

STORAGE NAME: h0263.er

DATE: March 22, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
ELECTION REFORM
ANALYSIS**

BILL #: HJR 263

RELATING TO: Suffrage and Elections

SPONSOR(S): Representative(s) Logan, Bradley and Others

COMPANION BILL(S): SB 208(i)

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

- (1) CRIME AND PUNISHMENT (CJCC) YEAS 6 NAYS 0
- (2) ELECTION REFORM (PRC) (W/D)
- (3) JUDICIARY (CJC)
- (4)
- (5)

I. SUMMARY:

HJR 263 is a House Joint Resolution proposed to amend Article VI, Section 4, of the Florida Constitution. The Resolution provides that a convicted felon or a person adjudicated mentally incompetent may not vote or hold office until that right has been restored, *as provided by law*.

The Resolution amends Article VI, Section 4 as follows:

- (a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until the person's right to register or vote has been restored, as provided by law, or until restoration of civil rights or removal of disability.

Each house of the legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot.

There is an estimated fiscal impact of at least \$46,000 associated with this amendment.

The constitutional amendment will be effective on the first Tuesday after the first Monday in January following the approval of the amendment by the voters of Florida.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Article VI of the Florida Constitution provides the constitutional framework for elections in the State of Florida. Subsection 4(a) provides general disqualifications as follows:

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

Additionally, section 97.041(2)(b), F.S., provides that a person who has been convicted of any felony by any court of record and who has not had his or her right to vote restored pursuant to law is not entitled to register or vote.

The authority to restore a person's civil rights is bestowed upon the Governor with the consent of at least three members of the Cabinet. Article IV, Section 8(a) establishes the authority for clemency as follows:

(a) Except in cases of treason and in cases where impeachment results in conviction, the governor may, ... with the approval of three members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

Therefore, a person who has been convicted of a felony and not had his or her civil rights restored by one of the methods prescribed by law, may not vote in Florida.

Amendments to Florida's constitution may be proposed in several manners. Article XI, Section 1, of the Florida Constitution, provides the legislature the authority to propose amendments to the Constitution by joint resolution voted on by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with Secretary of State's office or may be placed at a special election held for that purpose.

B. EFFECT OF PROPOSED CHANGES:

HJR 263 is a House Joint Resolution proposed to amend Article VI, section 4, of the Florida Constitution. The Resolution provides that a convicted felon or a person adjudicated mentally incompetent may not vote or hold office until that right has been restored, *as provided by law*.

HB 265 is the implementation bill to HJR 263. HB 265 essentially provides that persons convicted of one or more felonies will automatically have their right to vote restored one year after completion and satisfaction of all nonmonetary sentences imposed unless objected to by a majority of the Board of Executive Clemency.

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?

No.

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

The resolution gives the legislature authority to determine when persons who have been convicted of a felony(ies) or adjudicated mentally incompetent will have the right to vote restored.

(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?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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?

No.

4. Individual Freedom:

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

Indirectly yes. Upon approval of this constitutional amendment and passage of a general law granting restoration of the right to vote, persons who are either convicted felons or adjudicated mentally incompetent may have their right to vote restored.

- 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?

Not applicable.

- 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:

Article VI, section 4 of the Florida Constitution.

E. SECTION-BY-SECTION ANALYSIS:

Not applicable.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Not applicable.

2. Recurring Effects:

Not applicable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

4. Total Revenues and Expenditures:

Not applicable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Article XI, section 5 of the Florida Constitution requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. It is estimated that the cost to the Division of Elections would be approximately \$46,000 for each amendment proposed.

2. Recurring Effects:

Not applicable.

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:

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:

Election laws are exempt from the mandates of Art. VII, s. 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The house resolution does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

The house resolution does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The authority to grant clemency rests exclusively with the Governor [Article IV, section 8, Florida Constitution]. Previous attempts to circumvent this authority through legislative acts have met with objection from the Florida Supreme Court. [See generally, Singleton v. State, 38 Fla. 297 (1896); In re Advisory Opinion of the Governor, 334 So.2d 561 (Fla. 1976); In re Advisory Opinion of the Governor Civil Rights, 306 So.2d 520 (Fla. 1975); Sullivan v. Askew, 348 So.2d 312 (Fla. 1977). The Court's sentiment is best summarized by their statement:

"The people of this state through adoption of Article IV, Section 8, Florida Constitution expressed their will that the power of pardon and restoration of civil rights vest in the executive ... [t]herefore, when the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive ..." (Emphasis added).

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In re Advisory Opinion of the Governor Civil Rights at 523. In light of these decisions, a Constitutional amendment is required to grant an additional method allowing the restoration of voting rights.

Finally, an amendment should be offered to page 2, line 13 removing the "or hold office" text in the ballot summary to comport to amendment #1 which was adopted by the Crime and Punishment Committee on March 3, 1999.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Logan offered one amendment to the resolution that excludes the legislature from restoring the voting rights of those adjudicated mentally incompetent or from authorizing convicted felons to holding public office. The amendment was adopted by the Crime and Punishment Committee on March 3, 1999.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

J. Willis Renuart

Staff Director:

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AS REVISED BY THE COMMITTEE ON ELECTION REFORM:

Prepared by:

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