

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SJR 240

SPONSOR: Senator Saunders

SUBJECT: Basic Rights

DATE: January 22, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Roberts</u>	<u>JU</u>	<u>Favorable</u>
2.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The joint resolution revises section 2 of Article I of the *Florida Constitution* to afford the same equal protection against discrimination on the basis of mental or other type of disability as is currently afforded to persons with physical disabilities.

II. Present Situation:

Under the Florida Constitution, no person can be deprived of any right based on race, religion, national origin or physical disability. *See* s. 2, Art. I, Fla. Const.¹ Therefore, under the equal protection guarantees of this section, any law that abridges a fundamental right, such as the right to vote or free speech, or that adversely affects a suspect class such as persons with physical disabilities, is subject to strict scrutiny.² The term “physical disability” was added to the constitution in a 1998 ballot initiative. *See Revision 9, 1997-98 Constitution Revision Commission.*³ The existing phrase “physical disability” replaced the phrase “physical handicap.”⁴ The prohibition against discrimination based on “physical handicap” has been in the

¹ Section 2 of Article I of the Florida Constitution provides: All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

² Otherwise, a challenge to a law is analyzed under a rational relationship test, i.e., does the law serve a legitimate governmental purpose, and is it reasonable to believe that the challenged classification would promote that purpose.

³ The constitutional amendment also added the phrase: (a) “female and male alike” to modify the term “natural persons” for the purpose of securing the equality of women; and added the phrase “national origin” to the listing of protected classes.

⁴ The original proposal to the Constitution Revision Commission replaced the phrase “physical handicap” with the term “disability” but it was subsequently changed during redrafting.” See Florida Constitution Revision Commission Meeting Proceedings, Transcripts (September 1997-March 1998).

Florida Constitution since 1974. See SJR No. 917. The change in phraseology to “physical disability” was recommended in part in recognition of established case law interpreting the American Disabilities Act⁵ and in part in recognition of changing public perception and lexical use when referring to persons with disabilities. Federal statutory laws already prohibit discrimination against persons with a range of disabilities including physical, hearing, speech, mental or developmental disability.⁶

This bill is a joint legislative resolution which is one of the methods for proposing, approving or rejecting amendments to the *Florida Constitution*. See Art. XI, *Fla. Const.* (e.g., joint legislative resolution, constitution revision commission proposal, citizen initiative, and constitution budget or tax commission proposal). The joint resolution requires passage by a three-fourths vote by each house of the Legislature. The proposed constitutional amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. If approved by the electors, it becomes effective 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.

III. Effect of Proposed Changes:

The joint resolution revises section 2 of Article I of the *Florida Constitution* to expand the protected class of persons with disabilities under Florida law from those persons with *physical* disabilities to those with disabilities such as mental, developmental, sensory or emotional disabilities.

This resolution provides no effective date for the constitutional amendment. In accordance with section 5 of Article XI of the *Florida Constitution*, if approved by the electorate, it would take effect on the first Tuesday after the first Monday in January following the election.

⁵ The Americans with Disabilities Act gives civil rights protections to individuals with *disabilities* similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications. An individual is considered to have a “disability” under ADA if he or she has a *physical or mental impairment* that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. Persons discriminated against because they have a known association or relationship with an individual with a disability also are protected. An individual with epilepsy, paralysis, HIV infection, AIDS, a substantial hearing or visual impairment, mental retardation, or a specific learning disability is covered, but an individual with a minor, nonchronic condition of short duration, such as a sprain, broken limb, or the flu, generally would not be covered. The second part of the definition protecting individuals with a record of a disability would cover, for example, a person who has recovered from cancer or mental illness. See <http://www.usdoj.gov/crt/ada/q&aeng02.htm>

⁶ *Air Carrier Access Act of 1986*, 49 U.S.C. § 41705, *Americans with Disabilities Act of 1990*, 42 U.S.C. §§ 12101 et seq., *Architectural Barriers Act of 1968*, 42 U.S.C. §§ 4151 et seq., *Civil Rights of Institutionalized Persons Act*, 42 U.S.C. §§ 1997 et seq., *Fair Housing Amendments Act of 1988*, 42 U.S.C. §§ 3601 et seq., *Individuals with Disabilities Education Act*, 20 U.S.C. §§ 1400 et seq., *National Voter Registration Act of 1993*, 42 U.S.C. §§ 1973gg et seq., Section 501 of the *Rehabilitation Act of 1973*, as amended, 29 U.S.C. § 791, Section 503 of the *Rehabilitation Act of 1973*, as amended, 29 U.S.C. § 793, Section 504 of the *Rehabilitation Act of 1973*, as amended, 29 U.S.C. § 794.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Municipalities and counties will be affected by the joint resolution in the same manner the state will be.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Since this joint resolution expands the class of protected persons with disabilities to include those with mental, developmental, emotional or other type of disability, a discrimination claim within the context of public employment, education, or governmental service would be subject to strict scrutiny review by the court.

The equal protection provisions under the Florida Constitution and the United States Constitution are designed to prevent any person or class of persons from being singled out as a target for arbitrary and unjust discrimination. However, the provisions do not necessarily guarantee or require that all persons be treated equally but rather that the law apply equally to all persons who are similarly situated. Traditionally, a governmental classification must be rationally related to a legitimate state purpose. Reasonable classifications other than those involving suspect classes of persons or fundamental rights are permissible under the equal protection clause, so long as the classifications are not arbitrary and are based on some difference in the classes having a substantial relation to the purpose of the legislation. If the classification affects a fundamental right or suspect class such as race or national origin and the classification discriminates, then the courts apply a strict scrutiny standard. In order for a classification to be found permissible under this standard it must be proven that there is a compelling state interest to the law and that the classification is necessary to further that interest.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Persons with disabilities including mental or emotional disabilities would be constitutionally protected as a suspect class in discrimination or other equal protection claims.

C. Government Sector Impact:

Application of strict scrutiny in the context of newfound discrimination claims based on mental, emotional or other types of disability other than physical would increase the government's burden in proving a justification for the discrimination. Consequently, there may be an indeterminate fiscal impact on the state courts system and the governmental entities.

The Division of Elections estimates that the average cost to advertise the proposed constitutional amendment twice in a newspaper of general circulation in each county prior to the 2003 general election will be \$35,000.

A response for request for information or comments from the Florida Commission on Human Relations is pending.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear to what extent the constitutional expansion of the protected class of persons with disabilities would affect existing statutory provisions currently tailored to persons with physical disabilities. There are already a number of Florida statutory provisions that refer to "persons with disabilities," "disabled persons," and "disabled adults." The statutory definitions are such that they encompass a range of disabilities, sometimes depending on the context of the statute.⁷

For example, the Florida Election Code defines "persons with disabilities" as persons who "have a physical or mental impairment that substantially limits one or more major life activities." *See* e.g., s. 97.021(22), F.S., The Florida Election Code. This same definition is contained in the definition of the term "handicap" which is still used in some parts of the statutes. *See* s. 760.22, F.S., relating to definitions for the Florida Civil Rights Act. "Handicap" also refers to a person with a developmental disability. A "developmental disability" is defined as a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. *See* s. 393.063(12), F.S. A "disabled adult" for purposes of offenses of abuse, neglect or exploitation means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living. *See* s. 825.101(4), F.S. However, a "disabled adult" for purposes of adult family home care means any person between 18 and 59 years of age, inclusive, who is a resident of the state and who has one or more permanent

⁷ See also e.g., s. 252.356, F.S. (requiring state agency contracts with specified providers to include emergency and disaster planning provisions that include contact for evacuation procedures for persons with physical, mental or sensory disabilities); s.320.0848, F.S., (disabled parking permits for qualified disabled persons such as persons who need a cane or other device, need a wheelchair, have a lung disease, use portable oxygen, are restricted by cardiac disease, or are limited by arthritis, neurological or orthopedic condition).

physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

Section 252.356, F.S. refers to but does not define "persons with physical, mental or sensory disabilities" when requiring state agency contracts with specified providers to include emergency and disaster planning provisions that include contact for evacuation procedures for such persons. A disabled persons for purposes of a special parking permit includes persons who need a cane or other device, need a wheelchair, have a lung disease, use portable oxygen, are restricted by cardiac disease, or are limited by arthritis, neurological or orthopedic condition. *See* s.320.0848, F.S.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
