

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	8 Y, 4 N	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

Declaration of Rights Under the Florida Constitution

Article I of the Florida Constitution sets forth certain rights that are guaranteed to all persons. Those rights include:

- All political power is inherent in the people and the enunciation herein of certain rights shall not be construed to deny or impair others retained by the people.
- Basic rights for all people that are considered to be inalienable:
 1. Enjoy and defend life and liberty,
 2. Pursue happiness,
 3. Be rewarded for industry, and
 4. Acquire, possess and protect property, except for a specified exception.
- Religious freedom; however, this freedom "does not justify practices inconsistent with public morals, peace or safety."
- Freedom of speech and press.
- Right to peaceably assemble, instruct their representatives, and petition for redress of grievances.
- Right of persons to work shall not be denied or abridged because of membership or non-membership in a labor union or labor organization.
- Right of employees to bargain collectively, by an through a labor organization, shall not be denied or abridged. Public employees do not have the right to strike.
- Military power is subordinate to the civil.
- Right to keep and bear arms.
- Right to due process of law.
- No person shall be imprisoned for debt, except in cases of fraud.
- Right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.
- Writ of habeas corpus shall be grantable of right, freely, and without cost and only suspended in certain specified circumstances.
- Entitlement for pretrial release under specified circumstances.
- Requirement for a presentment or indictment by grand jury or an information under oath by prosecuting officer of the court for prosecution of certain crimes; provision for handling crimes by children.

- Rights of accused and of victims in criminal prosecutions.
- Excessive punishments are forbidden.
- Right to access the courts and trial by jury.
- Right of privacy, free from governmental intrusion into a person's private life.
- Right to inspect or copy any public record and right to attend meetings.
- Right to fair compensation involving certain medical liability claims.

Among the provisions in Article I of the Florida Constitution are the requirement for a Taxpayers' Bill of Rights and the definition of marriage.¹

Constitution and Law Provisions Related to Suffrage and Elections in Florida

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."² 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.³ The constitutional requirement for a "direct and secret vote" was added in 1968.⁴

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.⁵ 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.⁶

The Florida Election Code also imposes a secrecy requirement, requiring all elections held on any subject that 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."⁷ Additionally, no electronic or electromechanical voting system can be approved by the Department of State unless it is constructed so that, among other things, it "permits and requires voting in secrecy."⁸

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"⁹, 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.¹⁰

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

There are three specific provisions in chapter 447, F.S., that reference the use of a secret ballot. The first is found in Part I of the chapter and governs general provisions relating to union activity. 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.

¹ Art. 1, secs. 25 and 27, Fla. Const., respectively.

² 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.

³ See Fla. Stat. Ann. pp. 333-334 (Supp. 1995).

⁴ Ibid.

⁵ See s. 97.021, F.S.

⁶ See s. 100.3605, F.S..

⁷ See s. 101.041, F.S.

⁸ See s. 101.5606, F.S.

⁹ See s. 104.0615, F.S.

¹⁰ See s. 97.061(3), F.S.

The other two references are found in Part II of chapter 447, F.S., which relates to public employees:

- 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.

The Public Employees Relations Commission (PERC) is responsible for issues relating to collective bargaining issues related to public employees.¹¹ Public employees in the State of Florida have the constitutional right to collectively bargain. There are approximately 400,000 public employees in bargaining units throughout the state. PERC holds hearings and resolves disputes about the composition of bargaining units and alleged unfair labor practices.

PERC has an Election Division that conducts elections for public employees throughout the state. The elections are held for a wide range of units including Police, Fire, School or University, Sheriff, Medical, and all other City and County units. Elections are conducted when a Representation Certification Petition or a Petition to Revoke Certification is filed. Petitions have to be accompanied by at least a 30 percent showing of interest of the proposed unit. All elections are conducted by secret ballot and by a designated agent of the Commission.¹² Elections may be conducted by mail, on-site, or by any combined method ordered or approved by the Commission. The Election Division conducts an average of 65 elections a year.¹³ Some elections have been for very small units and some have been for statewide units.¹⁴ Elections have been held for as small as two people in a unit to as many as 30,000.¹⁵

Federal Law Governing Employer and Employee Labor Relations

The National Labor Relations Act (NLRA) states:

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.¹⁶

The NLRA delineates and defines the rights of employees to organize and to bargain collectively with their employers through representatives of their own choosing or to choose not to do so. The NLRA establishes a procedure by which employees can exercise their choice at a secret ballot election conducted the National Labor Relations Board.¹⁷ The NLRA also defines practices of employers and unions as unfair trade practices.

¹¹ "Public employees" means employees of the state, counties, school boards, municipalities, and special taxing districts. This includes all fire, police, corrections, school teachers and support personnel, medical personnel, state troopers, toll collectors, sanitation employees, and clerical, etc. See <http://perc.myflorida.com/>; last visited March 12, 2009.

¹² See <http://perc.myflorida.com/elections/elections.aspx>; last visited March 12, 2009.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ NLRA; 29 U.S.C. sec. 151.

¹⁷ The NLRA is principally administered and enforced by the NLRB and the General Counsel acting through 52 regional and other field offices located in major cities in various parts of the country. The General Counsel and staff of the regional offices investigate and prosecute unfair labor practice cases and conduct elections to determine employee representatives. See <http://www.nlr.gov/shared-files/brochures/BasicGuide.html>; Last visited March 12, 2009.

Proposed Federal Legislation

Two bills, H.R. 1176 (Secret Ballot Protection Act) by Congressman John Kline and S.B. 478 (Secret Ballot Protection Act of 2009) by Senator Jim DeMint, have been filed in the 111th Congress to amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board.¹⁸

H.R. 800, relating to the National Labor Relations Act, was filed in the 110th Congress. The bill, which is 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."¹⁹ The bill passed the House but was not heard in the Senate.

State 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.²⁰ 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.²¹ 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.²²

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.²³

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."

This arguably is a mandate to government to ensure that an election is conducted by secret vote. In contrast, the proposed resolution expressly states 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.

¹⁸ THOMAS (Library of Congress); <http://thomas.loc.gov/cgi-bin/thomas>; last visited March 7, 2009.

¹⁹ THOMAS (Library of Congress); <http://thomas.loc.gov/cgi-bin/bdquery/z?d1110:HR00800:@@L&summ2=m&>; last visited March 7, 2009.

²⁰ Art. XI, sec. 1, Fla. Const.

²¹ Art. XI, sec. 5(a), Fla. Const.

²² Art. XI, sec. 5(e), Fla. Const.

²³ "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."

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 must 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.²⁴ 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 at \$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 \$92.01.²⁵

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:

Indeterminate. It is not known what, if any, additional cost or cost savings the requirement for a secret ballot as a fundamental right will have on employers, employees, or the employee bargaining unit.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

²⁴ Art. XI, sec. 5(d), Fla. Const.

²⁵ 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.

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.²⁶ 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.²⁷ 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.²⁸

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 Ballot, Inc., for inclusion in revisions to state constitutions in other states.²⁹

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

²⁶ Art. XI, sec. 1, Fla. Const.

²⁷ Art. XI, sec. 5(a), Fla. Const.

²⁸ Art. XI, sec. 5(e), Fla. Const.

²⁹ 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 its efforts. See <http://www.sosballot.org/>