

**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.)

Prepared By: The Professional Staff of the Criminal Justice Committee

**BILL:** CS/SJR 908

**INTRODUCER:** Criminal Justice Committee and Senator Wilson

**SUBJECT:** Restoration of Civil Rights/Clemency

**DATE:** April 6, 2009                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.			JU	
3.			JA	
4.			RC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The CS for Senate Joint Resolution 908 proposes amendments to the Florida Constitution to grant clemency authority to the Legislature.

The joint resolution amends article IV, section 8 of the Florida Constitution.

**II. Present Situation:**

Depending upon the crime that is committed, conviction of a crime carries consequences that may include execution, confinement or restriction to supervision, or imposition of a fine. A collateral consequence of a felony conviction is loss of civil rights until they are restored by pardon or restoration. Among the civil rights that are lost is the right to vote, to hold public office, to serve on a jury, to possess a firearm, and to engage in certain regulated occupations or businesses.

**Clemency Authority**

Article IV, Section 8, of the Florida Constitution gives the governor sole authority to suspend collection of fines and forfeitures and to grant reprieves not exceeding sixty days. With the

approval of two members of the cabinet, the governor may grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures. There are two exceptions to this clemency authority:

- The governor does not have clemency authority with regard to cases in which impeachment results in conviction.
- In cases of treason, the governor may only grant reprieves until adjournment of the next legislative session after the conviction. If the Legislature does not grant a pardon or a further reprieve during that session, the sentence must be executed.

The Legislature does not have authority to grant clemency except that it may grant pardons or reprieves in cases of treason.

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

The joint resolution amends Article IV, Section 8 of the Florida Constitution to give the Legislature authority to enact laws that:

- Suspend or remit fines and forfeitures
- Grant reprieves not exceeding sixty days
- Restore civil rights
- Commute punishment, except in the case of treason.

The amendment gives the Legislature the same clemency authority as the governor, or the governor and cabinet, with two exceptions:

- It does not give the Legislature authority to grant pardons. However, the Legislature retains its existing authority to grant pardons in cases of treason.
- It does not change existing clemency authority in treason cases.

As is the case with every bill that is passed by the Legislature, the governor can veto a bill granting clemency and the veto can be overridden by a two-thirds vote of each house.<sup>1</sup>

#### **Effective Date**

This joint resolution does not provide an 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.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>1</sup> Article III, Section 8 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Article III, Section 11(a)(4) of the Florida Constitution prohibits the Legislature from passing a special law pertaining to punishment for crime. If the intent of the amendment is to allow the Legislature to pass a law that grants clemency to an individual, rather than a class of persons, consideration should be given to amending the joint resolution to specifically state that such a special law is permissible. It should be noted that the same potential conflict exists with regard to the Legislature's current authority to grant clemency in a treason case.

In order for the Legislature to submit CS/SJR 908 to the voters for approval, the joint resolution must be agreed to by three-fifths of the membership of each chamber.<sup>2</sup> If CS/SJR 908 is passed with the required majority by both the Senate and the House, 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>3</sup> As such, CS/SJR 908 would be submitted to the voters at the 2010 General Election. In order for CS/SJR 908 to take effect, it must be approved by at least 60 percent of the voters voting on the measure.<sup>4</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>5</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>2</sup> FLA. CONST. art. XI, s. 1.

<sup>3</sup> FLA. CONST. art. XI, s. 5(a).

<sup>4</sup> FLA. CONST. art. XI, s. 5(e).

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

**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.)

**CS by Criminal Justice on April 6, 2009:**

- Deletes the portion of the Joint Resolution that amends Article X, Section 9 of the Florida Constitution, to avoid unintended effects beyond the clemency area.
- Reorganizes Article IV, Section 8 of the Constitution in a logical manner and removes a superfluous “notwithstanding” clause.

**B. Amendments:**

None.