

STORAGE NAME: h0877.cfe

DATE: March 26, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CHILDREN AND FAMILY EMPOWERMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HJR 877

RELATING TO: Proposing an amendment to Section 22 of Article I of the State Constitution eliminating the right to a trial by jury in the case of a contested paternity action.

SPONSOR(S): Representative Logan

STATUTE(S) AFFECTED: Section 742.031, F.S.

COMPANION BILL(S):

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

- (1) CHILDREN AND FAMILY EMPOWERMENT
- (2) CIVIL JUSTICE & CLAIMS
- (3)
- (4)
- (5)

I. SUMMARY:

HJR 877 proposes an amendment to Section 22 of Article I of the State Constitution eliminating the right to a trial by jury in the case of a contested paternity action.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The right to a jury trial is set forth in the Declaration of Rights of the Florida Constitution under Article I, Section 22, which states: "The right of trial by jury shall be secure to all and remain inviolate." A similar provision has been included in each of the state's constitutions, beginning with the Constitution of 1838, which became effective in 1845. In interpreting this provision, the Florida Supreme Court has made it clear that the constitution secures to the citizens of this state the right to a jury trial in all types of proceedings in which a jury trial was a matter of right before the adoption of the constitution.

Prior to 1986, s. 742.031, F.S., provided for a trial by jury in determining the issue of paternity. The statute provided that the issue of paternity was to be determined by the court except that, "Upon request of either party, the issue of the paternity of such child [could] be tried by jury." In 1986, the Legislature amended s. 742.031, F.S., removing the provision for trial by jury upon request so that the issue of paternity would be determined solely by the judge.

In *B.J.Y. v M.A.* (1993, Fla.) 617 So 2d 1061, the Florida Supreme Court found s. 742.031, F.S., unconstitutional to the extent it precludes a jury trial on the issue of paternity. In that case, a mother brought a paternity action against the putative father who denied paternity and demanded a jury trial, contending that the statute violated his constitutional rights. The court reasoned that because the right to a jury trial in proceedings to determine paternity existed in common law prior to Florida becoming a state and was recognized in 1845 when Florida was admitted to the Union, the right was therefore preserved under Florida's Constitution.

One of the methods available to amend the state's constitution is by a joint resolution agreed to by three-fifths of the membership of each house of the Legislature. If agreed to by the Legislature, the proposed amendment must be submitted to the electors of Florida for approval or rejection at the next general election.

B. EFFECT OF PROPOSED CHANGES:

HJR 877 proposes an amendment to Section 22 of Article I of the State Constitution eliminating the right to a trial by jury in the case of a contested paternity action.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

i. *Any authority to make rules or adjudicate disputes?*

The joint resolution proposes an amendment to the Florida Constitution that would eliminate the right to a trial by jury in the case of a contested paternity action.

- ii. *Any new responsibilities, obligations or work for other governmental or private organizations or individuals?*

No.

- iii. *Any entitlement to a government service or benefit?*

No.

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

- i. *What responsibilities, costs and powers are passed on to another program, agency, level or government, or private entity?*

N/A

- ii. *What is the cost of such responsibility at the new level/agency?*

N/A

- iii. *How is the new agency accountable to the people governed?*

N/A

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?*

No.

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

No.

4. Individual Freedom:

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

No.

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

Yes. The bill would eliminate the constitutional right to a trial by jury in the case of a contested paternity action.

5. Family Empowerment:

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

- i. *Who evaluates the family's needs?*

N/A

- ii. *Who makes the decisions?*

N/A

- iii. *Are private alternatives permitted?*

N/A

- iv. *Are families required to participate in a program?*

N/A

- v. *Are families penalized for not participating in a program?*

N/A

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

Yes. Paternity matters would be decided only by the court. A party in the proceeding would not have the option of a jury trial.

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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:*

i. *Parents and guardians?*

N/A

ii. *Services providers?*

N/A

iii. *Government employees/agencies?*

N/A

D. SECTION-BY-SECTION ANALYSIS:

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

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2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

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

None

D. FISCAL COMMENTS:

None

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

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

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

V. COMMENTS:

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CHILDREN AND FAMILY EMPOWERMENT:

Prepared by:

Legislative Research Director:

Bob Barrios

Bob Barrios