

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The joint resolution removes the ability of the legislature to regulate or prohibit the property rights of aliens ineligible for citizenship.

Safeguard individual liberty – The joint resolution provides aliens ineligible for citizenship with the same basic rights regarding real property that are guaranteed to all persons.

B. EFFECT OF PROPOSED CHANGES:

Background

Basic 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.

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).

The state constitution provides that all natural persons are equal before the law and have inalienable rights, among which is the right to acquire, possess and protect property. However, the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law.² This exception, known as the “alien land law,” basically blocked anyone ineligible for U.S. citizenship from owning land in Florida.

The alien land law was created to ban Japanese farmers from leasing or owning property.³ Over the course of the 1940’s, the exclusion of particular Asian nationalities from U.S. citizenship gradually was eliminated, until federal naturalization law was made entirely race- and nationality-neutral in the Immigration and Nationality Act of 1952.⁴

The only persons ineligible for citizenship under current federal law are ineligible on an individual basis and not on a national or racial basis. To be eligible for naturalization⁵ an immigrant must:

- Be a legal permanent resident of the United States for five years;⁶
- Demonstrate knowledge of the English language and of the history, principles and form of government of the United States;⁷
- Be of “good moral character;”⁸ and
- Not be a deserter from the U.S. military.⁹

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 an alien is inadmissible if he or she:

- Is infected with a communicable disease designated by the Secretary of Health and Human Services as being of public health significance;
- Fails to present documentation of having received vaccination against vaccine-preventable diseases;
- Has a physical or mental disorder and behavior or a history of behavior associated with that disorder that is a threat to his or her own or others’ property, safety or welfare;
- Is a drug user or addict;
- Has been convicted of a crime of moral turpitude or of any federal, state, or foreign crime relating to trafficking in controlled substances;
- Has 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;

² Art. I, Section 2, of the Florida Constitution.

³ “Asian-Americans Call for Vote on Discriminatory State Law,” Sun-Sentinel, April 24, 2004.

⁴ Public Law 82-414, chapter 477, 66 Stat. 163 (June 27, 1952).

⁵ In law, **naturalization** refers to an act whereby a person acquires a citizenship different from that person's citizenship at birth. Naturalization is most commonly associated with economic migrants or refugees who have immigrated to a country and resided there as aliens, and who have voluntarily and actively chosen to become citizens of that country after meeting specific requirements. However, naturalization that is at least passive, and often not voluntary, can take place upon annexation or border adjustments between countries. Unless resolved by denaturalization or renunciation of citizenship, naturalization can lead to multiple citizenship. See Blacks Law Dictionary (2006 edition).

⁶ See 8 U.S.C. s. 1427(a).

⁷ See 8 U.S.C. s. 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. s. 1423(b)(1). Requirements with respect to knowledge of the English language do not apply to applicants for naturalization who are over 50 years old and a permanent legal resident for at least 20 years or over 55 and a permanent legal resident for at least 15 years. See 8 U.S.C. s. 1423(b)(2).

⁸ Id.

⁹ See 8 U.S.C. s. 1425.

- Is reasonably believed by the Attorney General or a consular officer to have been involved in drug trafficking or is the spouse or child of such a person and has profited from those activities within five years;
- Seeks entry to engage in or profit from any unlawful commercialized vice, including but not limited to prostitution, or has engaged in or profited from such activities in the past 10 years;
- Has ever asserted diplomatic immunity to escape criminal prosecution in the U.S.;
- Has engaged in severe violations of religious freedom as an official of a foreign government;
- Is reasonably believed to have trafficked in persons or benefited from traffic in persons;
- Is reasonably believed to be involved in money laundering;
- Is reasonably believed to be seeking entry to engage in sabotage, espionage, or attempts to overthrow the U.S. government by force;
- Has engaged in or are reasonably expected to engage in or incite, terrorist activity; or
- Is a representative or member of a foreign terrorist organization.¹⁰

As such, the Legislature could arguably regulate or prohibit an alien who has unlawfully entered the country or who falls in any of the above categories from acquiring or disposing of real property in Florida under the alien land law provision of the state constitution.

Effect of Bill

The joint resolution proposes to remove the alien land law provision from section 2, Art. I of the state constitution. It does not appear to render any statutes void since it does not appear that any provisions of the Florida Statutes currently in effect were enacted pursuant to this constitutional provision.

The joint resolution does not contain a specific effective date. Therefore, if adopted by 60% of the electors voting on the measure, it would take effect the first Tuesday after the first Monday in January following the election at which it was approved.¹¹

C. SECTION DIRECTORY:

The joint resolution is not divided into sections.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

Non-Recurring FY 2007-08

Department Of State, Division of Elections
 Publication Costs \$60,000 (General Revenue)¹²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have a fiscal impact on local revenues.

¹⁰ See 8 U.S.C. s. 1182(a).

¹¹ Article XI, Section 5, of the Florida Constitution.

¹² Telephone conversation with department staff in March 2007.

2. Expenditures:

The joint resolution does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The state 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.¹³ The Department of State, Division of Elections, estimates that the non-recurring cost of compliance would be approximately \$60,000 in FY 2007-08.¹⁴

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because Article VII, s. 18 of the Florida Constitution applies only to general laws.

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 state constitution. The joint resolution requires passage by a three-fifths vote of the membership of each house of the Legislature.¹⁵ 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 section 2, Art. I of the state constitution could be challenged as an equal-protection violation.

While Congress may, in light of its full power over immigration,¹⁶ generally make classifications based on citizenship as long as they are not arbitrary and unreasonable,¹⁷ state or local laws that do so are subject to strict scrutiny. Such laws must seek to advance a compelling governmental interest and must be narrowly tailored to advancing that interest.¹⁸ Although some state and local classifications based on citizenship have not been held subject to strict scrutiny, this has primarily

¹³ Article XI, Section 5(d) of the Florida Constitution.

¹⁴ Telephone conversation with department staff in March 2007.

¹⁵ Art. XI, Section 1, of the Florida Constitution.

¹⁶ See Art. I, Section 8, U.S. Const.

¹⁷ See *Mathews v. Diaz*, 426 U.S. 67 (1976).

¹⁸ See *Bernal v. Fainter*, 467 U.S. 216 (1984).

been in the field of public employment.¹⁹ Overcoming strict scrutiny can be difficult;²⁰ 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 satisfy the requirements of strict scrutiny.

The Supreme Court of the United States has treated similar legislation as unconstitutional since at least the 1940's,²¹ as have several state supreme courts in analyzing their own alien land law provisions before they were repealed.²²

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

¹⁹ See, e.g., *Cabell v. Chavez-Salido*, 454 U.S. 432 (1982); *Ambach v. Norwick*, 441 U.S. 68 (1979).

²⁰ 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).

²¹ See, e.g., *Takahashi v. Fish and Game Commission*, 334 U.S. 410 (1948); *Oyama v. California*, 332 U.S. 633 (1948).

²² 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).