

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1979 Fiscal Limitation on Constitutional Amendments
SPONSOR(S): Committee on Procedures
TIED BILLS: **IDEN./SIM. BILLS:** SJR 2898

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections (sub)	9 Y, 2 N	Thomas	Randle
2) Procedures	21 Y, 12 N	Thomas	Randle
3)			
4)			
5)			

SUMMARY ANALYSIS

The joint resolution proposes an amendment to Article XI of the State Constitution relating to amendments or revisions to the State Constitution. The joint resolution requires that any amendment or revision proposed by any manner to the State Constitution which imposes a cost on state government greater than \$1 per resident each fiscal year must also impose additional taxes or fees to sufficiently fund the amendment or revision. The estimate of the fiscal impact will be determined as provided by general law. The joint resolution provides that inclusion of such a tax or fee would not violate the single subject requirement for amendments or revisions proposed by citizen initiative. Any such initiative must be approved by at least two-thirds of those voting in the election that the proposal is considered. The joint resolution provides that the state is not required to expend any funds for such a proposal beyond those provided by the new taxes or fees, but may provide additional funding.

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 must 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: h1979.pr.doc
DATE: April 21, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

B. EFFECT OF PROPOSED CHANGES:

Effect of Joint Resolution

The joint resolution proposes an amendment to Article XI of the State Constitution relating to amendments or revisions to the State Constitution. The joint resolution creates Section 8 of Article XI of the State Constitution and requires that any amendment or revision proposed by any manner to the State Constitution which imposes a cost on state government greater than \$1 per resident based on the most recent decennial census per fiscal year must also impose additional taxes or fees to sufficiently fund the amendment or revision. The population for Florida from the last decennial census is 15,982,378.¹ The estimate of the fiscal impact will be determined as provided by general law. The joint resolution provides that inclusion of such a tax or fee would not violate the single subject requirement for amendments or revisions proposed by citizen initiative.² Any such initiative must be approved by at least two-thirds of those voting in the election that the proposal is considered. The joint resolution provides that the state is not required to expend any funds for such a proposal beyond those provided by the new taxes or fees, but may provide additional funding.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect January 4, 2005.³

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 recommendation. The explanation contained in the recommendation was:

¹ See <http://quickfacts.census.gov/qfd/>

² Section 3, Art. XI, FLA. CONST, provides in part: "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."

³ Section 5(d), Art. XI, 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 ability to mandate a program, without providing the funding for that program leaves every program mandate, in effect, a mandate for increased taxes, or budget-cuts with respect to every other function of state government. Each new mandate is in effect a redirection of resources from all programs that went before.

Revision or Amendment to the Constitution

Florida's State Constitution can be amended in five ways: 1) joint legislative resolution, 2) by the revision commission, 3) citizen's initiative, 4) proposal by a constitutional convention, or 5) the taxation and budget reform commission.⁴ All amendments or revisions proposed by joint resolution, initiative petition, or proposal of constitutional convention must be submitted to the electors at the next general election held more than ninety days after submission to the state custodian of records.⁵ As for a proposal by the revision commission, such proposal must be filed no later than 180 days prior to the next general election.⁶ As for a proposal by the taxation and budget reform commission, such proposal must be filed no later than 180 days prior to the general election in the second year following the year in which the commission is established.⁷

Fiscal Impact of Amendments or Revisions to the State Constitution

House Joint Resolution 571, which was adopted by the Legislature during the 2001 Session, proposed an amendment to article XI, section 5, Florida Constitution, to require that the Legislature provide by general law for the provision of a statement to the public regarding the probable financial impact of any amendment proposed to the Florida Constitution by initiative petition. HJR 571 appeared on the ballot for the 2002 general election as revision number 2 and was approved by 78% of the voters.

C. SECTION DIRECTORY:

The legislation is a joint resolution proposing a constitutional amendment and, therefore, does not contain bill sections.

The joint resolution proposes a new section to Article XI of the State Constitution relating to amendments and revisions to the State Constitution.

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.⁸ The Division of Elections estimates that the cost of compliance would be approximately \$35,000.⁹

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

⁵ See s. 5, Art. XI, FLA. CONST.

⁶ See s. 2(c), Art. XI, FLA. CONST.

⁷ See s. 6(e), Art. XI, FLA. CONST.

⁸ See Article XI, section (5)(c), FLA. CONST.

⁹ Estimate based on 2002 advertising rates.

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:

If adopted by the citizens of Florida, this proposed constitutional amendment would not have an economic impact on the private sector. However, if adopted, its effect will be to ensure adequate funding for new programs and policies placed in the constitution and avoiding the diversion of existing revenues.

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 raise 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.¹⁰ 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.¹¹

The ballot summary must be sufficient to provide fair notice of the contents and effect of the amendment or revision.¹² Further, the ballot summary must fully advise the electorate of all consequences of the proposal¹³ and cannot be misleading or ambiguous.¹⁴ This ballot summary appears to meet constitutional requirements.

¹⁰ See s. 5, Art. XI, FLA. CONST. The 2004 general election is on November 2, 2004.

¹¹ See s. 5(c), Art. XI, FLA. CONST.

¹² *Advisory Opinion to the Attorney General re: Stop Early Release of Prisoners*, 642 So.2d 724 (Fla. 1994).

¹³ *Armstrong v. Harris*, 773 So.2d 7 (Fla. 2000).

¹⁴ *Smith v. American Airlines, Inc.*, 606 So.2d 618 (Fla. 1992).

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Two amendments were adopted to the proposed joint resolution at the meeting of the Committee on Procedures meeting held on April 15, 2004. The amendments changed the threshold by which the provisions of the joint resolution apply from \$1 million to \$1 per resident based on the most recent decennial census.