



TAXATION AND BUDGET REFORM COMMISSION

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January 24, 2008

The Honorable Ken Pruitt
President

The Florida Senate
409 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399

The Honorable Marco Rubio
Speaker

The Florida House of Representatives
420 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399

Dear President Pruitt and Speaker Rubio:

The Taxation and Budget Reform Commission hereby transmits Statutory Recommendation 11, related to exemption of proposals by the Commission from the 75-word ballot summary limit found in s. 101.161(1), F.S.

On January 11, 2008, the TBRC voted unanimously to transmit Statutory Recommendation 11 to the Legislature for consideration. The purpose of the measure is to recommend that the Legislature amend s. 101.161(1), F.S., to make constitutional amendments proposed by the Commission exempt from the 75-word ballot summary limit. The Commission further requests that the statutory change be enacted early in the regular session in order to allow for it to apply to constitutional amendments proposed by the 2007 - 2008 Commission.

Article XI, Section 7, Florida Constitution, directs this Commission to recommend statutory changes to the Legislature, as well as propose constitutional revisions. Article XI, Section 5, requires that a revision proposed by the Commission "shall be submitted to the electors at the next general election...." In order to facilitate and ensure the implementation of Section 5, we are submitting a recommended statutory change to the ballot summary statute.

The present ballot summary law constitutes a significant impediment to the clear intentions of the Constitution that constitutional amendments and revisions "shall be submitted to voters." Numerous cases in recent years have removed constitutional proposals from the ballot based on the present wording of section 101.161. While the commission agrees that ballot proposals should clearly and unambiguously state the chief purpose of the ballot question, the effect of the statutory ballot summary limitation can be a denial of the right of Floridians to vote on a constitutionally proposed question.

The Commission has authority to approve complex and comprehensive tax and budget revisions. Considering the statutory requirement of clear and unambiguous ballot language, it appears that the 75 word limit imposes an unreasonable restriction on our proposals. The Commission is not bound by the single subject restriction applicable to initiative proposals, but the ballot summary restriction has an unintended limiting effect as the ability to meet the test of clear and unambiguous

description is severely tested in trying to describe more than one subject at a time. A number of important revisions have been proposed that might not be clearly and unambiguously explainable in 75 words or less.

After the 2000 Florida Supreme Court decision (*Armstrong vs. Harris*) striking the 1998 death penalty amendment, the Legislature recognized the unreasonableness of this restriction and exempted Joint Resolutions from the requirement. While an exemption from the 75 word limit would not guarantee that the Commission's proposed ballot language will be upheld in a court challenge, we understand that the Commission would have much more ability to comply with the substantive standard of the ballot law if it is exempted from the 75 word limitation. Therefore, the Commission urges the Legislature to exempt the Commission and the Constitutional Revision Commission from the 75 word ballot summary limitation imposed by section 101.161.

Enclosed is a copy of our statutory recommendation with respect to the 75 word limitation. I would be happy to assist you in explaining to your members the importance of ballot summary reform to the Commission's work. Please do not hesitate to contact me with any questions or requests for such assistance.

Respectfully,

A handwritten signature in black ink, appearing to read "Allan Bense", with a long horizontal flourish extending to the right.

Allan Bense, Chairman

Enclosures