

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1013 Guaranteeing the Right to Vote by Secret Ballot

SPONSOR(S): Hasner and others

TIED BILLS: IDEN./SIM. BILLS: SJR 1908

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee		McDonald	Williamson
2)	Policy Council			
3)	Rules & Calendar Council			
4)				
5)				

SUMMARY ANALYSIS

HJR 1013 proposes the creation of Section 28 of Article I of the Florida Constitution to provide that voting by secret ballot is a fundamental right of all individuals. The amendment provides that the right of individuals to vote by secret ballot is guaranteed where local, state, or federal law requires elections for public office, requires public votes on initiatives or referenda, or requires designations or authorizations of employee representation.

Article VI of the Florida Constitution sets forth provisions related to suffrage and elections. Section 1, relating to the regulation of elections, provides that "all elections by the people shall be by direct and secret vote." This provision was adopted by the electorate in 1968. Until the revision in 1968, Article VI, Section 6 of the 1885 Constitution referred to "elections by the people", and required that "the vote shall be by ballot." The deletion of the term "ballot" was to avoid confusion when the word is applied to modern methods of voting. The constitutional requirement for a "direct and secret vote" was added in 1968. The Florida Election Code defines the term "elections" and includes all addressed by HJR 1013 except those related to designations or authorizations of employee representation.

The joint resolution must be approved by a three-fifths vote of the membership of each house of the Legislature. If enacted by such vote, the proposal will be presented to the electors of Florida at the November 2, 2010 general election. Approval requires a favorable vote from 60 percent or more of the electors voting on the measure.

Based upon the costs involved in the 2008 election for advertising a proposed constitutional amendment, the total cost for advertising this proposed constitutional amendment is estimated to be \$5,976.63. The cost is determined by multiplying the total number of words in the proposed amendment by the average per word cost of \$92.01.

If approved, the amendment would take effect January 4, 2011.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Constitution and Law Provisions Related to Suffrage and Elections

Article VI of the Florida Constitution sets forth provisions related to suffrage and elections. Section 1, relating to the regulation of elections, provides that "all elections by the people shall be by direct and secret vote."<sup>1</sup> This provision was adopted by the electorate in 1968. Until the revision in 1968, Article VI, Section 6 of the 1885 Constitution referred to "elections by the people", and required that "the vote shall be by ballot." The deletion of the term "ballot" was to avoid confusion when the word is applied to modern methods of voting.<sup>2</sup> The constitutional requirement for a "direct and secret vote" was added in 1968.<sup>3</sup>

The Florida Election Code specifically defines "elections" to include an election called for the purpose of voting on a party nominee to fill a national, state, county or district office, or to fill such office, or voting on a constitutional amendment.<sup>4</sup> Under the Florida Election Code, the term "election" also includes any election held for the purpose of voting for a municipal office or municipal public measure.<sup>5</sup>

The Florida Election Code also imposes a secrecy requirement, requiring all elections held on any subject which is submitted to a vote, and for all or any state, county, district, or municipal officer be "by secret, official ballot as provided by the code."<sup>6</sup> Additionally, no electronic or electromechanical voting system is to be approved by the Department of State unless it is constructed that among other things "permits and requires voting in secrecy."<sup>7</sup>

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<sup>1</sup> It also states general elections shall be determined by a plurality of votes cast and provides that registration and elections shall, and political party functions may, be regulated by law. The remaining sections provide qualifications for electors; oath to be subscribed to by person registering; disqualifications for voting or holding office; primary, general, and special elections; municipal and district elections; and campaign spending limits and funding of campaigns for elective state-wide office.

<sup>2</sup> See Fla. Stat. Ann. pp. 333-334 (Supp. 1995).

<sup>3</sup> Ibid.

<sup>4</sup> See s. 97.021, F.S.

<sup>5</sup> See s. 100.3605, F.S..

<sup>6</sup> See s. 101.041, F.S.

<sup>7</sup> See s. 101.5606, F.S.

Protections are provided for voters throughout the Florida Election Code. Some examples are the prohibition against voter intimidation or suppression in the "Voter Protection Act"<sup>8</sup>, the prohibition against employers from trying to control votes of employees in elections governed by the code, and in the special registration requirements for persons with special needs which prohibits the person's employer, the agent of the person's employer, or an officer or agent of the person's union from being a person who can be designated to give assistance in voting.<sup>9</sup>

### Provisions Related to Secret Ballot Vote for Designations or Authorizations of Employee Representation in Florida Law

There are three specific provisions in chapter 447, F.S., that reference the use of a secret ballot:

- Under s. 447.09(4), F.S., it is unlawful to conduct a vote to participate in a strike, walkout, or cease or continue work unless the election is a secret ballot election.
- Under s. 447.307, F.S., relating to the certification of an employee organization for public employees, the Public Employees Relations Commission shall require an election by secret ballot of an employee organization to represent employees, if an employer has denied recognition of such organization.
- Under s. 447.308, F.S., relating to revocation of certification of an employee organization, the commission shall, after certain findings, order an election by secret ballot to continue the certification or decertify the employee organization as the exclusive bargaining agent of the employees.

### Constitutional Amendment Process

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments maybe proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.<sup>10</sup> Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.<sup>11</sup> If the proposed amendment is approved by a vote of a least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution 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.<sup>12</sup>

### **Effect of Proposed Changes**

HJR 1013 proposes the creation of Section 28 of Article I of the Florida Constitution to provide that voting by secret ballot is a fundamental right of all individuals. The amendment provides that the right of individuals to vote by secret ballot is guaranteed where local, state, or federal law requires elections for public office, requires public votes on initiatives or referenda, or requires designations or authorizations of employee representation.<sup>13</sup>

The proposed constitutional amendment is similar in part to Article VI, Section 1 of the Florida Constitution, as both relate to voting in secrecy in an election. However, the existing section 1 of Article VI states "all elections by the people shall be by direct and secret vote."

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<sup>8</sup> See s. 104.0615, F.S.

<sup>9</sup> See s. 97.061(3), F.S.

<sup>10</sup> Art. XI, sec. 1, Fla. Const.

<sup>11</sup> Art. XI, sec. 5(a), Fla. Const.

<sup>12</sup> Art. XI, sec. 5(e), Fla. Const.

<sup>13</sup> "Secret Ballot" is defined in Black's Law Dictionary, Sixth Edition, as "the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with the respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed." "Vote" is defined in Black's as the "expression of one's will, preference, or choice."

This arguably is a mandate to government to ensure that an election is conducted by secret vote. In contrast, the proposed resolution expressly states that an individual has the fundamental right to vote by secret ballot in certain elections or labor matters. By virtue of the placement of this provision in Article I, it appears the right to vote in secrecy in an election may be elevated to the level of an inalienable right. The right to vote by secret ballot, therefore, may be accorded the same or similar level of scrutiny and protection from legislative and regulatory limitations or restrictions as other fundamental and inalienable rights such as the right to privacy, right to bear arms, and freedom of speech.

Additionally, the fundamental right to a secret ballot will extend not only to any election for public office required by federal, state, or local law or to any public vote on an initiative or referenda, but also to any designation or authorization of employee representation as may be required by local, state, or federal law. It appears that this refers to matters relating to representation of employees, public or private, in organized labor or labor union matters.

**B. SECTION DIRECTORY:**

None.

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

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

1. Revenues:

None.

2. Expenditures:

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.<sup>14</sup> Costs for advertising vary depending upon the length of the amendment. Based upon the costs involved in the 2008 election for advertising a proposed constitutional amendment, the total cost for advertising this proposed amendment is estimated to be \$5,796.63. The cost is determined by multiplying the total number of words in the proposed amendment by the average per word cost of \$92.01.<sup>15</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

There is an indeterminate cost to local government for possible costs related to the printing of the ballot. There could be a cost if additional pages were needed to print the language that appears on the ballot.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

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<sup>14</sup> Art. XI, sec. 5(d), Fla. Const.

<sup>15</sup> The estimated cost is based on information and methodology received from staff of the Department of State. Based on the language in HJR 1013, the total number of words in the proposed amendment is 63.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

None.

##### 2. Other:

In order for the Legislature to submit HJR 1013 to the voters for approval, the joint resolution must be agreed to by three-fifths of the membership of each house.<sup>16</sup> If HJR 1013 is agreed to by the Legislature, it will be submitted to the voters at the next general election held more than 90 days after the amendment is filed with the Department of State.<sup>17</sup> As such, HJR 1013 would be submitted to the voters at the 2010 General Election. In order for HJR 1013 to take effect, it must be approved by at least 60 percent of the voters voting on the measure.<sup>18</sup>

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The differences in the use of the terms "secret ballot" in the proposed amendment and "direct and secret vote" in Article VI, Section 1 of the Florida Constitution might create some confusion in how to interpret the two provisions and in determining what impact, if any, the differences might have on the current Election Code.

The language of HJR 1013 is similar to that being proposed by SOS, Inc., to be included in revisions to state constitutions in other states.<sup>19</sup>

Proposed federal legislation has been filed in the 111<sup>th</sup> Congress relating to secret ballot elections conducted by the National Labor Relations Board.<sup>20</sup>

H.R. 800, relating to the National Labor Relations Act, was filed in the 110th Congress. The bill, referred to as the "Employee Free Choice Act", made numerous revisions to the National Labor Relations Act including "requiring the National Labor Relations Board to certify a bargaining representative without directing an election if a majority of the bargaining unit employees have authorized designation of the representative (card-check) and there is no other individual or labor organization currently certified or recognized as the exclusive representative of any of the employees in the bargaining unit."<sup>21</sup> The bill passed the House but was not heard in the Senate.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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<sup>16</sup> Art. XI, sec. 1, Fla. Const.

<sup>17</sup> Art. XI, sec. 5(a), Fla. Const.

<sup>18</sup> Art. XI, sec. 5(e), Fla. Const.

<sup>19</sup> According to SOS Ballot, Inc. (Save Our Secret Ballot), a 501 c 4 organization dedicated to educating the American public on the continued need for a secret ballot wherever state or federal law requires elections, Arizona, Arkansas, Georgia, Kansas, Missouri North Dakota, Oklahoma, South Carolina, South Dakota, and Utah are joining their efforts.; <http://www.sosballot.org/>

<sup>20</sup> See HR 1176 IH; S478 PCS (also known as "Secret Ballot Protection Act").

<sup>21</sup> THOMAS (Library of Congress); <http://thomas.loc.gov/cgi-bin/bdqvrt/z?d110:HR00800:@@L&summ2=m&>; last visited March 7, 2009.