

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 7165 CS PCB JU 06-05 Obsolete, Erroneous, and Inconsistent Provisions;
Preservation of Certain Constitutional Provisions as Statutes

SPONSOR(S): Judiciary Committee

TIED BILLS:

IDEN./SIM. BILLS: SJR 7086

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Committee	9 Y, 3 N	Thomas	Hogge
1) Justice Council	7 Y, 3 N, w/CS	Thomas	De La Paz
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The proposed joint resolution makes technical and other non-substantive changes to numerous sections of the Florida Constitution. These changes were identified by the Division of Statutory Revision. The changes include:

- grammatical, punctuation, and spelling corrections
- removal of obsolete language
- gender neutral revisions

The proposed joint resolution also transfers seven sections of the State Constitution to statute and provides that the provisions transferred to statute can only be amended by a two-thirds vote of both chambers of the Legislature during the first five years after transfer. The provisions being transferred to statute are:

- Section 26 of Article I, which pertains to a claimant's right to compensation in medical liability claims.
- Section 9 of Article II, which pertains to English as the official language of Florida.
- Section 21 of Article X, which pertains to the confinement of pregnant pigs.
- Section 24 of Article X, which pertains to a state minimum wage.
- Section 25 of Article X, which pertains to a patient's right to know about adverse medical incidents.
- Section 26 of Article X, which pertains to a prohibition on having a medical license after repeated medical malpractice.

Additionally, the proposed joint resolution repeals language providing for term limits on federal officeholders that was found to be unconstitutional by the Florida Supreme Court in 1999.

The joint resolution does not appear to have any fiscal impact on state or local government other than those costs related to placing the joint resolution on the ballot and publishing required notices. The Department of State estimates non-recurring publication costs of approximately \$50,000 for FY 2006-07.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect on January 2, 2007.

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

STORAGE NAME: h7165b.JC.doc

DATE: 4/4/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The proposed joint resolution does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Revision or Amendment to the State Constitution

Amendments to Florida's Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizen's initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.¹ Depending on the method, all proposed amendments or revisions to the constitution must be submitted to the electors at the next general election: 1) held more than ninety days after the joint resolution, 2) 180 days after the report of the Constitutional Revision Commission or Taxation Budget Reform Commission, or 3) for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election is to be held.²

A proposed constitutional amendment or revision is adopted upon approval of a majority of electors voting on the proposal.³ However, a new State tax or fee proposed by constitutional amendment or revision must be adopted by at least two-thirds of those voting in the election in which such amendment is considered.⁴

Florida Constitution – Organization of Articles

ARTICLE I	DECLARATION OF RIGHTS
ARTICLE II	GENERAL PROVISIONS
ARTICLE III	LEGISLATURE
ARTICLE IV	EXECUTIVE
ARTICLE V	JUDICIARY
ARTICLE VI	SUFFRAGE AND ELECTIONS
ARTICLE VII	FINANCE AND TAXATION
ARTICLE VIII	LOCAL GOVERNMENT
ARTICLE IX	EDUCATION
ARTICLE X	MISCELLANEOUS
ARTICLE XI	AMENDMENTS
ARTICLE XII	SCHEDULE

¹ See Art. XI, ss. 1-4 & 6, Fla. Const.

² See Art. XI, ss. 2, 5, and 6, Fla. Const.

³ See Art. XI, s. 5(e), Fla. Const.

⁴ See Art. XI, s. 7, Fla. Const.

Statistical Summary of Amendments to the State Constitution Since 1968

Constitutional Revision Commission – 8 amendments adopted

1978 - proposed 8, none adopted

1998 - proposed 9, 8 adopted

Taxation and Budget Reform Commission – 2 amendments adopted:

1992 – proposed 3, 2 adopted

Citizen Initiatives – 21 amendments:

proposed 26, 21 adopted

Legislature - 71 amendments adopted:

proposed 87, 71 adopted, 16 rejected

TOTAL – 102 amendments to Florida's Constitution since 1968.

History of Select Provisions of the State Constitution

Section 26 of Article I, which pertains to a claimant's right to compensation in medical liability claims, was proposed by citizen initiative and approved by the voters at the general election in 2004. This provision provides that an injured claimant who enters into a contingency fee agreement with an attorney in a claim for medical liability is entitled to at least 70% of the first \$250,000 in all damages received by the claimant, and 90% of damages in excess of \$250,000, exclusive of reasonable and customary costs and regardless of the number of defendants.

Section 9 of Article II, which pertains to English as the official language of Florida, was proposed by citizen initiative and approved by the voters at the general election in 1998.

Section 21 of Article X, which pertains to the confinement of pregnant pigs, was proposed by citizen initiative and approved by the voters at the general election in 2002. This provision prohibits the confinement of a pig during pregnancy in a cage, crate or other enclosure, or the tethering of a pregnant pig, on a farm so that the pig is prevented from turning around freely, except for veterinary purposes and during the prebirthing period.

Section 24 of Article X, which creates a state minimum wage, was proposed by citizen initiative and approved by the voters at the general election in 2004.

Section 25 of Article X, which pertains to a patient's right to know about adverse medical incidents, was proposed by citizen initiative and approved by the voters at the general election in 2004. This provision gives patients the right to review, upon request, records of health care facilities' or providers' adverse medical incidents.

Section 26 of Article X, which prohibits a medical doctor from having a medical license after repeated medical malpractice, was proposed by citizen initiative and approved by the voters at the general election in 2004.

Effect of Joint Resolution

The proposed joint resolution makes technical and other non-substantive changes to numerous sections of the Florida Constitution. These changes were identified by the Division of Statutory Revision. The changes include:

- grammatical, punctuation, and spelling corrections
- removal of obsolete language
- gender neutral revisions

Technical Changes

The removal of obsolete language includes past effective dates and implementation dates and transitional provisions. The removed transitional obsolete language is described as follows:

- Section 19(g), Art. III, State Const., pertains to the budget stabilization fund. The first two sentences of subsection (g), which provide for the initial funding of the fund, were not relevant past the 1998-1999 fiscal year. The 1998-1999 fiscal year was the year in which the fund had to be fully funded.
- Section 20(d)(6), Art. V, State Const., provided for the certification of the need for new judges and creation of new judgeships in 1972. This provision had no continuing significance past 1972.
- Section 20(d)(10), Art. V, State Const., states that the offices of county solicitor and prosecuting attorney are abolished and provides that the individuals filling those positions become assistant state attorneys. The transition described in subsection (d)(10) occurred on the effective date of Art. V, State Const., which was January 1, 1973.
- Section 20(e)(1), Art. V, State Const., provides that certain officeholders in office on January 1, 1973, shall remain in their offices for the remainder of their terms. The terms to the offices to which subsection (e)(1) applied have since expired.
- Section 20(g), Art. V, State Const., provides that certain provisions of the Judiciary Article of the Constitution of 1885 are preserved as statutes. The provisions to which subsection 20(g) applied were repealed by ch. 73-303, L.O.F.
- Section 20(h), Art. V, State Const., provides that county court and municipal court judges did not have to be compensated by state salaries until January 3, 1977. Subsection (h) had no continuing significance past January 3, 1977.
- Section 1(e), Art. VII, State Const., limits the growth of state revenues. One sentence of subsection (e) describes the limit on revenues for the 1995-1996 fiscal year. That sentence had no continuing significance after the 1995-1996 fiscal year.
- Section 6(e), Art. XI, State Const., provides that proposals by the Taxation and Budget Reform Commission are to be submitted to the custodian of state records at least one hundred eighty days prior to the general election in the second year following the year in which the commission is established. In 1998, the start date for the commission was moved from an even numbered year to an odd-numbered year, therefore, this provision needs to be amended accordingly.

- Section 3, Art. XII, State Const., provides that officeholders in office when the Constitution of 1968 became effective continue in their offices, unless their offices were abolished. Officers whose offices were abolished would be compensated by law. This section was only relevant immediately after the Constitution of 1968 was adopted.
- Section 16, Art. XII, State Const., provides that the executive branch of government must be organized into no more than 25 departments by July 1, 1969. The date referenced in section 16 had no continuing significance past July 1, 1969.
- Section 25, Art. XII, State Const., provides for the gradual implementation of state funding for the state courts system as required by s. 14, Art. V, State Const. Further, the section provides for full implementation by July 1, 2004. Section 14, Art. V, State Const., has been fully implemented, and the implementation date has expired. As such, s. 25, Art. XII, State Const., has no continuing significance.

Transfer to Statute

The proposed joint resolution transfers seven sections of the State Constitution to the Florida Statutes and provides that the provisions transferred to statute can only be amended or repealed by a two-thirds vote of both chambers of the Legislature during the first five years after transfer. The provisions transferred to statute are:

- Section 26 of Article I, which pertains to a claimant's right to compensation in medical liability claims.
- Section 9 of Article II, which pertains to English as the official language of Florida.
- Section 21 of Article X, which pertains to the confinement of pregnant pigs.
- Section 24 of Article X, which pertains to a state minimum wage.
- Section 25 of Article X, which pertains to a patient's right to know about adverse medical incidents.
- Section 26 of Article X, which pertains to a prohibition on having a medical license after repeated medical malpractice.

The proposed joint resolution directs the Division of Statutory Revision to codify the transferred provisions and authorizes the Division to make necessary nonsubstantive alterations to the provisions as needed to reflect their status as statutory law.

Federal Office Term Limits

The proposed joint resolution repeals language in section 4(b)(5) and (6), Art. VI, State Const., providing for term limits on federal officeholders that was found to be unconstitutional by the Florida Supreme Court in 1999. The U.S. Supreme Court, ruling in 1995 on an Arkansas state constitutional provision, determined that state-created term limits on federal officeholders are unconstitutional under the Qualifications Clause of the U.S. Constitution.⁵ The Florida Supreme Court stated that:

there is no question but that . . . section 4(b)(5) and 6 of article VI[, State Const.], placing limits on the terms of the U.S. Representatives and U.S. Senators, are unenforceable as violative of the United States [Constitution].⁶

⁵ *U.S. Term Limits, Inc., v. Thornton*, 514 U.S. 779 (1995).

⁶ *Ray v. Mortham*, 742 So. 2d 1276, 1280 (Fla. 1999).

Effective Date

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect January 2, 2007.⁷

C. SECTION DIRECTORY:

The joint resolution proposes technical and conforming changes to numerous articles of the Florida Constitution. The legislation is a joint resolution proposing a constitutional amendment and, therefore, does not contain bill sections.

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:

Non-Recurring

FY 2006-07

Department Of State, Division of Elections

Publication Costs

\$50,000 (General Revenue)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The proposed joint resolution makes technical and other non-substantive changes to numerous sections of the Florida Constitution. It does not have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Florida Constitution requires publication of a proposed amendment or revision to the constitution 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 with the Department of State estimates that the non-recurring cost of compliance would be approximately \$50,000 in FY 2006-07.

⁷ Art. XI, s. 5(e), 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."

⁸ See Art. XI, s. 5(c), Fla. Const.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision relates only to general bills and therefore would not apply to this joint resolution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The joint resolution does not raise the need for rules or rulemaking authority or direct an agency to adopt rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Amendments or revisions to the Florida Constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.⁹ 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 2006 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

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

JUDICIARY COMMITTEE

The proposed joint resolution was amended in the Judiciary Committee on March 8, 2006. The amendments transfer seven sections of the State Constitution to statute and provide that the provisions transferred to statute can only be amended or repealed by a two-thirds vote of both chambers of the Legislature during the first five years after transfer. The provisions transferred to statute are:

- Section 26 of Article I, which pertains to a claimant's right to compensation in medical liability claims.
- Section 9 of Article II, which pertains to English as the official language of Florida.
- Section 7 of Article IX, which pertains to a system of governance for the state university system.
- Section 21 of Article X, which pertains to the confinement of pregnant pigs.
- Section 24 of Article X, which pertains to a state minimum wage.
- Section 25 of Article X, which pertains to a patient's right to know about adverse medical incidents.
- Section 26 of Article X, which pertains to a prohibition on having a medical license after repeated medical malpractice.

The proposed joint resolution was also amended to correct an inadvertent problem created when the start date for the Taxation and Budget Reform Commission was transferred in 1998 to begin in an odd numbered year.

⁹ See Art. XI, s. 1, Fla. Const.

¹⁰ See Art. XI, s. 5(a), Fla. Const. The 2006 general election is on November 7, 2006.

¹¹ See Art. XI, s. 5(c), Fla. Const.

JUSTICE COUNCIL

The proposed joint resolution was amended in the Justice Council on April 4, 2006. The amendment removed the provisions that would have transferred to statute, section 7 of Article IX, which pertains to a system of governance for the state university system.

This analysis is drawn to the proposed joint resolution as amended by the Justice Council.