

STORAGE NAME: h2263.er

DATE: April 20, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELECTION REFORM
ANALYSIS**

BILL #: HB 2263 (PCB ER 99-02b)

RELATING TO: Elections (Nonpartisan School Boards)

SPONSOR(S): Committee on Election Reform and Representative Flanagan

COMPANION BILL(S): SB 756 (1st engrossed)

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

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I. SUMMARY:

HB 2263 provides for the nonpartisan election of school board members. This bill is drafted pursuant to the amendment to Article IX, Section 4(a), Florida Constitution, which was approved by the voters at the 1998 General Election, commonly referred to as "Constitutional Revision No. 11".

Additionally, the bill requires judicial candidates to subscribe to an oath that the candidate has read and understands the requirements of the Florida Code of Judicial Conduct. The penalty for a judicial candidate who violates the limitations on political activity, as set forth in the Florida Election Code, has been reduced from a first degree misdemeanor to a civil fine of up to \$1,000, to be determined by the Florida Elections Commission. The section prohibiting the endorsement or other support of judicial candidates by partisan organizations has been repealed.

A new section has been created to specifically provide for the determination of election to the office of school board member.

The fiscal impact of this bill has not been determined.

This bill has an effective date of January 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

CONSTITUTIONAL REVISION NO. 11

Effective January 5, 1999, Article IX, Section 4(a) of the Florida Constitution will require school board members to be elected in nonpartisan elections.

SCHOOL BOARD ELECTIONS

Under current general law, school board elections are partisan. [s. 230.08, F.S.(1997)]. Pursuant to general law, school board members are elected at the general election. [s. 100.041(3)(a), F.S. (1997)]. The purpose of primary elections, elections held preceding the general election, is to **nominate** a party nominee to be voted for in the general election. In Florida, the first primary is a **nomination** or **elimination** election; the second primary is a **nominating** election only. [s. 97.021(21), F.S. (1997)].

CHAPTER 105, FLORIDA STATUTES

The Florida Election Code defines a "nonpartisan office" as "an office for which a candidate is prohibited from campaigning or qualifying for election or retention in office based on party affiliation". [s. 97.021(16), F.S. (1997)]. The only chapter in the Florida Election Code which specifically details nonpartisan elections can be found in Chapter 105, Florida Statutes, *Nonpartisan Elections for Judicial Officers*. It should be noted, however, that charter counties may currently provide for nonpartisan school board elections pursuant to their charter or special act. Also, municipal elections may be partisan if so designated in their charter.

Under Chapter 105, Florida Statutes, if two or more candidates for judicial office qualify, the names of those candidates are placed on the ballot at the first primary election. If any candidate for such office receives a majority of the votes at the first primary, the candidate's name does not appear on the general election ballot unless a write-in candidate has qualified. An unopposed candidate is deemed to have voted for himself or herself at the general election. If no candidate receives a majority of votes in the first primary election, the names of the two candidates receiving the highest number of votes are placed on the general election ballot. If more than two candidates receive an equal and highest number of votes in the first primary election, the name of each candidate receiving an equal and highest number of votes is placed on the general elections 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 in the first primary election, the name of the candidate placing first and the name of each candidate tying for second are placed on the general election ballot. The candidate who receives the highest number of votes in the general election is elected to the office. If the vote at the general election results in a tie, the outcome is determined by lot. [See generally, s. 105.051, F.S., (1997)].

Section 105.09, F.S., currently prohibits the endorsement of judicial candidates by political parties and partisan political organizations. Three separate courts have ruled this provision unconstitutional. [See, Concerned Democrats of Florida v. Reno, 458 F.Supp. 60 (S.D. Fla. 1978), *reversed* 634 F.2d 6291 (5th Cir. 1979), *rehearing denied* 638 F.2d 1234 (5th Cir. 1980), *opinion issued* 689 F.2d 1211 (5th Cir. 1981), *cert. denied* 102 S.Ct. 1426, 455 U.S. 938, 71 L.Ed.2d 647; Collier County Republican Executive Committee v. Butterworth, Case No. 97-1283-CA 01 (Florida 20th Judicial Circuit, August 27, 1997); and Pinellas County Republican Executive Committee v. Butterworth and McCabe, Case No. 98-1570-CI-07 (Florida 6th Judicial Circuit, June 9, 1998)].

FILING FEES

Section 105.031, F.S., provides that the filing fees for judicial candidates [3% of the annual salary of the office sought] are deposited in the General Revenue Fund. Filing fees for partisan candidates, including school board candidates, are paid to their state party organizations.

B. EFFECT OF PROPOSED CHANGES:

CHAPTER 105, FLORIDA STATUTES & SCHOOL BOARD ELECTIONS

HB 2263 provides for the nonpartisan election of school board members. Chapter 105, Florida Statutes, has been amended to apply to both judicial candidates and candidates for school board. Under these provisions, school board candidates will qualify by paying a qualifying fee of 4 percent of the annual salary of the office sought, or by petition signed by 3 percent of the registered voters of the district represented by the office. Nonpartisan candidates who use the petition method of qualifying will not be required to state that the filing fee imposes an undue burden on their personal resources, or on resources otherwise available to them. [See, Grube v. Smith, Case No. TCA 92-40122-MMP, Order (N.D. Fla. 7/6/93)].

By definition, nonpartisan candidates are prohibited from campaigning or qualifying based on party affiliation. [s. 97.021(16), F.S. (1997)]. Under the provisions of this bill, **only** nonpartisan candidates for judicial office are further restricted on the types of activity they may be involved in as a candidate. However, the penalty for violating this provision of Chapter 105 has been reduced from a first degree misdemeanor to a civil fine of up to \$1,000, to be determined by the Florida Elections Commission.

This bill creates a new section to Chapter 105 providing a method for the determination of election to the office of school board member. The general premise behind the creation of this section is to assure that the election of a school board member will always be decided at the general election. To that end, if only two candidates, neither of whom is a write-in, qualify the names of those candidates are to be placed on the general election ballot. If more than two candidates, none of whom is a write-in, qualify for such an office, the names of those candidates are to be placed on the first primary election ballot. Thereafter, the names of the two candidates receiving the highest number of votes are to be placed on the general election ballot, **regardless of whether one of the candidates actually received a majority of the votes cast at the first primary election.** If more than two candidates receive an equal and highest number of votes in the first primary, the name of each candidate receiving such votes is to be placed on the ballot at the second primary election. Thereafter, the names of the candidates receiving the highest number of votes in the second primary election are to be placed on the general election ballot, **regardless of whether one of the candidates actually received a majority of the votes cast at the second primary election.** In any contest in which there is a tie for second place, the name of the candidate placing first will be placed on the general election ballot and the name of each candidate placing second are to be placed on the second primary election ballot. Thereafter, the candidate receiving highest number of votes in the second primary will have his or her name placed on the general election ballot.

The candidate who receives the highest number of votes in the general election shall be elected to the office of school board member. If the general election results in a tie, the outcome is to be determined by lot.

FILING FEES

Under the bill, the filing fees for nonpartisan candidates for judicial office and school board are to be deposited in the Elections Commission Trust Fund.

This bill repeals section 230.08, F.S., which provides for school board members to be nominated by political parties holding primary elections. The bill also repeals section 105.09, F.S., which prohibits the endorsement or other support of judicial candidates by partisan organizations.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. Reducing the penalty for the violation of section 105.071, F.S. from a first degree misdemeanor to a civil fine of up to \$1,000, transfers the enforcement of this section from the state attorney's office to the Florida Elections Commission.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. See above.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Not applicable.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not applicable.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. STATUTE(S) AFFECTED:

Amending ss. 99.061, 101.141, 101.151, 101.251, 105.031, 105.035, 105.041, 105.051, 105.061, 105.071, 105.08, 230.061, 230.105, 230.10, and 228.053, F.S.; creating s. 105.055; repealing ss. 105.09 and 230.08, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 230.10, F.S., relating to elections of school boards. Provides that school board elections shall be nonpartisan.

Section 2: Amends s. 105.031, F.S., relating to candidate qualification. Providing terms of qualifying for nonpartisan candidates for judicial office and school board. Provides that filing fees for judicial office and school board office be deposited into the Elections Commission Trust Fund. Provides an oath for candidates for judicial office stating that the candidate has read and understands the requirements of the Florida Code of Judicial Conduct.

Section 3: Amends s. 105.035, F.S., relating to the alternative method of qualifying for nonpartisan judicial and school board offices. Provides that the alternative method of qualifying for certain judicial offices shall apply to school board candidates. Provides that the qualifying officer shall provide the candidate with a petition format to be used by the candidate to reproduce petitions for circulation.

Section 4: Amends s. 105.041, F.S., relating to the form of the ballot for judicial elections. Provides for the inclusion of candidates for school board membership.

Section 5: Amends s. 105.051, F.S., relating to determination of election to judicial offices.

Section 6: Creating s. 105.055, F.S., relating to the determination of election to the office of school board member.

Section 7: Amends s. 105.061, F.S., relating to electors qualified to vote for judicial offices. Provides that the election of members of a school board shall be by vote of qualified electors as prescribed in Chapter 230.

Section 8: Amends s. 105.071, F.S., relating to candidates for judicial office and limitations on political activity. Reduces the violation of this section from a first degree misdemeanor to a civil fine of up to \$1,000, to be determined by the Florida Elections Commission.

Section 9: Amends s. 105.08, F.S., relating to campaign contributions and reporting for judicial candidates. Provides for the inclusion of candidates for school board membership.

Section 10: Amends s. 99.061, F.S., relating to the method of qualifying for nomination or election to federal, state, or multi county district offices other than judicial offices.

Section 11: Amends s. 101.141, F.S., relating to the specifications for the primary election ballot. Removes reference to members of district school boards to conform.

Section 12: Amends s. 101.151, F.S., relating to the specifications for the general election ballot. Removes reference to members of the district school boards to conform.

Section 13: Amends s. 101.251, F.S., relating to information which supervisors of elections must print on ballots. Provides for the designation "nonpartisan candidates" in lieu of "judicial officers".

Section 14: Amends s. 230.061, F.S., relating to school board member residence areas. Removes reference to "nominating" procedure to conform.

Section 15: Amends s. 230.105, F.S., relating to the alternate procedure for the election of district school board members to provide for single-member representation. Removes reference to "nominating" procedure to conform.

Section 16: Repeals s. 105.09, F.S., relating to limitations on political activity *in behalf of* a candidate for judicial office to conform with court rulings. Repeals s. 230.08, F.S., relating to the nomination of school board candidates by political parties.

Section 17: Amends s. 228.053, F.S., relating to development research schools. Removes reference to statute repealed under this bill.

Section 18: Provides an effective date of January 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Not applicable

2. Recurring Effects:

General Revenue will be reduced and the Elections Commission Trust Fund will be increased by the amount of the judicial filing fees in any general election cycle. The Elections Commission Trust Fund will also be increased by the amount of the school board office filing fees in any general election cycle.

3. Long Run Effects Other Than Normal Growth:

Not applicable

4. Total Revenues and Expenditures:

Indeterminable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Not applicable.

2. Recurring Effects:

Indeterminable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The political parties will realize a loss from the filing fees and party assessments of school board candidates. The political parties currently receive the 2 percent party assessment and the 3 percent filing fee from partisan school board candidates. Under the provisions of this bill, nonpartisan candidates for school board will pay no party assessment and the 3 percent filing fee will be deposited into the Elections Commission Trust Fund.

2. Direct Private Sector Benefits:

Not applicable.

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

Not applicable.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This act is exempt from the mandates provision of the Florida Constitution because it is an elections law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

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

None.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Not applicable.

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VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

Staff Director:

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