

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1949 Sixty Percent Approval for Initiative Proposals
SPONSOR(S): Committee on Procedures
TIED BILLS: **IDEN./SIM. BILLS:** SJR 2392

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Ethics and Elections (Sub)</u>	<u>8 Y, 3 N</u>	<u>Rubottom</u>	<u>Randle</u>
2) <u>Committee on Procedures</u>	<u>20 Y, 12 N</u>	<u>Rubottom</u>	<u>Randle</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This Joint Resolution proposes a constitutional amendment that, if approved by voters, would require a three-fifths vote to approve any future amendment proposed by citizen initiative.

Pursuant to Article XI, section 1 of the State Constitution, amendments or revisions to the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment or revision shall then be submitted to the electors at the next general election held more than ninety days after the joint resolution is filed with the custodian of state records, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision.

This joint resolution does not appear to have any fiscal impact on state or local governments other than those costs related to placing the joint resolution on the ballot and publishing required notices. The Division of Elections estimates that these costs would be approximately \$35,000.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect January 4, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1949.pr.doc
DATE: April 21, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

The amendment would directly reduce the freedom of voters in that constitutional amendments proposed directly by voters would be harder to pass. Since many such amendments, however, are directed at reducing individual freedom, the full effect may not reduce the freedom Floridians enjoy in their daily lives.

* The amendment would reduce government in that it would make it more difficult to pass new regulations or require new programs via the initiative process. The amendment would increase personal responsibility in that those who propose amendments by initiative would face higher public scrutiny to achieve their policy objective.

B. EFFECT OF PROPOSED CHANGES:

Revision or Amendment to the Constitution

Amendments to Florida’s State Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) by the revision commission, 3) citizen’s initiative, 4) a constitutional convention, or 5) the taxation and budget reform commission.¹ No matter the method, all proposed amendments or revisions to the constitution must be submitted to the electors at the next general election held more than ninety days after the joint resolution, initiative petition, report of revision commission, or proposal of constitutional convention.²

Section 5(d), Article XI, Florida Constitution, presently provides that any proposed constitutional amendment is adopted upon approval Florida voters. Section 1, Article VI, provides that general elections are decided by a plurality of the votes cast.

Citizen’s Initiative Process

The citizen’s initiative provision is a self-executing constitutional amendment. However, the citizen’s initiative process has and can be refined by statute or administrative rule, provided it is necessary to ensure ballot integrity.³ The Division of Elections must pre-approve the petition⁴ format prior to a person’s or group’s circulation of the petition for signatures.⁵ Once sufficient signatures are collected, the signatures are submitted to each county’s supervisor of elections, who verifies the validity and registered-electors status of each signatory. Each supervisor then certifies the number of valid

¹ See ss. 1-4 & 6, Art. XI, FLA. CONST.

² See s. 5, Art. XI, FLA. CONST.

³ See *State ex rel. Citizens Proposition for Tax Relief v. Firestone*, 386 So.2d 561 (1980); *Smith v. Coalition to Reduce Class Size*, 827 So.2d 959 (2002).

⁴ A petition form is deemed a political advertisement as defined in s. 106.011(17), F.S.

⁵ According to the Department of State’s Division of Elections website, the turn-around time for approval is a few days. See <http://election.dos.state.fl.us>.

signatures to the Secretary of State, no later than the 91st day (about 3 months) before the general election.⁶

The Division of Elections then compiles and certifies the total number of verified signatures to determine whether the requisite number of signatures has been obtained.⁷ If the requisite number of signatures is obtained, then the Secretary of State issues a certification of the ballot to the appropriate sponsoring political committee.⁸

Citizen initiative provided in Section 3, Article XI of the Florida Constitution has been part of the constitution for only 34 years. The legislature proposed it initially and it has been amended twice, once by initiative and once via the constitutional revision commission.

According to the Division of Elections Website, from 1978 to 2002, Floridians voted on twenty citizen initiative proposals. Of those, fifteen were approved. Of those, only eight appear to have received three-fifths of the vote. Those eight were: English as the official language, term limits, the net ban, the second-hand smoke prohibition, a homestead exemption provision, polluter pays, lottery and education governance.

House Select Committee on Constitutional Amendments

On October 20, 2003, Speaker Byrd appointed the Select Committee on Constitutional Amendments to assess how Florida amends its constitution and to make recommendations for possible change to the process. The Select Committee held ten public hearings and on March 15, 2004, completed its work by identifying the numerous comments and concerns regarding the existing constitutional amendment process and making its recommendations. This joint resolution reflects one of the Select Committee's recommendations. The committee explained its three-fifths vote recommendation as follows:

Raising the bar to 60% on initiative proposals would leave the majority with the ability to reform their own constitution. Florida's other varied methods of proposing amendments should remain available. The other methods could actually gain direction from a majority vote on an initiative proposal that might fail to meet a new higher passing threshold. The committee recognizes that the various methods of proposing amendments: citizen initiative, constitutional convention, constitutional revision commission, taxation and budget reform commission and legislative joint resolution each involve disparate procedures, checks and balances. The methods differ in many respects and those differences should be respected by reform proposals. While a strong case was made by disinterested public speakers for a two-vote process, retaining majority rule while inserting greater public deliberation, the legislature presently has the power to place any successful initiative back on the ballot for a second look and possible repeal at any time. Accordingly, if utilized it would produce the same effect.

The committee specifically rejected a proposal to apply a higher threshold to all methods of proposing amendments.

⁶ The deadline for the current year for filing an initiative petition is August 3, 2004.

⁷ Rule 1S-2.010, F.A.C.

⁸ Id.

Effect of Joint Resolution

The PCB proposes to add the following sentence to Section 5(d), Article XI:

For purposes of this subsection, an amendment or revision proposed pursuant to section 3 must be approved by three fifths or more of the electors voting on the proposal.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The joint resolution does not appear to have any impact on state revenues.

2. Expenditures:

The State Constitution requires that a proposed amendment or revision to the constitution be published in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in which the election is held.⁹ The Division of Elections estimates that the cost of compliance would be approximately \$35,000.¹⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have any impact on local governments' revenues.

2. Expenditures:

The joint resolution does not appear to have any impact on local governments' expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Many citizen initiative proposals are directed at private activities or particular industries. When they are approved by voters, those activities or industries are affected. Such direct political intervention in the private sector often impacts the private economy, both positively and negatively. Requiring initiatives to have broader public approval should reduce the number of times such impacts will occur.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this joint resolution does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to

⁹ See Article XI, section (5)(c), FLA. CONST.

¹⁰ Estimate based on 2002 advertising rates.

raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

Article XI, s. 1, Fla. Const., provides that a constitutional amendment or revision may be proposed by joint resolution of the Legislature. Final passage in the House and Senate requires a three-fifths vote in each house. Passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2004 general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.¹¹ Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.¹²

B. RULE-MAKING AUTHORITY:

The joint resolution does not raise the need for rules or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Ballot summaries for constitutional amendments in Florida have been subjected to extreme judicial scrutiny. Section 101.161, Florida Statutes, requires ballot summaries to clearly communicate the chief purpose of an amendment. The Supreme Court, in Armstrong v. Harris, 773 So.2d 7 (Fla. 2002), declared that the constitution itself impliedly requires a high standard of ballot clarity, although the court did not define that standard other than to apply the statutory standard in s. 101.161. As a result, ballot language on any controversial measure can be expected to be challenged and closely scrutinized.

The summary proposed in the PCB appears to clearly communicate the content of the amendment to the voter.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

¹¹ See s. 5, Art. XI, FLA. CONST. The 2004 general election is on November 2, 2004.

¹² See s. 5(c), Art. XI, FLA. CONST.