

**STORAGE NAME:** h1131a.ree.doc  
**DATE:** February 19, 2002

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
RULES, ETHICS & ELECTIONS (PRC)  
ANALYSIS**

**BILL #:** HJR 1131  
**RELATING TO:** Constitution/Amendments/Initiatives  
**SPONSOR(S):** Representative(s) Pickens & Others  
**TIED BILL(S):**

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

- (1) STATE ADMINISTRATION YEAS 4 NAYS 0
- (2) RULES, ETHICS & ELECTIONS (PRC) YEAS 11 NAYS 0
- (3) PROCEDURAL & REDISTRICTING COUNCIL
- (4)
- (5)

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I. SUMMARY:

The Florida Constitution provides for citizen initiatives to revise and amend the constitution. It prescribes the method of proposing these changes, the review of these changes to ensure compliance with constitutional requirements, and the approval of the initiative by the electors of the state. The constitution does not provide for citizen initiatives to amend the Florida Statutes.

HJR 1131 proposes a revision to the constitution that would provide for a citizen initiative to amend the Florida Statutes. The revision provides signature requirements for placing the initiative on the ballot, for the placing of an economic impact statement about the statutory initiative on the ballot, and for limitations on the types of statutes that may be proposed. The revision also provides that amendments to the Florida Statutes proposed under this initiative process must be approved by three fifths of the electors voting on the issue to become effective.

This Joint Resolution also proposes to amend provisions relating to the citizen initiative process to amend the constitution. If approved, subsequent revisions or amendments to the constitution must be approved by two thirds of the voters voting on the issue instead of a simple majority to become effective. Additionally, a brief statement of the economic impact of the revision or amendment would be placed on the ballot with the issue.

This Joint Resolution appears to have an insignificant fiscal impact on the State.

There are some concerns regarding the implementation of this Joint Resolution. Please see "Other Comments."

The Committee on State Administration adopted two amendments that are traveling with the bill. These amendments correct the placement within the bill of the two-thirds vote requirement for approval of constitutional initiatives.

The Committee on Rules, Ethics & Elections adopted an amendment that is also traveling with the bill. See Section VI., Amendments or Committee Substitute Changes.

If approved, this initiative would be placed on the November 2002 ballot.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |  |   |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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 type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" 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"/> |

This bill creates a method outside of the legislative process to create and amend Florida Statutes. The process itself should result in minimal costs to the state in processing initiatives for placement on the ballot.

B. PRESENT SITUATION:

**Initiatives authorized in the Florida Constitution**

Article XI, s. 3<sup>1</sup>, Fla. Const., provides:

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the secretary of state a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

Article XI, s. 5(c), Fla. Const., provides:

If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.

The constitution does not require an amendment or revision to receive any more than a majority of the votes of electors voting on the issue to become effective.

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<sup>1</sup> This section was amended by Revision No. 8 (1998), effective January 7, 2003, and will read:

SECTION 3. Initiative.—The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

The constitution does not currently provide for an initiative process for amending the Florida Statutes. Article 1, s. 1, Fla. Const., provides that the legislative power is vested in the Legislature.

### **Statutory Initiative Process in other States**

In 1995 the Florida Senate<sup>2</sup> studied the issue of voter initiatives to amend state constitutions and statutes. The Senate identified fourteen states that provide for direct voter initiatives to amend statutes. Twelve states use only the direct statutory initiative process: Arizona, Arkansas, California, Colorado, Idaho, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Oregon, and South Dakota. Utah and Washington allow for both direct and indirect statutory initiative methods.

Seven states provide indirect statutory initiative processes whereby a proposed initiative is placed before the legislature for consideration prior to the initiative being placed before the voters. Of the seven states that provide indirect statutory initiative processes, (Alaska, Maine, Massachusetts, Michigan, Nevada, Ohio, and Wyoming) five provide it exclusively. Utah and Washington provide for both direct and indirect statutory initiative methods.

The Senate reported that in most cases, the state constitution requires the initiative to contain only one subject and place signature requirements on initiatives to amend statutes like initiatives proposing to amend the constitution of that state. Several states, including Alaska, Massachusetts, and Missouri, also place limitations on the subjects that may be proposed under this initiative process.

## **C. EFFECT OF PROPOSED CHANGES:**

### **Statutory Initiative Process**

HJR 1131 creates a proposed revision to the Florida Constitution and amendments to existing provisions in the constitution. This resolution proposes to create art. III, s. 20, Fla. Const., a citizen initiative process to amend the Florida Statutes. It provides petition signature requirements and requires that an economic impact statement, describing the effect of the statutory initiative, appears on the ballot with the issue.

Legislation proposed by this method must be approved by three fifths of the electors voting on the proposal to be effective.

Legislation proposed by this method must meet the existing constitutional requirements for ordinary legislation: that it contain a single subject and may not amend a law by reference. This initiative process may not be used to approve special laws, those laws that apply to a population that is less than the total population of the state and for whom notice must be given and a referendum must occur, nor may it be used to approve general laws of local application, laws which by nature are applicable to a portion of the state.

Finally, the proposed revision authorizes the Legislature to establish by general law the procedures to be used to propose and vote on legislation proposed by initiative.

### **Constitutional Initiative Process**

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<sup>2</sup> The Florida Senate Committee on Governmental Reform and Oversight, A Review of the Citizen Initiative Method of Prospering Amendments to the Florida Constitution (March 1995, revised).

The Joint Resolution proposes to amend Art. XI, s. 5(a), Fla. Const., to provide that a proposed amendment or revision to the constitution must be approved by two thirds of the electors voting on the issue to be effective. Currently, an amendment or revision to the constitution need only be approved by a simple majority of the electors voting on the issue to become effective.

The Joint Resolution also proposes to create Art. XI, s. 5(a), Fla. Const., to require that a brief statement of the economic impact of the amendment be included on the ballot. The Legislature is to establish by general law the content of the economic impact statement.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes," above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There would be an insignificant cost to verify voter signatures and to prepare an initiative for the ballot. Article XI, s. 5, Fla. Const. 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. The Division of Elections estimates that the cost of compliance would be approximately \$58,767.<sup>3</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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<sup>3</sup> The exact cost depends on the length of each advertisement, according to the Division of Elections.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The proposed revision to create a statutory initiative process is silent on some basic implementation issues. For example, it does not speak to the ability of the Governor to veto statutory initiative language or to the Legislature's ability to amend or repeal such language.

Additionally, Art. VII, s. 2(d), Fla. Const., provides that "[p]rovision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period." What this means in practical terms is that during the legislative session, the annual appropriations bill as well as substantive bills containing a specific appropriation are accounted for and that sufficient revenues are authorized to be generated to cover these outlays. In other words, the revenues and expenditures authorized by the Legislature are balanced within the state budget. It is unclear then how legislation, approved by the electors through the statutory initiative process, that requires the expenditure of funds would be implemented where it would appear that the implementation would unbalance the state's budget and therefore would appear to violate the requirements of Art. VII, s. 2(d), Fla. Const.

**Statutory Initiative Processes in Other States.** The National Conference of State Legislatures (NCSL)<sup>4</sup> provided information illustrating how other states treat statutory initiatives. Information provided by the NCSL indicates that some states prohibit amendment for a period of time or provide that by an extraordinary vote by the Legislature an initiative statute may be amended or repealed:

**Alaska**                      No repeal within 2 years; amendment by majority vote anytime

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<sup>4</sup> Information provided by the staff of the National Conference of State Legislatures to staff of the Committee on State Administration in response to an e-mail inquiry, February 1, 2001.

<b>Arizona</b>	3/4 vote to amend; amending legislation must “further the purpose” of the measure
<b>Arkansas</b>	2/3 vote of the members of each house to amend or repeal
<b>California</b>	No amendment or repeal of an initiative statute by the Legislature unless the initiative specifically permits it
<b>Michigan</b>	3/4 vote to amend or repeal
<b>Nevada</b>	No amendment or repeal within 3 years of enactment
<b>North Dakota</b>	2/3 vote required to amend or repeal within 7 years of effective date
<b>Oregon</b>	2/3 vote required to amend or repeal within 2 years of enactment
<b>Washington</b>	2/3 vote required to amend or repeal within 2 years of enactment
<b>Wyoming</b>	No repeal within 2 years of effective date; amendment by majority vote anytime

The NCSL indicates that in the remaining initiative states (Colorado, Idaho, Illinois, Maine, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Dakota, Utah), the Legislature may amend or repeal an initiative statute with a simple majority vote.

The constitutions of some states specifically address these concerns. The NCSL provided several examples:

Arizona Constitution, Art. 4, pt. 1(6)

(A) Veto of initiative or referendum. The veto power of the governor shall not extend to an initiative measure approved by a majority of the votes cast thereon or to a referendum measure decided by a majority of the votes cast thereon.

(B) Legislature's power to repeal initiative or referendum. The legislature shall not have the power to repeal an initiative measure approved by a majority of the votes cast thereon or to repeal a referendum measure decided by a majority of the votes cast thereon.

(C) Legislature's power to amend initiative or referendum. The legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon, or to amend a referendum measure decided by a majority of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure.

California Constitution, Art. 2, §10(c)

The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.

North Dakota Constitution, Art. 3, §8

A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.

Wyoming Constitution, Art. 3, §52

(f) If votes in an amount in excess of fifty percent (50%) of those voting in the general election are cast in favor of adoption of an initiated measure, the measure is enacted. If votes in an amount in excess of fifty percent (50%) of those voted in the general election are cast in favor of rejection of an act referred, it is rejected. The secretary of state shall certify the election returns. An initiated law becomes effective ninety (90) days after certification, is not subject to veto, and may not be repealed by the legislature within two (2) years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty (30) days after certification. Additional procedures for the initiative and referendum may be prescribed by law.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its February 7, 2002, meeting the Committee on State Administration adopted two amendments that are traveling with the bill. These amendments conform the bill to its Senate companion; these amendments correct the placement within the bill of the two-thirds vote requirement for approval of constitutional initiatives.

At its February 19, 2002, meeting the Committee on Rules, Ethics & Elections adopted an amendment that is also traveling with the bill. The amendment affects only the statutory initiative portion of the bill. Specifically, the amendment:

1. reduces the number of required signatures from 8% to 5% of the votes cast in the preceding presidential election;
2. requires that signatures be taken from each of Florida's congressional districts rather than from one half of Florida's congressional districts;
3. exempts from the statutory initiative process any laws that impose, eliminate, increase or grant exemptions from taxes or that appropriate state funds; and,
4. clarifies that the governor and the legislature retain the same constitutional powers with regard to laws enacted by statutory initiative as they would otherwise have with laws enacted by the legislature.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

David M. Greenbaum

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

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Prepared by:

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