

**STORAGE NAME:** h0049a.ree.doc  
**DATE:** March 21, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
COMMITTEE ON RULES, ETHICS, & ELECTIONS  
ANALYSIS**

**BILL #:** HJR 49  
**RELATING TO:** Felon's Right to Vote  
**SPONSOR(S):** Representative(s) Harper & Others  
**TIED BILL(S):** HB 51

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

- (1) RULES, ETHICS & ELECTIONS (PRC) YEAS 13 NAYS 0
  - (2) JUDICIAL OVERSIGHT (SGC)
  - (3) PROCEDURAL & REDISTRICTING COUNCIL
  - (4)
  - (5)
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I. SUMMARY:

HJR 49 is a House Joint Resolution proposed to amend Article VI, Section 4, of the Florida Constitution. The Resolution provides that a convicted felon may not register or vote 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 restoration of civil rights or removal of disability. No person convicted of a felony shall be qualified to vote until the person's right to register or vote has been restored, as provided by law. No person adjudicated in this state to be mentally incompetent shall be qualified to vote until 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 \$25,000 associated with advertising 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. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                                         |                             |                                         |
|-----------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. 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:<sup>1</sup>

- (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

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<sup>1</sup> Effective January 7, 2003, Article IV, Section 4 of the Florida Constitution is amended to reduce the number of elected Cabinet officers from six to three. In addition, Article IV, Section 8, relating to Clemency, reduces the number of cabinet members from three to two which, along with the Governor, is required to grant clemency.

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.

C. EFFECT OF PROPOSED CHANGES:

HJR 49 is a House Joint Resolution proposed to amend Article VI, section 4, of the Florida Constitution. If passed, the Constitutional Amendment would allow general law to control the manner in which a person who has been convicted of a felony could have his or her right to register or vote restored.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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 \$25,000 statewide.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the constitutional amendment is required to be published in a paper of general circulation, local newspapers will receive a small economic benefit.

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:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

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); and *Sullivan v. Askew*, 348 So.2d 312 (Fla. 1977),]. The Court's sentiment is best summarized by this 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).

*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.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON RULES, ETHICS, & ELECTIONS:

Prepared by:

Staff Director:

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R. Michael Paredes

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R. Philip Twogood, PhD.