

The Constitution Revision Commission
COMMITTEE MEETING EXPANDED AGENDA

JUDICIAL
Commissioner Schifino, Chair
Commissioner Gamez, Vice Chair

MEETING DATE: Friday, January 19, 2018
TIME: 1:00—6:00 p.m.
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 28 Coxe	JUDICIARY, Funding; Clerks of the circuit courts; Sections 14 and 16 of Article V of the State Constitution to require the state, rather than counties, to fund the cost of communications services for trial courts and to designate the clerk of the circuit court or county court as the official records custodian for court records. JU 11/28/2017 Temporarily Postponed JU 01/19/2018 Favorable LO	Favorable Yeas 6 Nays 1
2	P 42 Schifino	JUDICIARY, Vacancies; SCHEDULE, creates new section; Section 11 of Article V and create a new section in Article XII of the State Constitution to specify the composition of judicial nominating commissions, to establish terms of membership on a commission, and to require appointing authorities to the commissions to consider diversity in making appointments. JU 01/19/2018 Favorable EX	Favorable Yeas 6 Nays 1
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 JU 01/19/2018 Fav/CS LO	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judicial

Friday, January 19, 2018, 1:00—6:00 p.m.

TAB	PROPOSAL NO. and INTRODUCER	PROPOSAL DESCRIPTION and COMMITTEE ACTIONS	COMMITTEE ACTION
4	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 JU 01/19/2018 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 28

Relating to: JUDICIARY, Funding; Clerks of the circuit courts

Introducer(s): Commissioners Coxe and Martinez

Article/Section affected:

Date: November 22, 2017

	REFERENCE	ACTION
1.	JU	Pre-meeting
2.	LO	

I. SUMMARY:

A proposal to amend Sections 14 and 16 of Article V of the Florida Constitution to require the state, rather than counties, to fund the cost of communications services for trial courts. Additionally, the clerk of the circuit court or county court will be designated as the official records custodian for court records.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, the Florida Constitution requires counties to fund the cost of communications services for trial courts, in addition to funding the same services for the public defenders' offices, states attorneys' offices, and the offices of the clerks of the circuit and county courts performing court related functions.¹ Communications services statutorily include, but are not limited to, telephone system infrastructure; computer networks, systems, and equipment; courier messenger and subpoena services; and auxiliary aids and services for disabled individuals.²

Florida clerks have experienced decreased revenue and increased operating costs in recent years.³ Trial courts have existing unmet technology needs.⁴ Florida statutes currently provide that the clerk of the circuit court of each county is designated the custodian of all court records. Court Rules give the Florida Court Technology

¹ Fla. Const. art. V, § 14.

² Fla. Stat. § 29.008.

³ See e.g., NORTH HIGHLAND CONSULTING, FLORIDA CLERKS OF COURTS WORKLOAD ANALYSIS REPORT 37 (2015).

⁴ Judicial Impact Statement from Office of the State Court Administrator on file with the CRC.

commission the authority to set standards and procedures for how clerks are “to receive, manage, maintain, use, secure and distribute court records by electronic means consistent with the technology policies established by the Supreme Court”.⁵

B. EFFECT OF PROPOSED CHANGES:

If the proposal is adopted, counties would continue to be responsible for funding clerk communication, including technology except for the trial courts.⁶ Communications services will be defined to include, but not be limited to, all “technology.” The legislature will need to determine the funding needs and a source of funding for the technology needs of the trial courts.⁷

Additionally, the clerk of the circuit or county court will become the constitutional official custodian for court record and must maintain them in accordance with the requirements of the Florida Supreme Court. This language removes the independent authority of clerks, who are the official keepers of court records, to determine how best to manage those records.⁸ The Clerks of Court also have concern about access to data from court records available to users of the Comprehensive Case Information System which is currently mandated by statute accessed by thousands of users outside the Florida courts.⁹

C. FISCAL IMPACT:

Indeterminate amount of 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 Rule 2.236. Florida Rules of Judicial Administration.

⁶ Comments from the General to the Florida Court Clerks and Comptrollers on file with the CRC.

⁷ Judicial Impact Statement from Office of the State Court Administrator on file with the CRC.

⁸ Comments from the Clerks of Circuit Courts on file with the CRC

⁹ Comments from the Clerks of Circuit Courts on file with the CRC, Fla. Stat. § 28.24.



871534

CRC ACTION

Commissioner .
Comm: WD .
01/19/2018 .
. .
. .
. .

The Committee on Judicial (Timmann) recommended the following:

CRC Amendment

Delete lines 76 - 79
and insert:
official records custodian for court records.

By Commissioner Coxe

coxeh-00044-17

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1 A proposal to amend
2 Sections 14 and 16 of Article V of the State
3 Constitution to require the state, rather than
4 counties, to fund the cost of communications services
5 for trial courts and to designate the clerk of the
6 circuit court or county court as the official records
7 custodian for court records.

8
9 Be It Proposed by the Constitution Revision Commission of
10 Florida:

11
12 Sections 14 and 16 of Article V of the State Constitution
13 are amended to read:

14 ARTICLE V

15 JUDICIARY

16 SECTION 14. Funding.—

17 (a) All justices and judges shall be compensated only by
18 state salaries fixed by general law. Funding for the state
19 courts system, state attorneys' offices, public defenders'
20 offices, and court-appointed counsel, except as otherwise
21 provided in subsection (c), shall be provided from state
22 revenues appropriated by general law.

23 (b) All funding for the offices of the clerks of the
24 circuit and county courts performing court-related functions,
25 except as otherwise provided in this subsection and subsection
26 (c), shall be provided by adequate and appropriate filing fees
27 for judicial proceedings and service charges and costs for
28 performing court-related functions as required by general law.
29 Selected salaries, costs, and expenses of the state courts
30 system may be funded from appropriate filing fees for judicial
31 proceedings and service charges and costs for performing court-
32 related functions, as provided by general law. Where the

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33 requirements of either the United States Constitution or the
34 Constitution of the State of Florida preclude the imposition of
35 filing fees for judicial proceedings and service charges and
36 costs for performing court-related functions sufficient to fund
37 the court-related functions of the offices of the clerks of the
38 circuit and county courts, the state shall provide, as
39 determined by the legislature, adequate and appropriate
40 supplemental funding from state revenues appropriated by general
41 law.

42 (c) No county or municipality, except as provided in this
43 subsection, shall be required to provide any funding for the
44 state courts system, state attorneys' offices, public defenders'
45 offices, court-appointed counsel or the offices of the clerks of
46 the circuit and county courts performing court-related
47 functions. Counties are ~~shall be~~ required to fund the cost of
48 communications services, existing radio systems, and existing
49 multi-agency criminal justice information systems for public
50 defenders' offices, state attorneys' offices, and the offices of
51 the clerks of the circuit and county courts performing court-
52 related functions, and the cost of construction or lease,
53 maintenance, utilities, and security of facilities for the trial
54 courts, public defenders' offices, state attorneys' offices, and
55 the offices of the clerks of the circuit and county courts
56 performing court-related functions. Counties shall also pay
57 reasonable and necessary salaries, costs, and expenses of the
58 state courts system to meet local requirements as determined by
59 general law. The state is required to fund the cost of
60 communications services for the trial courts. For purposes of
61 this subsection, the term "communications services" includes,

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62 but is not limited to, all technology.

63 (d) The judiciary shall have no power to fix
64 appropriations.

65 SECTION 16. Clerks of the circuit courts.-

66 (a) There shall be in each county a clerk of the circuit
67 court who shall be selected pursuant to the provisions of
68 Article VIII section 1. Notwithstanding any other provision of
69 the constitution, the duties of the clerk of the circuit court
70 may be divided by special or general law between two officers,
71 one serving as clerk of court and one serving as ex officio
72 clerk of the board of county commissioners, auditor, recorder,
73 and custodian of all county funds. There may be a clerk of the
74 county court if authorized by general or special law.

75 (b) The clerk of the circuit court or county court are the
76 official records custodian for court records. Court records must
77 be stored, maintained, transmitted, and made available to the
78 courts by the clerk in accordance with standards and
79 requirements established by the supreme court.



Accessible • Fair • Effective • Responsive • Accountable

CRC Proposal 28

January 19, 2018

A constitutional issue



Data Gap



Technology Gap



Clerks in the constitution

ARTICLE V

SECTION 3. Supreme court.—

(c) CLERK AND MARSHAL.—The supreme court 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 state, and in any county may deputize the sheriff or a deputy sheriff for such purpose.

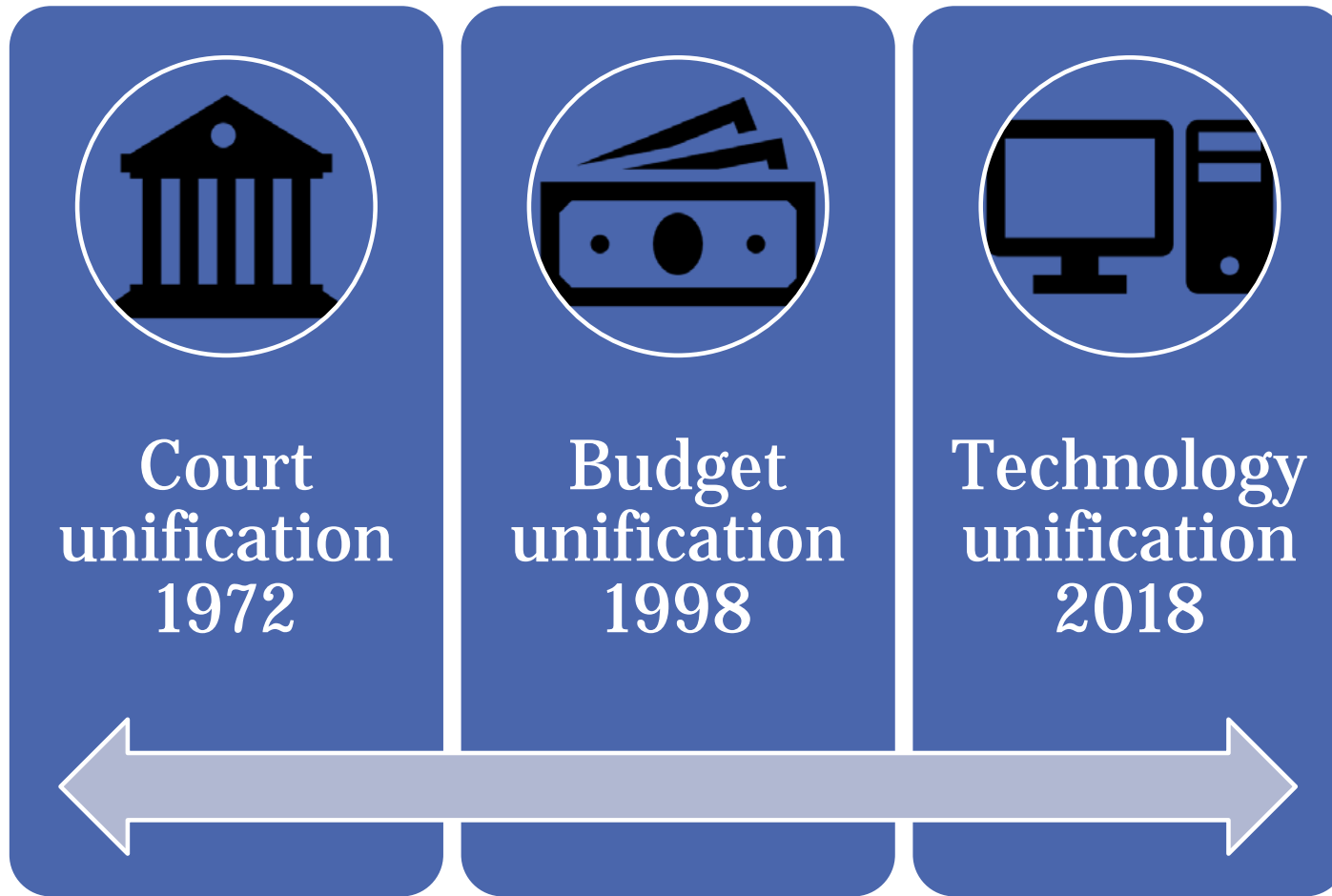
SECTION 4. District courts of appeal.—

(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.

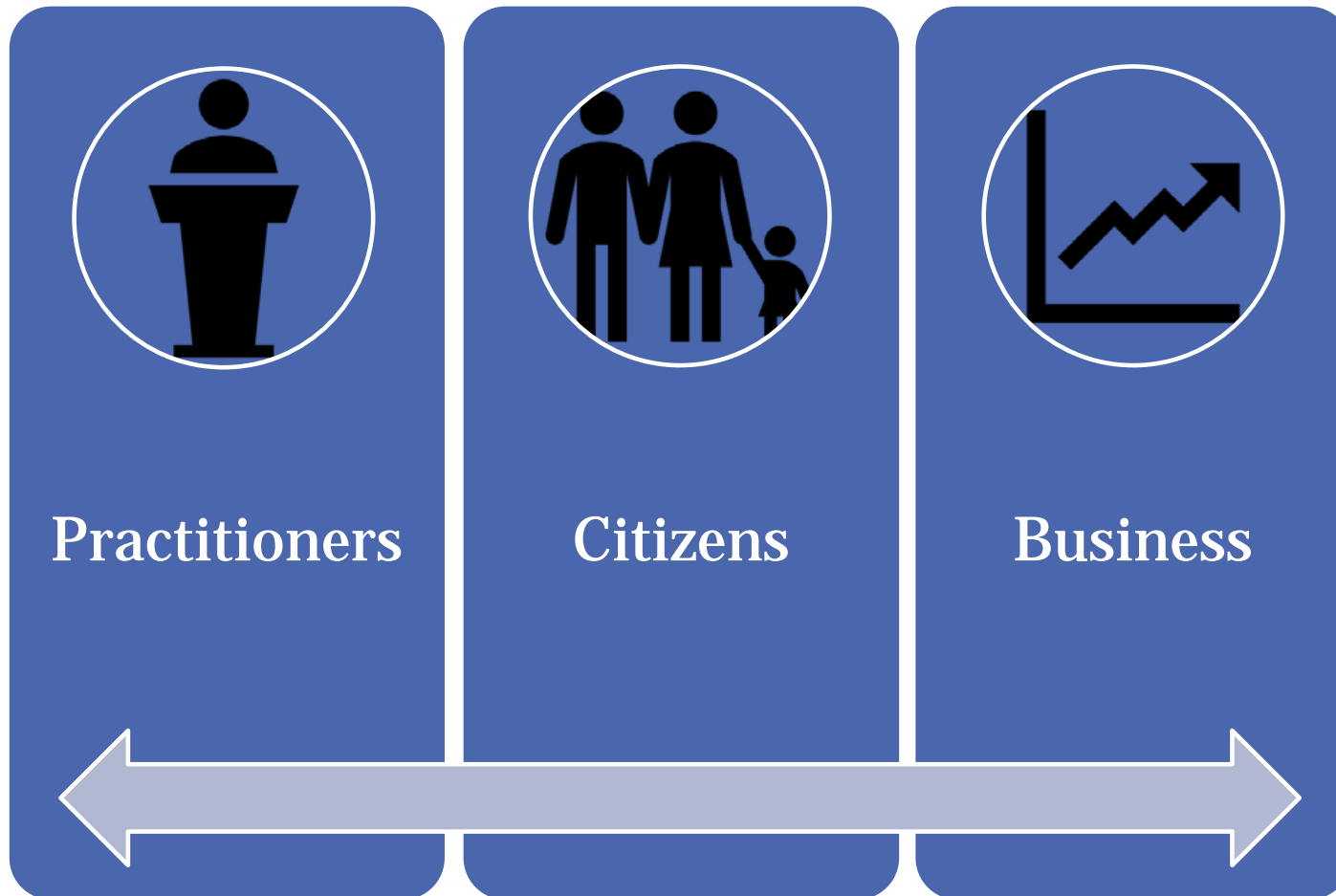
SECTION 16. Clerks of the circuit courts.—There shall be in each county a clerk of the circuit court who shall be selected pursuant to the provisions of Article VIII section 1.

Notwithstanding any other provision of the constitution, the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. There may be a clerk of the county court if authorized by general or special law.

On a 45-year path



User perspective



CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

28

Proposal Number (if applicable)

*Topic Proposal 28

Amendment Barcode (if applicable)

*Name Margaret O. Steinbeck

Address 1700 Monroe St.

Phone (239) 5-33-9162

Street

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FL

33919

City

State

Zip

Email msteinbeck@ca.cjis20.org

*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? The State Courts System

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
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/18/18

Meeting Date

28

Proposal Number (if applicable)

*Topic Proposal 28

Amendment Barcode (if applicable)

*Name Mark H. Mahon

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Phone 904-255-1229

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FL

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State

Zip

Email mmahon@coj.net

*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? State Court System

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
APPEARANCE RECORD**

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

28

Proposal Number (if applicable)

*Topic Proposal 28

Amendment Barcode (if applicable)

*Name John M. Stewart

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City

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State

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Zip

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*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? _____

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
APPEARANCE RECORD

(Deliver completed form to Commission staff)

Jan. 19, 2018

Meeting Date

28

Proposal Number (if applicable)

*Topic P28 Judiciary, Funding, Clerks of the Circuit Courts

Amendment Barcode (if applicable)

*Name Chris Hart IV

Address 3544 MacLay Blvd.

Phone (850) 921-0808

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Tallahassee

FL

32312

City

State

Zip

Email chrishart@flclerks.com

*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? Florida Court Clerks & Computer

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
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-19-18

Meeting Date

28

Proposal Number (if applicable)

*Topic #28

Amendment Barcode (if applicable)

*Name Jon Spashow

Address Gov County Courthouse

Phone _____

Street

Tallahassee

FL

State

32301

Zip

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? _____

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 42

Relating to: JUDICIARY, Vacancies; SCHEDULE, creates new section

Introducer(s): Commissioner Schifino

Article/Section affected:

Date: January 18, 2018

	REFERENCE	ACTION
1.	JU	Pre-meeting
2.	EX	

I. SUMMARY:

A proposal to amend Section 11 of Article V of the State Constitution to provide the composition of the judicial nominating commissions. The Florida Bar Board of Governors shall appoint three commissioners who are members of the bar and have offices within the jurisdiction of the affected court. The governor shall appoint three commissioners who reside in the territorial jurisdiction of the court. The six appointees shall then select three more commissioners who reside in the territorial jurisdiction of the court and may not be members of the bar. The appointing authorities are directed to seek appointees that reflect ethnic, racial, gender, and geographic diversity as well as the representation of each county within the judicial circuit. The amendment would take effect on July 1, 2019.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The current language of Section 11 of Article V was adopted with the 1972, 1976, 1996 and 1998 revisions to the judicial article respectively.¹ The requirement that the Governor appoint judges from a list provided by judicial nominating commissions were the result of the 1972 amendment.² The initial composition of the judicial nominating commissions was provided in Article V Section 20 but can be changed by general law.³ In 1991 § 43.29, Fla. Stat., was amended by § 1, Ch. 91-74, Laws of Fla., to require that the composition of the commissions must include a member of a “racial or ethnic minority

¹ Talbot D’Alemberte, *The Florida State Constitution, 177-78 (2nd ed. 2017)*.

² *Id.*

³ Fla. Const. Art. V, § 11.

group or a woman.”⁴ The requirement that one third of the appointees to the judicial nominating commissions be women or minorities was challenged by an applicant that was not in either of these categories. The operation of the statute was enjoined by the Federal District Court.⁵ The court held that the race and gender-based quota established by § 43.29, Fla. Stat., violated the equal protection clause of the Fourteenth Amendment to the Federal Constitution.⁶ It held that because there was no evidence that the limited number of minorities and women on the Judicial Nominating Commissions was the result of past discrimination, a compelling state interest was not shown.⁷ It also held that the statute was not narrowly tailored, an absolute quota was not necessary, and less intrusive remedies existed.⁸ The court noted that in Florida less drastic remedies already existed.⁹ In 1994, the Florida Legislature amended s. 26.021, Florida Statutes, to provide that: The judicial nominating commission of each circuit, in submitting nominations for any vacancy in a judgeship, and the Governor, in filling any vacancy for a judgeship, shall **consider** whether the existing judges within the circuit, together with potential nominees or appointees, reflect the geographic distribution of the population within the circuit, the geographic distribution of the caseload within the circuit, the racial and ethnic diversity of the population within the circuit, and the geographic distribution of the racial and ethnic minority population within the circuit. (emphasis in the original)

The court provided that “unlike § 43.29(1)(a), § 26.021 requires that the JNCs and the Governor ‘consider’ diversity. The statute imposes no quota.” Such provisions were therefore permissible.¹⁰

Section 43.29, Fla. Stat. was repealed by Ch. 2001-282, Laws of Fla.,¹¹ which established the current composition of the judicial nomination commissions. Section 43.291, Fla. Stat. was enacted by that law and provides in part:

(1) Each judicial nominating commission shall be composed of the following members:

(a) Four members of The Florida Bar, appointed by the Governor, who are engaged in the practice of law, each of whom is a resident of the territorial jurisdiction served by the commission to which the member is appointed. The Board of Governors of The Florida Bar shall submit to the Governor three recommended nominees for each position. The Governor shall select the appointee from the list of nominees recommended for that position, but the Governor may reject all of the nominees recommended for a position and request that the Board of Governors submit a new list of three different recommended

⁴ Analysis prepared by the General Counsel of the Florida Bar on file with CRC staff.

⁵ *Mallory v. Harkness*, 895 F. Supp. 1556 (S.D. Fla. 1995) aff'd 109 F. 3d 771 (11th Cir. 1997).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ CS/HB 367 by the Council for Smarter Government and Reps. Brummer and Cantens.

nominees for that position who have not been previously recommended by the Board of Governors.

(b) Five members appointed by the Governor, each of whom is a resident of the territorial jurisdiction served by the commission to which the member is appointed, of which at least two are members of The Florida Bar engaged in the practice of law. . . .

(4) In making an appointment, the Governor shall seek to ensure that, to the extent possible, the membership of the commission reflects the racial, ethnic, and gender diversity, as well as the geographic distribution, of the population within the territorial jurisdiction of the court for which nominations will be considered. The Governor shall also consider the adequacy of representation of each county within the judicial circuit.¹²

The 1996 amendment proscribed that the number of nominees sent to the governor be not fewer than three but not more than six for each vacancy.¹³

B. EFFECT OF PROPOSED CHANGES:

This proposed amendment provides for the composition of each judicial nominating commission. It provides that the commissions shall be composed of three members who are appointed by the Board of Governors of The Florida Bar from bar members who are actively engaged in the practice of law and who have offices within the territorial jurisdiction of the affected court or in the district or circuit.

It provides that three members who are electors are to be appointed by the Governor and they must reside in the territorial jurisdiction of the court or in the circuit. These members may or may not be members of the bar. It provides that the remaining three members must reside in the territorial jurisdiction of the court or in the circuit, who are not members of the bar and are appointed by the six members on the commission appointed by the bar and the Governor.

The appointing authorities must seek to provide appointments that reflect diversity regarding ethnicity, race, and gender as well as providing geographic distribution of the population within the territorial jurisdiction of the court. The amendment takes effect on July 1, 2019.

C. FISCAL IMPACT:

None.

¹² Fla. Stat. § 43.291.

¹³ Talbot D'Alemberte, *The Florida State Constitution*, 178 (2nd ed. 2017).

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.

By Commissioner Schifino

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201742__

1 A proposal to amend
2 Section 11 of Article V and create a new section in
3 Article XII of the State Constitution to specify the
4 composition of judicial nominating commissions, to
5 establish terms of membership on a commission, and to
6 require appointing authorities to the commissions to
7 consider diversity in making appointments.

8
9 Be It Proposed by the Constitution Revision Commission of
10 Florida:

11
12 Section 11 of Article V of the State Constitution is
13 amended to read:

14 ARTICLE V

15 JUDICIARY

16 SECTION 11. Vacancies.—

17 (a) Whenever a vacancy occurs in a judicial office to which
18 election for retention applies, the governor shall fill the
19 vacancy by appointing for a term ending on the first Tuesday
20 after the first Monday in January of the year following the next
21 general election occurring at least one year after the date of
22 appointment, one of not fewer than three persons nor more than
23 six persons nominated by the appropriate judicial nominating
24 commission.

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

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33 shall be held to fill that judicial office for the term of the
34 office beginning at the end of the appointed term.

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

40 (d) There shall be a separate judicial nominating
41 commission as provided by general law for the supreme court,
42 each district court of appeal, and each judicial circuit for all
43 trial courts within the circuit. Uniform rules of procedure
44 shall be established by the judicial nominating commissions at
45 each level of the court system. Such rules, or any part thereof,
46 may be repealed by general law enacted by a majority vote of the
47 membership of each house of the legislature, or by the supreme
48 court, five justices concurring. Except for deliberations of the
49 judicial nominating commissions, the proceedings of the
50 commissions and their records shall be open to the public.

51 (1) Each judicial nominating commission shall be composed
52 of the following:

53 a. Three members appointed by the board of governors of the
54 bar of Florida from among bar members who are actively engaged
55 in the practice of law with offices within the territorial
56 jurisdiction of the affected court, or in the district or
57 circuit;

58 b. Three electors who reside in the territorial
59 jurisdiction of the court or in the circuit appointed by the
60 governor; and

61 c. Three electors who reside in the territorial

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62 jurisdiction of the court or in the circuit and who are not
63 members of the bar of Florida, selected and appointed by a
64 majority vote of the other six members of the commission.

65 (2) A justice or judge may not be a member of a judicial
66 nominating commission. A member of a judicial nominating
67 commission may hold public office other than judicial office. A
68 member of a judicial nominating commission is not eligible for
69 appointment to state judicial office for which that commission
70 has the authority to make nominations, either during such term
71 of membership or for a period of 2 years thereafter. All acts of
72 a judicial nominating commission shall be made with a
73 concurrence of a majority of its members.

74 (3) A member of a judicial nominating commission shall
75 serve a term of 4 years and is not eligible for consecutive
76 reappointment. A member of a judicial nominating commission may
77 be suspended by the governor and removed by the senate for cause
78 pursuant to uniform rules of procedure established by the
79 judicial nominating commissions consistent with Section 7,
80 Article IV of this Constitution.

81 (4) In making an appointment, the governor, the board of
82 governors of the bar of Florida, and members of the judicial
83 nominating commissions shall seek to provide appointments to the
84 commissions that reflect diversity as to ethnicity, race, and
85 gender, and provide geographic distribution of the population
86 within the territorial jurisdiction of the court for which
87 nominations will be considered. The governor, the board of
88 governors of the bar of Florida, and members of the judicial
89 nominating commissions shall also consider the adequacy of
90 representation of each county within the judicial circuit.

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

ARTICLE XII
SCHEDULE

Composition of judicial nominating commissions.—The amendment to Section 11 of Article V, which relates to the composition of judicial nominating commissions, shall take effect July 1, 2019.

**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.



369424

CRC ACTION

Commissioner .
Comm: FAV .
01/19/2018 .
. .
. .
. .

The Committee on Judicial (Joyner) recommended the following:

CRC Amendment (with title amendment)

Delete lines 50 - 62
and insert:
appropriated by general law.

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

And the title is amended as follows:

Delete lines 8 - 11
and insert:
functions to the Legislature.

By Commissioner Kruppenbacher

kruppenbf-00073-17

201755__

1 A proposal to amend
2 Section 14 of Article V of the State Constitution to
3 require the Legislature to provide by general law for
4 the payment of filing fees, service charges, and other
5 costs for certain judicial proceedings; to require the
6 clerks of the circuit and county courts to submit an
7 annual cumulative budget for performing court-related
8 functions to the Legislature; and to authorize the
9 clerks of the circuit and county courts to appeal to
10 the Governor and Cabinet if the Legislature fails to
11 take certain action regarding a budget deficit.

12
13 Be It Proposed by the Constitution Revision Commission of
14 Florida:

15
16 Section 14 of Article V of the State Constitution is
17 amended to read:

18 ARTICLE V

19 JUDICIARY

20 SECTION 14. Funding.—

21 (a) All justices and judges shall be compensated only by
22 state salaries fixed by general law. Funding for the state
23 courts system, state attorneys' offices, public defenders'
24 offices, and court-appointed counsel, except as otherwise
25 provided in subsection (c), shall be provided from state
26 revenues appropriated by general law.

27 (b) All funding for the offices of the clerks of the
28 circuit and county courts performing court-related functions,
29 except as otherwise provided in this subsection and subsection
30 (c), shall be provided by adequate and appropriate filing fees
31 for judicial proceedings and service charges and costs for
32 performing court-related functions as required by general law.

kruppenbf-00073-17

201755__

33 By general law, the legislature shall provide for the payment of
34 filing fees, service charges, and other costs for judicial
35 proceedings in criminal and other cases where the parties
36 participating do not pay filing fees. Such payment must be
37 sufficient to offset the cost of the clerks' services in those
38 cases. Selected salaries, costs, and expenses of the state
39 courts system may be funded from appropriate filing fees for
40 judicial proceedings and service charges and costs for
41 performing court-related functions, as provided by general law.
42 Where the requirements of either the United States Constitution
43 or the Constitution of the State of Florida preclude the
44 imposition of filing fees for judicial proceedings and service
45 charges and costs for performing court-related functions
46 sufficient to fund the court-related functions of the offices of
47 the clerks of the circuit and county courts, the state shall
48 provide, as determined by the legislature, adequate and
49 appropriate supplemental funding from state revenues
50 appropriated by general law. The clerks of the circuit and
51 county courts shall annually submit a cumulative budget for
52 performing court-related functions to the legislature, including
53 any projected deficit based on the most recent official
54 consensus estimate of fines and service charges set by general
55 law that are available to fund the budgets of the clerks. If the
56 legislature fails to address such deficit during the next
57 regular legislative session following submission of the budget,
58 the clerks of the circuit and county courts may file an appeal
59 by petitioning the governor and cabinet to conduct a budget
60 hearing, to determine the amount of any deficit, and to request
61 relief from the legislature from unobligated moneys in the state

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62 treasury.

63 (c) No county or municipality, except as provided in this
64 subsection, shall be required to provide any funding for the
65 state courts system, state attorneys' offices, public defenders'
66 offices, court-appointed counsel or the offices of the clerks of
67 the circuit and county courts performing court-related
68 functions. Counties shall be required to fund the cost of
69 communications services, existing radio systems, existing multi-
70 agency criminal justice information systems, and the cost of
71 construction or lease, maintenance, utilities, and security of
72 facilities for the trial courts, public defenders' offices,
73 state attorneys' offices, and the offices of the clerks of the
74 circuit and county courts performing court-related functions.
75 Counties shall also pay reasonable and necessary salaries,
76 costs, and expenses of the state courts system to meet local
77 requirements as determined by general law.

78 (d) The judiciary shall have no power to fix
79 appropriations.

PROPOSAL 55

What is the issue or problem?

The Florida Constitution provides that “All funding for the offices of the clerks of the circuit and county courts performing court-related functions... 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.” Art. V, § 14, Fla. Const.

- This system was implemented as a result of the 1998 CRC. It is fitting that the next CRC take this opportunity to evaluate the status and efficacy of the current funding model.
- During the early years, this funding model worked well. The legislature created appropriate fees and service charges, and clerks retained the majority of revenue. The foreclosure crisis actually helped stabilize the justice system, due to the generation of increased civil filing fees.
- Over time, however, both policy changes and social factors have caused the funding model to break down and destabilize.

(1) The legislature has created an increasing number of non-paying customers. For example, criminal cases are exempt from filing fees; state agencies such as DCF are exempt from filing fees; indigent persons are exempt from filing fees; DV petitioners are exempt from fees; Baker Act cases are exempt from fees; etc.

(2) Fees haven't been revised to keep up with costs. Health care and FRS expenses continue to increase, as do the technological investments required by statute and by order of the Florida Supreme Court. And yet, filing fees aren't increased each year to compensate.

(3) Foreclosure cases and traffic fines have dropped off substantially. The foreclosure crisis has resolved, and officers are issuing far fewer tickets than they did in the past.

(4) Each year, it seems a greater percentage of fees have been redirected from clerks to other purposes. Instead of clerks getting

paid first, the current statutory scheme only allows the clerks to keep a **remainder** of fees that remain **after** a substantial portion (approximately 45%) of those fees are redistributed to general revenue and various trust funds. Thus, clerks now pay an effective tax rate on their income of 45%. For these reasons, the current funding model can no longer sustain a stable justice system.

How have clerks been specifically impacted by the budget de-stabilization?

- Quality, accuracy, and speed are crucial to public safety. All of these areas are jeopardized when the clerks are starved for funding:
 - **Warrants:** judges and sheriffs depend on clerks to issue warrants and quash warrants, thereby ensuring that persons who need to be arrested, are arrested – and people who shouldn't be arrested, aren't arrested.
 - **Driver's licenses:** DHSMV depends on clerks for timely and accurate suspension (and restoration) of driver's licenses.
 - **Baker Act:** FDLE depends on clerks for accurate and timely reporting to the mental health database, to ensure that law abiding citizens can purchase firearms, while Baker Act patients cannot.
 - **Criminal Sentencing:** a trial clerk's calculation and recording of a criminal sentence is crucial to ensure that persons remain in prison for the exact amount of time specified by the judge.
 - **Domestic Violence:** victims receive help from specially trained clerks when seeking injunctions for protection.
 - **Child support:** the Department of Revenue (DOR) depends on clerks to accurately report child support payments. This ensures that children actually receive their court-ordered support.
 - **Trust funds:** many agencies depend on clerks to collect, process, and distribute trust funds on the agencies' behalf. Examples include the state attorneys, public defenders, counties, and municipalities.

How does Proposal 55 solve the problem?

- Article V is a “pay to play” system – in other words, the clerks are designed to be funded by users. This system works fine as long as users actually pay. However, the legislature has created a large category of users who do **not** pay for the services we receive. As a result, any such users require an offset from other funding sources.
- This proposal brings stability to the justice system by ensuring that clerks are compensated for performing labor in cases where the legislature has determined that no fees should be assessed.
 - Note: clerks are neutral regarding the policy decision to charge or not charge a fee to certain users. The clerks are simply saying that there is a cost associated with providing services – and if the user is not paying the cost, then the cost needs to be paid elsewhere. Under proposal 55, it remains 100% up to the legislature to determine (1) which users are exempt from fees, and (2) how and where to reimburse the clerks for the costs associated with providing those services.

Why does it belong in the constitution? Why can't it be accomplished through legislation?

- Proposal 55 is important to the stability of the justice system. Every year legislation changes. Fees are often adjusted. Paying customers today are non-paying customers tomorrow. P55 ensures that the justice system remains functional regardless of policy decisions that create additional classes of non-paying customers, or redirect additional revenues to trust funds.
- The legislature cannot bind future legislatures to funding commitments. A constitutional amendment is the only way to ensure that all future legislatures will provide adequate funding for the justice system.

Amendment to remove the appeal process

- Original proposal includes an appeal for the clerks in situations where the funding is inadequate. The appeal is similar to the statutory appeal process for sheriffs (i.e. the appeal goes to the governor). Therefore, the legislature has already recognized the “appeal to the governor” as a reasonable method by which local officials can help ensure that public safety is adequately protected.
- However, clerks recognize that the appeal places additional resources and strain on the governor’s office. In addition, clerks respect the determination of the legislature, and don’t want to be perceived as “crying to dad” if they don’t get their way from the legislature. As a result, the clerks support Commissioner Joyner’s amendment to remove the appeals process.

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

*SPEAKS
before KEN*

1/19/18

Meeting Date

55

Proposal Number (if applicable)

*Topic Clerk Funding

Amendment Barcode (if applicable)

*Name Stacy M. Butterfield

Address 330 W. Church Street

Phone 863-534-4522

Bartow, FL 33830
City State Zip

Email Stacybutterfield@polk-county.net

*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? Florida Court Clerks ; Comptroller

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No

Clerk ; Comptroller Polk County, FL

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
APPEARANCE RECORD
(Deliver completed form to Commission staff)

SPKX N76L
STACY
55

1/12/18

Meeting Date

Proposal Number (if applicable)

*Topic CLEK FUNDING

Amendment Barcode (if applicable)

*Name KEN BURKE

Address 315 COURT ST

Phone 727-647-1859

Street

CLEARWATER FL 33756

Email KBURKE@PINECLAS

City

State

Zip

CLEK ONE

*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? FLORIDA COURT CLERKS & COMPTROLLERS

Are you a registered lobbyist? Yes No

→ PINECLAS COUNTY CLERK & COMPTROLLER

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
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/2018

Meeting Date

55

Proposal Number (if applicable)

*Topic CLERK FUNDING

Amendment Barcode (if applicable)

*Name BILLY WASHINGTON

Address 12353 NE COLIN KOUY HWY

Phone 850 973 8000

Street

PIPETTA

FL

32350

City

State

Zip

Email bwashington@madison
clerk.com

*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? FLORIDA COURT CLERKS & COMPTROLLERS

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No MADISON COUNTY CLERK

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__

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

7
8 Be It Proposed by the Constitution Revision Commission of
9 Florida:

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

13 ARTICLE V

14 JUDICIARY

15 SECTION 10. Retention; election and terms.-

16 (a) Any justice or judge may qualify for retention by a
17 vote of the electors in the general election next preceding the
18 expiration of the justice's or judge's term in the manner
19 prescribed by law. If a justice or judge is ineligible or fails
20 to qualify for retention, a vacancy shall exist in that office
21 upon the expiration of the term being served by the justice or
22 judge. When a justice or judge so qualifies, the ballot shall
23 read substantially as follows: "Shall Justice (or Judge)
24 ... (name of justice or judge) ... of the ... (name of the
25 court) ... be retained in office?" If a majority of the qualified
26 electors voting within the territorial jurisdiction of the court
27 vote to retain, the justice or judge shall be retained for a
28 term of six years. The term of the justice or judge retained
29 shall commence on the first Tuesday after the first Monday in
30 January following the general election. If a majority of the
31 qualified electors voting within the territorial jurisdiction of
32 the court vote to not retain, a vacancy shall exist in that

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2017101__

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

35 ~~(b)(1)~~ The terms of circuit judges and county court judges
36 shall be for six years. The initial election of circuit judges
37 and county court judges is shall be preserved notwithstanding
38 the provisions of subsection (a). However, if a circuit judge or
39 a county court judge chooses to serve additional terms in the
40 same office following the conclusion of the term that he or she
41 initially assumed by election, the judge must qualify for
42 retention in accordance with subsection (a). ~~unless a majority~~
43 ~~of those voting in the jurisdiction of that circuit approves a~~
44 ~~local option to select circuit judges by merit selection and~~
45 ~~retention rather than by election. The election of circuit~~
46 ~~judges shall be by a vote of the qualified electors within the~~
47 ~~territorial jurisdiction of the court.~~

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

55 ~~(3)~~

56 ~~a. A vote to exercise a local option to select circuit~~
57 ~~court judges and county court judges by merit selection and~~
58 ~~retention rather than by election shall be held in each circuit~~
59 ~~and county at the general election in the year 2000. If a vote~~
60 ~~to exercise this local option fails in a vote of the electors,~~
61 ~~such option shall not again be put to a vote of the electors of~~

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62 ~~that jurisdiction until the expiration of at least two years.~~

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

70 ~~e. After the year 2000, a county may initiate the local~~
71 ~~option for merit selection and retention or the election of~~
72 ~~county court judges, whichever is applicable, by filing with the~~
73 ~~supervisor of elections a petition signed by the number of~~
74 ~~electors equal to at least ten percent of the votes cast in the~~
75 ~~county in the last preceding election in which presidential~~
76 ~~electors were chosen. The terms of circuit judges and judges of~~
77 ~~county courts shall be for six years.~~

78 SECTION 11. Vacancies.-

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

88 (b) The governor shall fill each vacancy on a circuit court
89 or on a county court, ~~wherein the judges are elected by a~~
90 ~~majority vote of the electors,~~ by appointing for a term ending

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91 on the first Tuesday after the first Monday in January of the
92 year following the next primary and general election occurring
93 at least one year after the date of appointment, one of not
94 fewer than three persons nor more than six persons nominated by
95 the appropriate judicial nominating commission. An election
96 shall be held to fill that judicial office for the term of the
97 office beginning at the end of the appointed term.

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

103 (d) There shall be a separate judicial nominating
104 commission as provided by general law for the supreme court,
105 each district court of appeal, and each judicial circuit for all
106 trial courts within the circuit. Uniform rules of procedure
107 shall be established by the judicial nominating commissions at
108 each level of the court system. Such rules, or any part thereof,
109 may be repealed by general law enacted by a majority vote of the
110 membership of each house of the legislature, or by the supreme
111 court, five justices concurring. Except for deliberations of the
112 judicial nominating commissions, the proceedings of the
113 commissions and their records shall be open to the public.