

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 78

SPONSOR: Senator Geller

SUBJECT: Declaration of Rights/Aliens

DATE: March 10, 2003 REVISED: 3/31/03 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Roberts</u>	<u>JU</u>	<u>Favorable</u>
2.	<u>Dodson</u>	<u>Skelton</u>	<u>HP</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Joint Resolution 78 amends Article I, Section 2 of the Florida Constitution to delete provisions authorizing the Legislature to regulate or prohibit the ownership, inheritance, disposition, and possession of real property by aliens ineligible for citizenship.

This joint resolution substantially amends Article I, Section 2 of the Florida Constitution.

II. Present Situation:

A. Constitutional Amendment Process

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. *Art. XI, s. 1, Fla. Const.* Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing. *Art. XI, s. 5(a), Fla. Const.* If the proposed amendment is approved by a vote of the electors, it becomes effective as an amendment to the Florida Constitution 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. *Art. XI, s. 5(c), Fla. Const.*

B. Property Rights

Article I, s. 2 of the Florida Constitution, which sets forth Florida's constitutional guaranty of property rights, provides:

Basic Rights.--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.

This constitutional provision has its genesis in the Florida Constitution of 1868, which provided that “[f]oreigners who are or who may hereafter become bona fide residents of the State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens.”

This provision was transferred to the Florida Constitution of 1885 and amended by the voters in 1926 to provide that “[f]oreigners who are eligible to become citizens of the United States under the provisions of the laws and treaties of the United States shall have the same rights as to the ownership, inheritance and disposition of property in the State as citizens of the State, but the Legislature shall have power to limit, regulate, and prohibit the ownership, inheritance, disposition, possession and enjoyment of real estate in the State of Florida by foreigners who are not eligible to become citizens of the United States under the provisions of the laws and treaties of the United States.”

The current provision pertaining to the Legislature's ability to regulate or prohibit an alien's right to own, inherit, dispose, and possess real property has been in the Florida Constitution since 1968.¹ There is no Florida case law construing this provision. Additionally, there are only two Florida statutes currently in existence that pertain to an alien's real property rights. Section 198.04, F. S., provides for a tax to be imposed upon the real property of an alien that is located in this state upon the death of the alien. Section 732.1101, F.S., simply provides that aliens shall have the same rights of inheritance as citizens.

Under Florida's constitutional provision, property ownership by “aliens ineligible for citizenship” may be limited, regulated or prohibited. When this provision was added to the Constitution, the phrase “alien ineligible for citizenship” referred primarily to Asians, because at the time federal law limited naturalization to whites and persons of African nativity or descent. In 1923, the United States Supreme Court determined “Generally speaking, the natives of European countries are eligible. Japanese, Chinese and Malays are not.” *Terrace v. Thompson*, 263 U.S. 197, 220, 44 S. Ct. 15, 69 L.ED. 278 (1923).

¹ The Florida Constitution does not define the term “alien.” Only one Florida statute, s. 327.02(1), defines the term “alien” by providing that an alien is “...a person who is not a citizen of the United States.” The Federal Code defines an alien as any person not a citizen or national of the United States. *See* 8 U.S.C.A. s. 1101(a)(3).

Supreme Courts in California, Oregon, and Montana have ruled that their states' Alien Land Laws were unconstitutional. *Sei Fujii v. State*, 242 P.2d 617 (Cal.1952); *Namba v. McCourt*, 204 P.2d 569 (Or. 1949); *Oakland v. State*, 287 P.2d 39 (Mont. 1955). In *Sei Fujii v. State*, the California Supreme Court stated "By its terms the land law classifies persons on the basis of eligibility to citizenship, but in fact it classifies on the basis of race or nationality. This is a necessary consequence of the use of the express racial qualifications found in the federal code."

The Immigration and Nationality Act² contains provisions that relate to the immigration, temporary admission, naturalization, and removal of aliens. Generally, aliens ineligible to naturalize, that is, to become naturalized U.S. citizens, include but are not limited to, persons who:

- Are not yet 18 years of age (with some exceptions).
- Have not been lawfully admitted for *permanent residence*. Permanent residence means having been legally accorded the privilege of residing permanently in the United States in accordance with the immigration laws.
- Have not resided continuously as a lawful permanent resident in the United States for at least 5 years prior to the filing of an application for naturalization (some brief departures from the United States do not disrupt continuity).
- Cannot demonstrate that he or she has been a person of good moral character for five years prior to the filing of the application for naturalization. A person cannot be found to be a person of good moral character if, during the last 5 years, he or she has committed certain crimes or given false information in order to gain immigration benefits.
- Are not able to read, write, speak and understand the English language (there are certain exemptions based on age and medical impairments).
- Cannot demonstrate knowledge and understanding of the fundamentals of the history and principles and form of government of the United States (there are certain exemptions based on age and medical impairments).³

Generally, *illegal aliens* include non-U.S. citizens present in the United States in violation of the U.S. immigration laws, such as a person who entered the United States without being inspected by an immigration officer, or a non-U.S. citizen who entered legally but overstays or violates his or her immigration status. Examples include, but are not limited to:

- Aliens who enter the United States by crossing the border at a place other than a designated entry point in order to avoid inspection.
- Aliens who enter the United States at an entry point but who lack valid admission documents.
- Aliens who enter the United States legally as visitors or students but who stay beyond the permitted time or do not continue their studies as required.
- Aliens who enter the United States legally, but commit certain crimes while in the United States.⁴

² Laws relating to naturalization are provided at Immigration and Nationality Act (INA), section 301 et seq; laws relating to removal of illegal aliens are generally found at INA sections 212 and 237.

³ Information provided by Andrea Rogers, Assistant District Counsel, Office of the District Counsel, Department of Homeland Security, Miami, Florida, on 3-26-03.

⁴ *Id.*

Florida is one of only two states that currently provide for the regulation of property ownership by aliens ineligible for citizenship. During the general election on November 5, 2002, New Mexico voters rejected a constitutional amendment repealing a section which mandates that unless otherwise provided by law, aliens who are not eligible to become citizens, and corporations majority-owned by such aliens, are prohibited from acquiring any interest in real property in New Mexico.

III. Effect of Proposed Changes:

This resolution would amend Article I, s. 2 of the Florida Constitution to delete the provision that currently allows the Legislature to prohibit or regulate an alien's right to own, inherit, dispose, and possess real property. This would allow aliens to enjoy property rights similar to those currently afforded to citizens of the state.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The impact of the joint resolution on the private sector is indeterminate.

C. Government Sector Impact:

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election. Costs for advertising vary depending on the length of the amendment; however, it is estimated that the cost per amendment averages about \$46,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Home Defense, Public Security, and Ports

This amendment revises the provision in Article I, s. 2 of the Florida Constitution that allows the Legislature to prohibit or regulate an alien's right to own, inherit, dispose, and possess real property to prohibit the ownership of real property by illegal aliens.

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