

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HJR 657                      Rights of Noncitizens to Own Real Property  
**SPONSOR(S):** Brutus  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** SJR 566

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	14 Y, 0 N	Jaroslav	Havlicak
2) Procedures		Christian	Randle
3)			
4)			
5)			

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**SUMMARY ANALYSIS**

The Florida Constitution currently provides that that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. This "alien land law" provision was adopted in 1926 to bar certain nationalities of immigrants, principally Asians, from acquiring land in Florida, as federal law at the time prohibited people of those nationalities from becoming U.S. citizens.

This joint resolution proposes amending the Florida Constitution to remove the alien land law.

## 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |

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

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Article I, section 2 of the Florida Constitution currently states:

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. [italics added]

The provision in italics is known as an “alien land law.” It was added to the 1885 Florida Constitution in 1926 and carried over into the current constitution promulgated in 1968. It is similar or identical to language once found in the constitutions or statutes of many other states.<sup>1</sup> These provisions, while facially neutral with respect to nationality, were widely adopted in the late 19th and early 20th centuries to comport with federal statutes excluding Asian immigrants from naturalization,<sup>2</sup> and thus authorizing those states that adopted them to bar such immigrants from acquiring land.

Over the course of the 1940’s, the exclusion of particular Asian nationalities from U.S. citizenship was eliminated, until federal naturalization law was made entirely race- and nationality-neutral in the Immigration and Nationality Act of 1952, also known as the McCarran Act.<sup>3</sup> The only persons ineligible for citizenship under current federal law are ineligible on an individualized, not national or racial basis. Unless granted one of a limited number of waivers under certain extremely narrow circumstances related to national security,<sup>4</sup> to be eligible for naturalization, an immigrant must:

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<sup>1</sup> Most alien land laws were repealed between 1940 and 1960. Only three other states appear to maintain similar provisions in their current law. See Art. II, § 22, N.M. Const.; Ind. Code § 32-22-2; Neb. Rev. Stat. § 4-107.

<sup>2</sup> The first federal naturalization statute authorized the granting of citizenship only to “free white persons.” Act of Mar. 26, 1790, ch. 3, 1 Stat. 103. This was extended to “persons of African nativity and descent” shortly after the Civil War. Act of July 14, 1870, ch. 254, § 7, 16 Stat. 254, 256. Although this may have already previously been implicit, beginning in the early 1880’s, Congress enacted a string of statutes specifically excluding Chinese, people originating from the Indian subcontinent, and other Asians from eligibility for U.S. citizenship. See, e.g., Chinese Exclusion Act of May 6, 1882, ch. 126, 22 Stat. 58. Regardless of their nationality, foreign-born unmarried women were also ineligible for citizenship until 1922. See Cable Act of Sept. 22, 1922, ch. 411, 42 Stat. 1021.

<sup>3</sup> Pub. L. 82-414, ch. 477, 66 Stat. 163 (June 27, 1952).

<sup>4</sup> Such waivers are granted jointly by the Attorney General of the United States, the Commissioner of Immigration and the Director of Central Intelligence, and are limited to no more than five each year. See 8 U.S.C. § 1427(f).

- have been a legal permanent resident of the United States for five years;<sup>5</sup>
- demonstrate knowledge of the English language and of the history, principles and form of government of the United States;<sup>6</sup>
- be of “good moral character;”<sup>7</sup> and
- not be a deserter from the U.S. military.<sup>8</sup>

Because an applicant for naturalization must be a legal permanent resident, eligibility for naturalization also relates back to initial eligibility for admission into the United States. Federal law provides that aliens are inadmissible if they:

- are infected with a communicable disease designated by the Secretary of Health and Human Services as being of public health significance;<sup>9</sup>
- fail to present documentation of having received vaccination against vaccine-preventable diseases, including at least mumps, measles, rubella, polio, tetanus, diphtheria, pertussis, influenza type B and hepatitis B, as well as any other vaccinations recommended by the Advisory Committee for Immunization Practices;<sup>10</sup>
- have a physical or mental disorder and behavior or a history of behavior associated with that disorder that is a threat to their own or others’ property, safety or welfare;<sup>11</sup>
- are a drug user or addict;<sup>12</sup>
- have been convicted of a crime of moral turpitude, or of any federal, state or foreign crime relating to trafficking in controlled substances;<sup>13</sup>
- have been convicted of two or more crimes, of any kind other than purely political offenses, the aggregate sentences for which were five years or more;<sup>14</sup>
- are reasonably believed by the Attorney General or a consular officer to have been involved in drug trafficking, or are the spouse or child of such a person and has profited from those activities within five years;<sup>15</sup>
- seek entry to engage in or profit from any unlawful commercialized vice, including but not limited to prostitution, or have engaged in or profited from such activities in the past ten years;<sup>16</sup>
- have ever asserted diplomatic immunity to escape criminal prosecution in the U.S.;<sup>17</sup>
- have engaged in severe violations of religious freedom as an official of a foreign government;<sup>18</sup>
- are reasonably believed to have trafficked in persons or benefited from traffic in persons;<sup>19</sup>

<sup>5</sup> See 8 U.S.C. § 1427(a).

<sup>6</sup> See 8 U.S.C. § 1423(a). These requirements do not apply to applicants for naturalization who are unable to comply due to physical or developmental disability or mental impairment. See 8 U.S.C. § 1423(b)(1). Requirements with respect to knowledge of the English language do not apply to applicants for naturalization who are either over fifty years old and a permanent legal resident for at least twenty years, or over fifty-five and a permanent legal resident for at least fifteen years. See 8 U.S.C. § 1423(b)(2).

<sup>7</sup> *Id.*

<sup>8</sup> See 8 U.S.C. § 1425.

<sup>9</sup> See 8 U.S.C. § 1182(a)(1)(A)(i).

<sup>10</sup> See 8 U.S.C. § 1182(a)(1)(A)(ii). This requirement does not apply to children under 10 years of age if they are the immediate relative of someone already legally in the U.S. and their parent signs an affidavit stating that the child will receive these vaccinations within 30 days of entry. See 8 U.S.C. § 1182(a)(1)(C).

<sup>11</sup> See 8 U.S.C. § 1182(a)(1)(A)(iii).

<sup>12</sup> See 8 U.S.C. § 1182(a)(1)(A)(iv).

<sup>13</sup> See 8 U.S.C. § 1182(a)(2)(A)(i). This does not apply to any crime if committed when the applicant was under 18 years of age and more than five years before applying for entry, or if the maximum sentence for the crime was one year or less and the applicant was actually sentenced to six months or less. See 8 U.S.C. § 1182(a)(2)(A)(ii).

<sup>14</sup> See 8 U.S.C. § 1182(a)(2)(B).

<sup>15</sup> See 8 U.S.C. § 1182(a)(2)(C).

<sup>16</sup> See 8 U.S.C. § 1182(a)(2)(D).

<sup>17</sup> See 8 U.S.C. § 1182(a)(2)(E).

<sup>18</sup> See 8 U.S.C. § 1182(a)(2)(G).

<sup>19</sup> See 8 U.S.C. § 1182(a)(2)(H).

- are reasonably believed to be involved in money laundering;<sup>20</sup>
- are reasonably believed to be seeking entry to engage in sabotage, espionage, or attempts to overthrow the U.S. government by force;<sup>21</sup>
- have engaged in or are reasonably expected to engage in or incite, terrorist activity;<sup>22</sup> or
- are representatives or members of a foreign terrorist organization.<sup>23</sup>

Since all such categories of aliens are literally “ineligible for citizenship,” the Legislature could arguably regulate or prohibit their acquisition or disposition of real property in Florida under the alien land law provision of the state constitution.

### **Proposed Changes**

This joint resolution proposes to remove the alien land law provision from Art. I, s. 2, Fla. Const. Since it does not appear that any provisions of the Florida Statutes currently in effect were enacted pursuant to this constitutional provision, this joint resolution does not appear to render any statutes void.

#### **C. SECTION DIRECTORY:**

This joint resolution, proposing an amendment to Article I, section 2 of the Florida Constitution, and containing ballot summary language describing the proposed amendment, is not divided into sections.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **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>20</sup> See 8 U.S.C. § 1182(a)(2)(I).

<sup>21</sup> See 8 U.S.C. § 1182(a)(3)(A).

<sup>22</sup> See 8 U.S.C. § 1182(a)(3)(B)(i).

<sup>23</sup> See *id.*

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

By its own terms, Article VII, s. 18, Fla. Const., the local mandates provision of the state constitution, applies only to general laws, not to other constitutional provisions.

##### 2. Other:

#### **Constitutional Amendment Process**

This is a legislative joint resolution, which is one of the methods for proposing, approving or rejecting amendments to the Florida Constitution.<sup>24</sup> The joint resolution requires passage by a three-fifths vote of the membership of 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 a majority of the electors voting on the question, the proposed amendment becomes effective on the Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.

#### **Equal Protection**

The Fourteenth Amendment to the United States Constitution guarantees the equal protection of the laws to “persons,” not only to citizens. This joint resolution may be redundant in light of this federal guarantee, since any legislation enacted pursuant to the alien land law provision of Art. I, s. 2, Fla. Const., would probably be successfully challenged as an equal-protection violation.

While Congress may, in light of its plenary power over immigration,<sup>25</sup> generally make classifications based on citizenship as long as they are not arbitrary and unreasonable,<sup>26</sup> state or local laws which do so are subject to strict scrutiny: i.e., such laws must seek to advance a compelling governmental interest and must be narrowly tailored to advancing that interest.<sup>27</sup> Although some state and local classifications based on citizenship have not been held subject to strict scrutiny, this has primarily been in the field of public employment.<sup>28</sup> Overcoming strict scrutiny is not impossible but merely difficult and rare;<sup>29</sup> however, even if applied in a race- and nationality-blind manner, it is unclear how legislation barring ownership of real property in the state to certain specified aliens could ever satisfy the requirements of strict scrutiny. Indeed, the Supreme Court of the United States has treated very similar legislation as unconstitutional since at least the 1940’s,<sup>30</sup> as have several state supreme courts in analyzing their own alien land law provisions before they were repealed.<sup>31</sup>

#### B. RULE-MAKING AUTHORITY:

None.

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<sup>24</sup> See Art. XI, Fla. Const. (providing for amendment by legislative joint resolution, constitution revision commission proposal, citizen initiative, and constitutional budget or tax commission proposal).

<sup>25</sup> See Art. I, s. 8, U.S. Const. (“Congress shall have Power To . . . establish an uniform Rule of Naturalization[.]”)

<sup>26</sup> See *Mathews v. Diaz*, 426 U.S. 67 (1976).

<sup>27</sup> See *Bernal v. Fainter*, 467 U.S. 216 (1984).

<sup>28</sup> See, e.g., *Cabell v. Chavez-Salido*, 454 U.S. 432 (1982); *Ambach v. Norwick*, 441 U.S. 68 (1979).

<sup>29</sup> See, e.g., *Maine v. Taylor*, 477 U.S. 131 (1986) (allowing a state ban on importation of live baitfish to survive strict scrutiny under the Commerce Clause); *Buckley v. Valeo*, 424 U.S. 1 (1976) (allowing some campaign finance restrictions to survive strict scrutiny under the First Amendment but striking down others).

<sup>30</sup> See, e.g., *Takahashi v. Fish and Game Commission*, 334 U.S. 410 (1948); *Oyama v. California*, 332 U.S. 633 (1948).

<sup>31</sup> See, e.g., *State v. Oakland*, 287 P.2d 39 (Mont. 1955); *Sei Fujii v. State*, 242 P.2d 617 (Cal. 1952); *Namba v. McCourt*, 204 P.2d 569 (Or. 1949).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.