected impact the fiscal needs of the judiciary because the number of judges remains the same and it does not eliminate the need for elections.[7]

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

[5] Fla. Const. Art. V §11(b).
[6] Judicial Impact Statement prepared by the Office of the State Court Administrator (on file with CRC staff).
[7] Id.

By Commissioner Smith

smithc-00092-17 2017101__

A proposal to amend
Sections 10 and 11 of Article V of the State Constitution to provide that circuit judges and county court judges must qualify for retention for any terms of office that are subsequent to the term of office that a judge initially assumes by election.

Be It Proposed by the Constitution Revision Commission of Florida:

Sections 10 and 11 of Article V of the State Constitution are amended to read:

ARTICLE V
JUDICIARY

SECTION 10. Retention; election and terms.—

(a) Any justice or judge 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 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 or judge 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 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

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office upon the expiration of the term being served by the justice or judge.

(b) ~~(1)~~ The terms of circuit judges and county court judges shall be for six years. The initial election of circuit judges and county court judges is ~~shall be~~ preserved notwithstanding ~~the provisions of~~ subsection (a). However, if a circuit judge or a county court judge chooses to serve additional terms in the same office following the conclusion of the term that he or she initially assumed by election, the judge must qualify for retention in accordance with subsection (a). ~~unless a majority of those voting in the jurisdiction of that circuit approves 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 approves 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. The terms of circuit judges and judges of county courts shall be for six years.~~

SECTION 11. Vacancies.—

(a) ~~Whenever a vacancy occurs in a judicial office to which election for retention applies,~~ The governor shall fill each ~~the~~ 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

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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.

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to the governor.

(d) There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system. Such 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. Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records shall be open to the public.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Constitution Revision Commission
Judicial Committee
Proposal Analysis

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 102

Relating to: JUDICIARY, District courts of appeal; Vacancies; SCHEDULE, creates new section

Introducer(s): Commissioner Heuchan

Article/Section affected:

Date: January 9, 2018

	REFERENCE	ACTION
1.	JU	**Pre-meeting**
2.	EE	

I. SUMMARY:

The proposal amends Sections 4 and 11 of Article V and creates a new section in Article XII of the State Constitution to revise the minimum amount of judges for each district court of appeal and have at least one judge from each judicial circuit in the court's territorial jurisdiction, and to require that each judicial nominating commission of a district court of appeal have at least one member from each judicial circuit in the court's territorial jurisdiction.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Constitution presently mandates that a District Court of Appeal shall consist of at least 3 judges, but may contain more as needed by their workload.[1]

Currently, each District Court of Appeal has well above the six judges that would be a minimum under the proposed amendment.[i]

Circuit representation on each court: On the Third, Fourth and Fifth DCAs, each circuit within each court's territorial jurisdiction is currently represented. However, it appears that no judge from the Eighth or Fourteenth Judicial Circuit currently sit on the First DCA.[2] In addition, no judge from the Twelfth Judicial Circuit currently sits on the Second DCA.[3]

[1] Fla. Const Art V §4
[2] Judicial Impact Statement prepared by the Office of the State Court Administrator (on file with CRC staff).
[3] Id.

B. EFFECT OF PROPOSED CHANGES:

The composition of the DCAs would be mandated by the proposal's requirements because the geographical representation must be accounted for before consideration of any other criteria. The effect on the judiciary and judicial branch would depend on the decision of judges leaving the bench and those appointed to fill those seats. If vacancies in the DCAs come open and if judges from the geographic areas necessary to satisfy the provisions of the proposed amendment are chosen it is possible that the proposal would have limited to no practical effect.

The phrase "[e]ach district court of appeal must have at least one judge from each judicial circuit in the court's territorial jurisdiction" could reasonably be interpreted to mean that each circuit must be represented on its respective DCA by an individual who is a resident of the territorial jurisdiction or has served as a judge in that judicial circuit. This would result in vacancies on the DCAs where only candidates who have been judges in the respective judicial circuits or residents of those circuits may be considered for the vacancies. If the provision is interpreted to mean judges from the circuit as opposed to residents, the provision would eliminate non-judges from consideration for some vacancies. The proposed amendment would be effective on January 1, 2020.

C. FISCAL IMPACT:

The proposal would not impact on the judiciary because it does not expressly change the actual number of judges in any of the DCAs. However, the proposal would have a fiscal impact if judicial seats were added to any of the courts to provide vacancies to accomplish the geographic representation, thereby requiring additional office space and staff.[4]

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

The proposal states, "Each district court of appeal must have at least one judge from each judicial circuit in the court's territorial jurisdiction." That could lead more than one interpretation of the requirement. It is unclear whether it must be a judge from the circuit, must be a resident of the circuit as of the time of appointment, must practice law primarily within the circuit, or must be "from" the circuit in another manner.

[4] Id.

D. Related Issues:

None.

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CRC ACTION

Commissioner .
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The Committee on Judicial (Timmann) recommended the following:

CRC Amendment

Delete everything after the enacting clause and insert:

ARTICLE V

JUDICIAL

SECTION 4. District courts of appeal.—

(a) ORGANIZATION.—There shall be a district court of appeal serving each appellate district. Each district court of appeal shall consist of at least six ~~three~~ judges. As defined by general law, each district court of appeal must have

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representation from each judicial circuit in the court's territorial jurisdiction, based on the residence of each judge for the twelve month period prior to their initial appointment to the district court of appeal. Three judges shall consider each case and the concurrence of two shall be necessary to a decision.

(b) JURISDICTION.—

(1) District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including those entered on review of administrative action, not directly appealable to the supreme court or a circuit court. They may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court.

(2) District courts of appeal shall have the power of direct review of administrative action, as prescribed by general law.

(3) A district court of appeal or any judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof or before any circuit judge within the territorial jurisdiction of the court. A district court of appeal may issue writs of mandamus, certiorari, prohibition, quo warranto, and other writs necessary to the complete exercise of its jurisdiction. To the extent necessary to dispose of all issues in a cause properly before it, a district court of appeal may exercise any of the appellate jurisdiction of the circuit courts.

(c) CLERKS AND MARSHALS.—Each district court of appeal shall appoint a clerk and a marshal who shall hold office during

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the pleasure of the court and perform such duties as the court directs. Their compensation shall be fixed by general law. The marshal shall have the power to execute the process of the court throughout the territorial jurisdiction of the court, and in any county may deputize the sheriff or a deputy sheriff for such purpose.

SECTION 11. Vacancies.—

(a) Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill the vacancy 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.

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the

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nominations have been certified to the governor.

(d) There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. The judicial nominating commission for each district court of appeal must have at least one member from each judicial circuit in the court's territorial jurisdiction. Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system. Such 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. Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records shall be open to the public.

A new section is added to Article XII of the State Constitution to read:

ARTICLE XII

SCHEDULE

District courts of appeal. The Amendments to Sections 4 and 11 of Article V, relating to the district courts of appeal and the judicial nominating commissions thereof, shall take effect on January 1, 2019. However, no judge or judicial nominating commission member shall be displaced by the amendments, but all future vacancies shall be filled in accordance with these provisions.

By Commissioner Heuchan

heuchanb-00098A-17 2017102__

A proposal to amend

Sections 4 and 11 of Article V and to create a new section in Article XII of the State Constitution to revise the minimum amount of judges for each district court of appeal, to require that each district court of appeal have at least one judge from each judicial circuit in the court's territorial jurisdiction, and to require that each judicial nominating commission of a district court of appeal have at least one member from each judicial circuit in the court's territorial jurisdiction.

Be It Proposed by the Constitution Revision Commission of Florida:

Sections 4 and 11 of Article V of the State Constitution are amended to read:

ARTICLE V

JUDICIARY

SECTION 4. District courts of appeal.—

(a) ORGANIZATION.—There shall be a district court of appeal serving each appellate district. Each district court of appeal shall consist of at least six ~~three~~ judges. Each district court of appeal must have at least one judge from each judicial circuit in the court's territorial jurisdiction. Three judges shall consider each case and the concurrence of two shall be necessary to a decision.

(b) JURISDICTION.—

(1) District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including those entered on review of administrative action, not directly appealable to the

supreme court or a circuit court. They may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court.

(2) District courts of appeal shall have the power of direct review of administrative action, as prescribed by general law.

(3) A district court of appeal or any judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof or before any circuit judge within the territorial jurisdiction of the court. A district court of appeal may issue writs of mandamus, certiorari, prohibition, quo warranto, and other writs necessary to the complete exercise of its jurisdiction. To the extent necessary to dispose of all issues in a cause properly before it, a district court of appeal may exercise any of the appellate jurisdiction of the circuit courts.

(c) CLERKS AND MARSHALS.—Each district court of appeal shall appoint a clerk and a marshal who shall hold office during the pleasure of the court and perform such duties as the court directs. Their compensation shall be fixed by general law. The marshal shall have the power to execute the process of the court throughout the territorial jurisdiction of the court, and in any county may deputize the sheriff or a deputy sheriff for such purpose.

SECTION 11. Vacancies.—

(a) Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill the vacancy 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.

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to the governor.

(d) There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. The judicial nominating commission for each district court of appeal must have at least one member from each judicial circuit in the court's territorial jurisdiction. Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system. Such 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. Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records shall be open to the public.

A new section is added to Article XII of the State Constitution to read:

ARTICLE XII

SCHEDULE

District courts of appeal.—The amendments to Sections 4 and 11 of Article V, relating to the district courts of appeal and the judicial nominating commissions thereof, shall take effect January 1, 2020.