

STORAGE NAME: h0125.ca

DATE: January 17, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HJR 125

RELATING TO: Amending the State Constitution Relating To Recording Of Instruments

SPONSOR(S): Representative Gay

STATUTE(S) AFFECTED: Section 1, Article VIII, State Constitution

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) COMMUNITY AFFAIRS

(2)

(3)

(4)

(5)

I. SUMMARY:

This bill proposes amending the Constitution to allow county records to be filed at branch offices of the county clerk's office. Branch offices are designated by the county commission. The bill provides ballot language.

The Division of Elections, Department of State, estimates that the approximate cost to the state to advertise this amendment to be \$25,000.

The fiscal impact on local governments for ballot printing costs is estimated to be minimal.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Constitutional Provision for County Office

The current Constitution and statutes provide that counties maintain principal offices and permanent records at the county seat. *Official records are to be filed at the county seat and are not considered official unless filed there.* Branch offices may serve the county citizens as long as the county commission provides for that.

Currently, attorneys, persons handling real estate transactions, and others needing an officially filed document must travel, in some cases long distances, to reach the county seat. In the alternative, the documents are taken by courier from branch offices to the county seat for official recording. Current computer technology provides an electronic filing method that allows filing official records at branch offices. However, because of the current Constitutional provision, this technology cannot lawfully be employed.

At present, many counties maintain branch offices (i.e., Dade, Orange, Seminole, Okaloosa, Brevard, Charlotte, to name a few). Some smaller counties do not maintain any branch offices.

Constitutional Provision for Amending the Constitution

Article XI, Florida Constitution, provides five ways to amend the Constitution:

- ✓ A vote by three-fifths of each house of the legislature and majority vote in a general election;
- ✓ A three-fourths vote in each house of the legislature and majority vote in a special election;
- ✓ A Constitution Revision Commission (meeting in 1978 and every 20 years thereafter) and majority vote in a general election;
- ✓ Statewide ballot initiative, after collection of sufficient signatures; and
- ✓ Constitutional convention of elected delegates and majority vote in a general election

It also specifies that a Tax and Budget Reform Commission will meet every 10 years (beginning in 1990) to review the state's tax and budget laws, including constitutional limits, and submit changes to voters in the next general election. [See Comments Section of this analysis for future meetings of the Constitution Revision Commission.]

The requirements for placing a constitutional amendment to the vote of the people are found in section 101.161, Florida Statutes. The substance of the amendment must be printed in clear and unambiguous language on the ballot, followed by the words **"yes"** and **"no"** to signify approval or rejection. The wording of the substance of the amendment is not to exceed 75 words. The ballot title is not to exceed 15 words and both must appear in the joint resolution.

B. EFFECT OF PROPOSED CHANGES:

This bill amends the Constitution to allow **official records** of the county **to be filed at branch offices throughout the county**. The County Commission must designate the branches. However, counties are not required to have branch offices. Electronic filing of documents at branch offices is possible through the use of computer software programs. An explanation of this process is found in the Comments Section.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

The bill may place new responsibilities on branch offices of the county clerk's office. However, these new responsibilities represent a change in operating procedures based on new and electronically-dependent technology rather than office personnel. It reduces the requirement that documents be taken to the county seat by courier or other personnel-dependent methods. The bill produces more efficient handling of official documents.

2. Lower Taxes:

This bill does not increase or decrease taxes.

3. Personal Responsibility

This bill does not affect personal responsibility.

4. Individual Freedom:

Not applicable.

5. Family Empowerment:

This bill does not affect family empowerment.

D. SECTION-BY-SECTION ANALYSIS:

Not applicable.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Division of Elections, Department of State, estimates the cost of advertising the Constitutional amendment to be approximately \$25,000.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

4. Total Revenues and Expenditures:

Approximate cost for advertising ballot question: \$25,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

This bill requires county Supervisors of Elections to expend minimal funds connected with the printing of the ballot.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Not applicable.

2. Direct Private Sector Benefits:

Benefits might be realized with respect to saving time and proving convenient for persons filing and recording official documents.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill has an insignificant fiscal impact on counties, but does not require municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue raising authority of counties or municipalities.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce state tax shared with counties and municipalities.

V. COMMENTS:

A spokesman for the Constitutional Revision Commission (Commission), Mr. Billy Buzzett, revealed that the Commission is scheduled to have its first meeting June 2, 1997 if the Legislative Session ends in a timely fashion. The Internet address for the Commission is:

<http://www.law.fsu.edu/crc>

All minutes from past meetings, the last two revision newsletters, the Florida Constitution, meeting notices and other relevant information are available through the website.

REMOTE PROCESSING OF OFFICIAL RECORDS

Ms. Barbara Scott, Clerk of the Circuit Court for Charlotte County, Florida, was appointed a member of the Supreme Court's Court Technology Users' Committee and the Electronic Filing Subcommittee by Supreme Court Chief Justice Gerald Kogan. Ms. Scott serves in this capacity until July 1997. The charge to the subcommittee is to:

. . . assist the Supreme Court and the Office of the State Courts Administrator by reviewing proposed plans submitted by clerks of courts **to implement the electronic filing of documents** . . . and to insure that attorneys, pro se litigants, and members of the public **do not have to purchase multiple or different software programs** in order to file documents electronically from county to county and from court to court. . . . [emphasis added]

Ms. Scott favors this bill. Her work with the Supreme Court's Committee and Subcommittee gives her first-hand knowledge of the availability of systems that could accomplish the goal of branch office electronic filing.

Ms. Scott transmitted to the committee staff a diagram titled "Remote Processing of Official Records," to assist in understanding how the electronic filing of records at a branch office might work. [See attached diagram]. She explains:

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The “main” machine that issues numbers is located at the county seat. It issues numbers on a first-come, first-served basis. The program disallows issuance of the same number to different documents by placing a “hold” on other paths until the file number has been assigned to the active path. [See Comments Section for additional information on this process].

Position of the Florida Association of Court Clerks

The Florida Association of Court Clerks supports this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

An amendment adding “Yes” and “No” to the ballot language is necessary and included with this analysis.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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