

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Military Affairs and Domestic Security Committee

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BILL:               SJR 314

INTRODUCER:     Senator Sobel and others

SUBJECT:          Basic Rights

DATE:             February 25, 2009     REVISED:     \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Maclure	JU	<b>Favorable</b>
2.	Pardue	Skelton	MS	<b>Favorable</b>
3.			RC	
4.				
5.				
6.				

**I. Summary:**

Senate Joint Resolution 314 proposes an amendment to the Florida Constitution to delete provisions authorizing the Legislature to regulate or prohibit the ownership, inheritance, disposition, and possession of real property by aliens ineligible for citizenship.

This joint resolution amends article I, section 2 of the Florida Constitution.

**II. Present Situation:**

**Property Rights**

Article I, section 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. (Emphasis added.)

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 of, and possess real property has been in the Florida Constitution since 1968.<sup>1</sup> 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 transfer of 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.

Under Florida’s constitutional provision, property ownership by “aliens ineligible for citizenship” may be regulated or prohibited. When this provision was added to the Constitution, the phrase “aliens ineligible for citizenship” referred primarily to Asians, because at the time federal law limited naturalization to whites and persons of African nativity or descent. In 1923, the United States Supreme Court determined that, “[g]enerally speaking, the natives of European countries are eligible. Japanese, Chinese and Malays are not.”<sup>2</sup>

Today, the only persons ineligible for citizenship under federal law are ineligible on an individual basis and not on a national or racial basis. To be eligible for naturalization<sup>3</sup> an immigrant must:

- Be a legal permanent resident of the United States for five years;<sup>4</sup>
- Demonstrate knowledge of the English language and of the history, principles, and form of government of the United States;<sup>5</sup>

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<sup>1</sup> The Florida Constitution does not define the term “alien.” Only one Florida statute, s. 327.02(2), 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. 8 U.S.C. s. 1101(a)(3).

<sup>2</sup> *Terrace v. Thompson*, 263 U.S. 197, 220 (1923).

<sup>3</sup> 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 Black’s Law Dictionary (2006 edition).

<sup>4</sup> See 8 U.S.C. s. 1427(a).

<sup>5</sup> 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

- Be of “good moral character;”<sup>6</sup> and
- Not be a deserter from the U.S. military.<sup>7</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 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;
- 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.<sup>8</sup>

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.

Most alien land laws had been found unconstitutional on equal protection grounds by 1960.<sup>9</sup> Wyoming, Kansas, New Mexico, and Florida were the last states to maintain alien land laws. In

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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).

<sup>6</sup> *See* 8 U.S.C. s. 1427(a) and (d).

<sup>7</sup> *See* 8 U.S.C. s. 1425.

<sup>8</sup> *See* 8 U.S.C. s. 1182(a).

2001, Wyoming and Kansas repealed their alien land laws, and in 2006, after having a failed ballot initiative in 2002, New Mexico repealed its law. Florida remains the last state with an alien land law on its books.<sup>10</sup>

In November 2008, voters in Florida did not pass Amendment 1, which would have removed the provision from the state constitution authorizing the Legislature to bar aliens ineligible for citizenship from owning property. The amendment was the result of SJR 166 that passed in the 2007 Regular Session.

### **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 may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.<sup>11</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>12</sup> If the proposed amendment is approved by a vote of at 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>13</sup>

### **III. Effect of Proposed Changes:**

Senate Joint Resolution 314 proposes an amendment to article I, section 2 of the Florida Constitution to delete provisions authorizing the Legislature to regulate or prohibit the ownership, inheritance, disposition, and possession of real property by aliens ineligible for citizenship.

This joint resolution provides no effective date for the constitutional amendment. In accordance with article XI, section 5 of the Florida Constitution, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate.

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<sup>9</sup> See, e.g., *Namba v. McCourt*, 204 P.2d 569 (Or. 1949); *Fujii v. State*, 242 P.2d 617 (Cal. 1952); *State v. Oakland*, 287 P.2d 39 (Mont. 1955).

<sup>10</sup> National Asian Pacific American Bar Association, "NAPABA Urges Florida Voters to Pass Ballot Initiative to Eliminate Last Alien Land Law in the U.S.," October 27, 2008, <http://www.napaba.org/napaba/showpage.asp?code=PR-FLAmendment1008> (last visited January 30, 2009).

<sup>11</sup> FLA. CONST. art. XI, s. 1.

<sup>12</sup> FLA. CONST. art. XI, s. 5(a).

<sup>13</sup> FLA. CONST. art. XI s. 5(e).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. Other Constitutional Issues:

In order for the Legislature to submit SJR 314 to the voters for approval, the joint resolution must be agreed to by three-fifths of the membership of each house.<sup>14</sup> If SJR 314 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>15</sup> As such, SJR 314 would be submitted to the voters at the 2010 General Election. In order for SJR 314 to take effect, it must be approved by at least 60 percent of the voters voting on the measure.<sup>16</sup>

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

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>17</sup> Costs for advertising vary depending upon the length of the amendment. According to the Department of State, the average cost of publishing a constitutional amendment with the ballot summary is \$102,053. The cost varies depending on the length of the full text. The average cost per word is \$94.68.

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<sup>14</sup> FLA. CONST. art. XI, s. 1.

<sup>15</sup> FLA. CONST. art. XI, s. 5(a).

<sup>16</sup> FLA. CONST. art. XI, s. 5(e).

<sup>17</sup> FLA. CONST. art. XI, s. 5(d).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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