

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 999 Impeachment and Suspension of State Attorneys and Public Defenders  
**SPONSOR(S):** Toledo  
**TIED BILLS:** IDEN./SIM. **BILLS:** SJR 904

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Public Integrity & Ethics Committee	15 Y, 1 N	Mitz	Rubottom
2) Judiciary Committee			
3) Rules & Policy Committee			

### SUMMARY ANALYSIS

Under the state's Constitution, the Legislature is vested with the power to impeach the governor, the lieutenant governor, cabinet members, or justices and judges for committing misdemeanors in office. Similarly, the Constitution provides that the Governor, by executive order, may suspend certain state and county officers on various grounds.

The joint resolution extends the Legislature's power to impeach state officers for committing misdemeanors in office to include the state's 20 state attorneys and public defenders. The joint resolution also provides that the Governor's suspension powers do not extend to the lieutenant governor, cabinet members, or justices and judges of the state's court system. State attorneys and public defenders would be subject to impeachment by the Legislature and suspension by the Governor.

The joint resolution does not appear to have an impact on state or local government.

The proposed joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 6, 2018. If adopted at the 2018 general election, the effective date of this resolution is January 9, 2019.

**A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature to appear on the next general election ballot. If on the ballot, the constitution requires 60 percent voter approval for passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Article III, s. 1, of the state's Constitution provides in part; "[t]he legislative power of the state shall be vested in a legislature of the State of Florida...." The Legislature is composed of the House of Representatives and the Senate. Article IV, s. 1, of the Constitution vests the supreme executive power in the Governor.

Presently there are 20 state attorneys and 20 public defenders in the state; one for each judicial circuit.<sup>1</sup> Each position is selected during the general election, by the qualified electors of their respective judicial circuits, for a term of four years. State attorneys and public defenders are subject to the suspension powers by the Governor, as discussed in more detail below.

In addition to the Governor's ability to appoint a state attorney or public defender to fill a vacancy following a suspension, s. 27.16, F.S., provides that the circuit judge of the affected circuit may make appointments to fill vacancies of state attorneys where the vacancy is temporary and the Governor has not already exercised his or her appointment authority.<sup>2</sup>

##### *The Legislature's Impeachment Power*

Pursuant to Article III, s. 17, of the state's constitution, the power of the Legislature includes the ability to impeach certain public officers for committing misdemeanors in office. The state officers subject to impeachment by the Legislature are:

- The Governor,
- The Lieutenant Governor,
- Cabinet members,<sup>3</sup> and
- Justices and judges of the state court system<sup>4</sup>

The House of Representatives may impeach these officers of the state by a two-thirds vote, at which time the officer is disqualified from discharging any official duties. Following a discharge of duties for a state officer, the Governor is allowed to temporarily fill the office through appointment. Additionally, the Speaker of the House of Representatives is granted the power at any time to appoint a committee to investigate charges against any officer subject to impeachment.

The Senate is required to hold a trial at any time within six months following the impeachment. Conviction by the Senate, which requires a two-thirds vote, removes the officer from office. If, however, the Senate does not convict the state officer, the officer returns to their position and replaces the individual assuming that position, if temporarily appointed by the Governor. Upon conviction, the Senate may elect to impose an additional penalty of forfeiture of accrued pension benefits and may disqualify the officer from holding any public office in the future.

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<sup>1</sup> Art. V, s. 17, Fla. Const., and s. 27.01, F.S. (state attorneys); Art. V, s. 18, Fla. Const., and s. 27.50, F.S. (public defenders).

<sup>2</sup> See *State ex rel. Harris v. McCauley*, 297 So.2d 825 (Fla. 1974) (finding that s. 27.16, F.S. relates only to the temporary appointment by the circuit judge of an attorney to fill an emergency role as prosecutor during a temporary vacancy or absence in the office of state attorney).

<sup>3</sup> The Cabinet members are the attorney general, the chief financial officer, and the commissioner of agriculture. See Article IV, s. 4, Fla. Const.

<sup>4</sup> Justices and judges are also subject to removal or discipline by the Florida Supreme Court acting upon the recommendation of the Judicial Qualification Commission. See Art. V, s. 12, Fla. Const.

A conviction in a Senate impeachment proceeding is not subject to reversal or review in any court.<sup>5</sup>

### The Governor's Suspension Power

Article IV, s. 7, of the state's Constitution grants the Governor the power to suspend state and county officers on various grounds. The Governor effectuates a suspension pursuant to his power under the constitution by filing an executive order stating the grounds for suspension with the custodian of state records. Officers subject to suspension include:

- State officers not subject to impeachment by the Legislature,
- Any officer of the militia not in the active service of the United States,
- County officers such as the sheriff, clerk of court, tax collector, property appraiser, supervisor of elections, county commissioners, and district school board members,<sup>6</sup> and
- Elected municipal officers indicted for a crime, until acquitted.

Except for elected municipal officers, the grounds for suspension are limited to malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony. The Governor is allowed to fill the office of the suspended officer by appointment for the period of suspension. The Governor may also reinstate the suspended officer at any time before removal.

Suspensions by the Governor are subject to review by the Senate, which may either remove or reinstate the suspended officer. The Senate may review suspensions in a special session convened at the direction of the Senate president or by a majority vote of the Senate members.

In addition to the Governor's suspension powers under the Constitution, s. 112.52(1), F.S., grants the Governor a similar suspension power with respect to elected or appointed public officials. The statute states:

When a method for removal from office is not otherwise provided by the State Constitution or by law, the Governor may by executive order suspend from office an elected or appointed public official, by whatever title known, who is indicted or informed against for commission of any felony, or for any misdemeanor arising directly out of his or her official conduct or duties, and may fill the office by appointment for the period of suspension, not to extend beyond the term.

Similar to suspensions made by the Governor pursuant to the Constitution, suspensions made under s. 112.52, F.S., must be revoked if the public official is acquitted or found not guilty.<sup>7</sup>

### Oversight of Conduct of State Attorneys and Public Defenders

As constitutional officers, State Attorneys and Public Defenders are exempt from regulation by the Florida Bar during their tenure in office.<sup>8</sup> Instead, their conduct is overseen by the Governor of Florida. They may also be sanctioned by the Florida Commission on Ethics.

### **Effect of Joint Resolution**

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<sup>5</sup> *In re Exec. Comm'n*, 14 Fla. 289, 295 (Fla. 1872).

<sup>6</sup> *In re Advisory Op. to the Governor-Sch. Bd. Member--Suspension Auth.*, 626 So.2d 684, 687 (Fla. 1993) (concluding that elected school board members may be suspended by the Governor under authority granted under Art. IV, s.7).

<sup>7</sup> s. 112.52(4), F.S.

<sup>8</sup> The Florida Bar may, however, consider complaints concerning misconduct alleged to have occurred while a State Attorney or Public Defender held office after they vacate office and for up to six years after they leave office. See *Fla. Bar R. 3-7.16*.

The joint resolution expands the Legislature's power to impeach state officers to include the state's 20 state attorneys and public defenders. It does not affect the Governor's current suspension powers. Moreover, state attorneys and public defenders would be subject to impeachment by the Legislature under Art. III, s. 17 of the state Constitution as well as subject to suspension by the Governor through an executive order under Art. IV, s. 7, and s. 112.52, F.S.

**B. SECTION DIRECTORY:**

N/A.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The joint resolution does not appear to have any impact on state revenues.

2. Expenditures:

The joint resolution does not appear to have any impact on state expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The joint resolution does not appear to have any impact on local government revenues.

2. Expenditures:

The joint resolution does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The joint resolution does not appear to have any direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This section does not apply to a proposed constitutional amendment.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The joint resolution does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A.