

House Bill No. 2163

An act relating to judicial selection; amending s. 34.021, F.S.; authorizing retention of county court judges; amending s. 105.031, F.S.; providing requirements to qualify for election or retention to judicial office; amending s. 105.041, F.S.; providing form of ballot for retention votes on county and circuit court judges; amending s. 105.051, F.S.; providing for determination of retention for county and circuit court judges; amending s. 105.061, F.S.; authorizing electors to vote for retention of circuit and county court judges; amending s. 105.08, F.S.; providing for campaign contribution and expense reporting for circuit and county court judges subject to vote of retention; amending s. 106.011, F.S.; redefining the term "unopposed candidate"; amending s. 106.08, F.S.; providing contribution limits for election and retention of circuit and county court judges; providing penalties; providing for petitions and certification of ballot position; establishing deadlines; amending s. 101.161, F.S.; placing the issue of the method of selection of judges on the general election ballot in the year 2000; establishing manner for placing judicial selection initiatives on subsequent general election ballots; providing ballot language; providing for impact on sitting judges; repealing s. 25.021, F.S.; deleting terms of elected Supreme Court justices; amending s. 35.06, F.S.; deleting terms of elected district court of appeal judges; amending s. 101.151, F.S.; conforming provisions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 34.021, Florida Statutes, is amended to read:

34.021 Qualifications of county court judges.—

(1) No person is eligible for election or appointment to the office of county court judge unless the person is, and has been for the preceding 5 years, a member in good standing of the bar of Florida prior to qualifying for election to such office or submitting his or her name to the appropriate judicial nominating commission for appointment. However, a person is eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or less if he or she is a member in good standing of the bar of Florida.

(2) A county court judge is eligible to seek reelection or retention, notwithstanding the provisions of subsection (1), if, on the first day of the qualification period for election to such office or a retention vote, such judge is actively serving in such office and is not under suspension or disqualification.

(3) Any person who was a county court judge prior to July 1, 1978, in any county having a population of 40,000 or less, according to the last decennial census, and who has successfully completed a 3-year law training program

approved by the Supreme Court for the training of county court judges who are not members of The Florida Bar is eligible to seek ~~entitled to such election or retention~~ and to serve as a county court judge in any county having a population of 40,000 or less, the provisions of subsection (1) to the contrary notwithstanding.

(4) Any county judge who is not a member of the bar, in any county having a population of 40,000 or less, according to the last decennial census, and who has successfully completed a law training program approved by the Supreme Court for the training of county court judges who are not members of The Florida Bar is entitled to serve as a county court judge in any county encompassed in the circuit in which the judge has been elected or retained in a retention vote, when assigned thereto.

Section 2. Paragraph (a) of subsection (5) of section 105.031, Florida Statutes, is amended to read:

105.031 Qualification; filing fee; candidate's oath; items required to be filed.—

(5) ITEMS REQUIRED TO BE FILED.—

(a) In order for a candidate for judicial office to be qualified, the following items must be received by the filing officer by the end of the qualifying period:

1. Except for candidates for retention to judicial office ~~For each candidate qualifying for the office of circuit judge or county court judge~~, a properly executed check drawn upon the candidate's campaign account in an amount not less than the fee required by subsection (3) or, in lieu thereof, the copy of the notice of obtaining ballot position pursuant to s. 105.035. If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall, the end of qualifying notwithstanding, have 48 hours from the time such notification is received, excluding Saturdays, Sundays, and legal holidays, to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.

2. The candidate's oath required by subsection (4), which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, duly acknowledged.

3. The loyalty oath required by s. 876.05, signed by the candidate and duly acknowledged.

4. The completed form for the appointment of campaign treasurer and designation of campaign depository, as required by s. 106.021.

5. The full and public disclosure of financial interests required by s. 8, Art. II of the State Constitution.

Section 3. Section 105.041, Florida Statutes, is amended to read:

105.041 Form of ballot.—

(1) **BALLOTS.**—The names of candidates for judicial office which appear on the ballot at the first primary election shall either be grouped together on a separate portion of the ballot or on a separate ballot. The names of candidates for election to judicial office which appear on the ballot at the general election and the names of justices and judges seeking retention to office shall be grouped together on a separate portion of the general election ballot.

(2) **LISTING OF CANDIDATES.**—The names of all candidates for election to the office of circuit judge or the office of county court judge shall be listed in alphabetical order. With respect to retention of justices and judges ~~of district courts of appeal~~, the question “Shall Justice (or Judge) (name of justice or judge) of the (name of the court) be retained in office?” shall appear on the ballot in alphabetical order and thereafter the words “Yes” and “No.”

(3) **REFERENCE TO PARTY AFFILIATION PROHIBITED.**—No reference to political party affiliation shall appear on any ballot with respect to any nonpartisan judicial office or candidate.

(4) **WRITE-IN CANDIDATES.**—Space shall be made available on the general election ballot for an elector to write in the name of a write-in candidate for judge of a circuit court or county court if a candidate has qualified as a write-in candidate for such office pursuant to s. 105.031. This subsection does not apply to the offices of justices and judges seeking retention.

Section 4. Section 105.051, Florida Statutes, is amended to read:

105.051 Determination of election or retention to office.—

(1) **ELECTION.**—In circuits and counties holding elections:

(a) The name of an unopposed candidate for the office of circuit judge or county court judge shall not appear on any ballot, and such candidate shall be deemed to have voted for himself or herself at the general election.

(b) If two or more candidates, neither of whom is a write-in candidate, qualify for such an office, the names of those candidates shall be placed on the ballot at the first primary election. If any candidate for such office receives a majority of the votes cast for such office in the first primary election, the name of the candidate who receives such majority shall not appear on any other ballot unless a write-in candidate has qualified for such office. An unopposed candidate shall be deemed to have voted for himself or herself at the general election. If no candidate for such office receives a majority of the votes cast for such office in the first primary election, the names of the two candidates receiving the highest number of votes for such office shall be placed on the general election ballot. If more than two candidates receive an equal and highest number of votes, the name of each candidate receiving an equal and highest number of votes shall be placed on the general election ballot. In any contest in which there is a tie for second place and the candidate placing first did not receive a majority of the votes

cast for such office, the name of the candidate placing first and the name of each candidate tying for second shall be placed on the general election ballot.

(c) The candidate who receives the highest number of votes cast for the office in the general election shall be elected to such office. If the vote at the general election results in a tie, the outcome shall be determined by lot.

(2) RETENTION.—With respect to any justice of the Supreme Court or judge of a district court of appeal who qualifies to run for retention in office, the question prescribed in s. 105.041(2) shall be placed on the ballot at the general election. If a majority of the qualified electors voting on such question within the territorial jurisdiction of the court vote for retention, the justice or judge shall be retained for a term of 6 years commencing on the first Tuesday after the first Monday in January following the general election. If less than a majority of the qualified electors voting on such question within the territorial jurisdiction of the court vote for retention, a vacancy shall exist in such office upon the expiration of the term being served by the justice or judge.

Section 5. Section 105.061, Florida Statutes, is amended to read:

105.061 Electors qualified to vote.—Each qualified elector of the territorial jurisdiction of a court shall be eligible to vote for a candidate for each judicial office of such court or, in the case of a justice of the Supreme Court or a judge seeking retention of a district court of appeal, for or against retention of such justice or judge.

Section 6. Subsection (2) of section 105.08, Florida Statutes, is amended to read:

105.08 Campaign contribution and expense; reporting.—

(2) Notwithstanding any other provision of this chapter or chapter 106, a candidate for retention as a justice of the Supreme Court or a judge of a district court of appeal who has not received any contribution or made any expenditure may file a sworn statement at the time of qualifying that he or she does not anticipate receiving contributions or making expenditures in connection with the candidacy for retention to office. Such candidate shall file a final report pursuant to s. 106.141, within 90 days following the general election for which the candidate's name appeared on the ballot for retention. Any such candidate for retention to judicial office who, after filing a statement pursuant to this subsection, receives any contribution or makes any expenditure in connection with the candidacy for retention shall immediately file a statement to that effect with the qualifying officer and shall begin filing reports as an opposed candidate pursuant to s. 106.07.

Section 7. Subsection (15) of section 106.011, Florida Statutes, is amended to read:

106.011 Definitions.—As used in this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(15) “Unopposed candidate” means a candidate for nomination or election to an office who, after the last day on which any person, including a

write-in candidate, may qualify, is without opposition in the election at which the office is to be filled or who is without such opposition after such date as a result of any primary election or of withdrawal by other candidates seeking the same office. A candidate is not an unopposed candidate if there is a vacancy to be filled under s. 100.111(4), if there is a legal proceeding pending regarding the right to a ballot position for the office sought by the candidate, or if the candidate is seeking retention as a justice of the Supreme Court or as a judge of a district court of appeal.

Section 8. Subsection (1) of section 106.08, Florida Statutes, is amended to read:

106.08 Contributions; limitations on.—

(1)(a) Except for political parties, no person, political committee, or committee of continuous existence may, in any election, make contributions in excess of \$500 to any candidate for election to or retention in office or to any political committee supporting or opposing one or more candidates. Candidates for the offices of Governor and Lieutenant Governor on the same ticket are considered a single candidate for the purpose of this section.

(b)1. The contribution limits provided in this subsection do not apply to contributions made by a state or county executive committee of a political party regulated by chapter 103 or to amounts contributed by a candidate to his or her own campaign.

2. Notwithstanding the limits provided in this subsection, an unemancipated child under the age of 18 years of age may not make a contribution in excess of \$100 to any candidate or to any political committee supporting one or more candidates.

(c) The contribution limits of this subsection apply to each election. For purposes of this subsection, the first primary, second primary, and general election are separate elections so long as the candidate is not an unopposed candidate as defined in s. 106.011(15). However, for the purpose of contribution limits with respect to candidates for retention as a justice of the Supreme Court or judge of a district court of appeal, there is only one election, which is the general election, ~~and~~ With respect to candidates in a circuit holding an election for circuit judge or in a county holding an election for county court judge, there are only two elections, which are the first primary election and general election.

Section 9. Initiative for method of selection for circuit or county court judges; procedures for placement on ballot.—

(1) Subsequent to the general election in the year 2000, a local option for merit selection and retention or the election of circuit or county court judges may be placed on the ballot for the general election occurring in excess of 90 days from the certification of ballot position by the Secretary of State for circuit court judges or the county supervisor of elections for county court judges. The ballot shall provide for a vote on the method for selection of judges not currently used for filling judicial offices in the county or circuit.

(2) Certification of ballot position for the method of selection of circuit court judges shall be issued when the Secretary of State has received a verification certificate from each supervisor of elections in a circuit indicating that the requisite number of valid signatures of electors in the circuit has been submitted and verified by the supervisor or supervisors of that circuit. Certification of ballot position for the method of selection of county court judges shall be issued when the supervisor of elections in a county indicates that the requisite number of signatures of electors in the county has been submitted to and verified by the supervisor. Each signature shall be dated when made and shall be valid for a period of 2 years following such date, provided all requirements of law are complied with.

(3) The sponsor of an initiative for merit selection and retention or election of circuit or county court judges must register as a political committee pursuant to s. 106.03.

(4) The Secretary of State shall adopt rules pursuant to ss. 120.536(1) and 120.54 prescribing the style and requirements of the circuit court and county court forms for collection of signatures.

(5) No later than 5 p.m. 151 days prior to the general election at which the proposed judicial selection initiative is to be voted on, the sponsor shall submit signed and dated forms to the appropriate supervisor of elections for verification as to the number of registered electors whose valid signatures appear thereon. The supervisor shall promptly verify the signatures upon payment of the fee or filing of the undue burden oath required by s. 99.097. Verification must be completed at least 91 days prior to the general election. Upon completion of verification, the supervisor shall execute a certificate indicating the total number of signatures checked and the number of signatures verified as valid and as being of registered electors of the applicable county or circuit. This certificate must be immediately transmitted to the Secretary of State for petitions related to the method of selection of circuit court judges. The supervisor must retain the signature forms for at least 1 year following the election in which the issue appeared on the ballot or until the committee that circulated the petition is no longer seeking to obtain ballot position as determined by the Division of Elections for circuit court petitions or by the supervisor of elections for county court petitions.

(6) Upon a determination by the Secretary of State for circuit court petitions or by the supervisor of elections for county court petitions that the requisite number of valid signatures has been obtained, a certification of ballot position must be issued for the proposed method of selection of judges. A request to exercise a local option to change the method for selection of circuit or county court judges is deemed filed with the Secretary of State for circuit court judges or the supervisor of elections for county court judges upon the date of the receipt of a certificate or certificates indicating the petition has been signed by the constitutionally required number of electors.

(7) Within 10 days after each general election for which an initiative to change the method of selection of circuit or county court judges was placed on the ballot in any circuit or county in the state, the Secretary of State must notify the Chief Justice of the Supreme Court of Florida of the changed

method for selection of judges for any circuit or county where the initiative passed.

(8) The Department of State shall have the authority to promulgate rules in accordance with ss. 120.536(1) and 120.54 to carry out the provisions of this section.

Section 10. Subsection (3) is added to section 101.161, Florida Statutes, to read:

101.161 Referenda; ballots.—

(3)(a) The ballot for the general election in the year 2000 must contain a statement allowing voters to determine whether circuit or county court judges will be selected by merit selection and retention as provided in Section 10 of Article V of the State Constitution. The ballot in each circuit must contain the statement in paragraph (c). The ballot in each county must contain the statement in paragraph (e).

(b) For any general election in which the Secretary of State, for any circuit, or the supervisor of elections, for any county, has certified the ballot position for an initiative to change the method of selection of judges, the ballot for any circuit must contain the statement in paragraph (c) or paragraph (d) and the ballot for any county must contain the statement in paragraph (e) or paragraph (f).

(c) In any circuit where the initiative is to change the selection of circuit court judges to selection by merit selection and retention, the ballot shall state: "Shall circuit court judges in the ...(number of the circuit)... judicial circuit be selected through merit selection and retention?" This statement must be followed by the word "yes" and also by the word "no."

(d) In any circuit where the initiative is to change the selection of circuit court judges to election by the voters, the ballot shall state: "Shall circuit court judges in the ...(number of the circuit)... judicial circuit be selected by vote of the electorate of the circuit?" This statement must be followed by the word "yes" and also by the word "no."

(e) In any county where the initiative is to change the selection of county court judges to merit selection and retention, the ballot shall state: "Shall county court judges in ...(name of county)... be selected through merit selection and retention?" This statement must be followed by the word "yes" and also by the word "no."

(f) In any county where the initiative is to change the selection of county court judges to election by the voters, the ballot shall state: "Shall county court judges in ...(name of the county)... be selected by vote of the electorate of the county?" This statement must be followed by the word "yes" and also by the word "no."

Section 11. No county court judge elected prior to or at the election that approves any revision to the selection of county court judges shall be affected in his or her term of office. Any county judge wishing to apply for a subsequent term will be elected or retained pursuant to the method of election or

selection and retention of county court judges in effect in the county for the election preceding the end of the judge's term of office.

Section 12. No circuit court judge elected prior to or at the election that approves any revision to the selection of circuit court judge shall be affected in his or her term of office. Any circuit court judge wishing to apply for a subsequent term will be elected or retained pursuant to the method of election or selection and retention of circuit court judges in effect in the circuit for the election preceding the end of the judge's term of office.

Section 13. Section 35.06, Florida Statutes, is amended to read:

35.06 Organization of district courts of appeal.—A district court of appeal shall be organized in each of the five appellate districts to be named District Court of Appeal, District. The number of judges of each district court of appeal shall be as follows:

- (1) In the first district there shall be 15 judges.
- (2) In the second district there shall be 14 judges.
- (3) In the third district there shall be 11 judges.
- (4) In the fourth district there shall be 12 judges.
- (5) In the fifth district there shall be 9 judges.

~~The successors of the original and additional judges of the district courts of appeal shall be elected at the general election next preceding the expiration of their respective terms of office to serve for full terms of 6 years.~~

Section 14. Subsection (6) of section 101.151, Florida Statutes, is amended to read:

101.151 Specifications for general election ballot.—In counties in which voting machines are not used, and in other counties for use as absentee ballots not designed for tabulation by an electronic or electromechanical voting system, the general election ballot shall conform to the following specifications:

(6) ~~Except for justices of the Supreme Court and or judges seeking retention of district courts of appeal,~~ the names of unopposed candidates shall not appear on the general election ballot. Each unopposed candidate shall be deemed to have voted for himself or herself.

Section 15. Section 25.021, Florida Statutes, is repealed.

Section 16. This act shall take effect January 1, 2000.

Approved by the Governor June 11, 1999.

Filed in Office Secretary of State June 11, 1999.