

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1553

Basic Rights

SPONSOR(S): Rader

TIED BILLS:

IDEN./SIM. BILLS: SJR 84

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Criminal & Civil Justice Policy Council		Billmeier	Havlicak
2)	Rules & Calendar Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

The Florida Constitution provides that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. A provision such as this one is commonly referred to as an "alien land law." Many states adopted such provisions in late 19<sup>th</sup> and early part of the 20<sup>th</sup> centuries to bar certain nationalities of immigrants from acquiring land in those states. The first alien land law provision was adopted as part of the Florida Constitution in 1868. The current provision was adopted in 1968.

The joint resolution proposes amending 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.

The joint resolution appears to have a fiscal impact on state government. The Department of State, Division of Elections, estimates a non-recurring cost of approximately \$16,853.04 for FY 2010-11. The cost is a result of publishing required notices in newspapers.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it would become effective on January 4, 2011.

**The joint resolution requires a three-fifths vote of the membership for passage.**

## 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:

##### 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.

(emphasis added).

This constitutional provision has its genesis in the Florida Constitution of 1868, which provided:

Foreigners 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.<sup>1</sup>

In 1926, the Constitution was amended:

Foreigners 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.**<sup>2</sup>

<sup>1</sup> See Article 1, Section 17, Fla. Const. (1868).

<sup>2</sup> See Article 1, Section 18, Fla. Const. (Amendment approved June 25, 1925).

(emphasis added).

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.<sup>3</sup> There is no Florida case law construing this provision. It does not appear that the Legislature has ever enacted laws implementing this provision.<sup>4</sup> Additionally, there are only two current statutes 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.

The alien land law was created to ban Japanese farmers from leasing or owning property.<sup>5</sup> 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.<sup>6</sup>

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 naturalization<sup>7</sup> an immigrant must:

- Be a legal permanent resident of the United States for five years;<sup>8</sup>
- Demonstrate knowledge of the English language and of the history, principles and form of government of the United States;<sup>9</sup>
- Be of "good moral character;"<sup>10</sup> and
- Not be a deserter from the U.S. military.<sup>11</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;

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<sup>3</sup> The Florida Constitution does not define the term "alien." Only one Florida Statute, s. 327.02(1), F.S., 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).

<sup>4</sup> In 2007, the staff of the Florida Senate Committee on Judiciary reviewed Florida Statutes adopted since 1847 and found no statute regulating or prohibiting the ownership of property by aliens ineligible for citizenship. See Professional Staff Analysis and Economic Impact Statement of SJR 166 prepared by the staff of the Florida Senate Committee on Judiciary, dated March 21, 2007.

<sup>5</sup> See Florida Constitutional Amendments and You at the Collins Center for Public Policy website, <https://www.communicationsmgr.com/projects/1373/property-rights-ineligible-aliens.asp> (accessed April 8, 2010).

<sup>6</sup> Public Law 82-414, chapter 477, 66 Stat. 163 (June 27, 1952).

<sup>7</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 Blacks Law Dictionary (2006 edition).

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

<sup>9</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 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>10</sup> *Id.*

<sup>11</sup> See 8 U.S.C. s. 1425.

- 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>12</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.

Others have argued that alien land laws cannot be sustained because such laws were initially enacted to prohibit persons of particular races from owning property.<sup>13</sup> A discussion from the Collins Center for Public Policy also set forth the argument:

Using this argument, that the law is racially discriminatory and based on old definitions of "ineligible aliens," they distance the amendment from the current political debate on how to stem illegal immigration. One has nothing to do with the other, they say, because immigrants are no longer barred from citizenship based on their race. "Ineligible aliens," they argue, have no legal relationship to people regarded as "illegal immigrants," who enter the country illegally.<sup>14</sup>

The Florida Legislature has never enacted laws to implement the alien land law provision so no court has ruled on whether such laws are permissible under the federal constitution's equal protection provision. A law enacted pursuant to this provision would be subject to an equal protection challenge if a court were to find the provision was based on race.

In 2007, the Legislature passed SJR 166 to attempt to remove the alien land law provision. The voters rejected the proposal.<sup>15</sup>

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<sup>12</sup> See 8 U.S.C. s. 1182(a).

<sup>13</sup> See generally Gabriel J. Chin, Citizenship and Exclusion: Wyoming's Anti-Japanese Alien Land Law in Context, Wyoming Law Review, 2001.

<sup>14</sup> See Florida Constitutional Amendments and You at the Collins Center for Public Policy website, <https://www.communicationsmgr.com/projects/1373/property-rights-ineligible-aliens.asp> (accessed April 8, 2010).

<sup>15</sup> See Florida Department of State website report at <http://election.dos.state.fl.us/initiatives/initdetail.asp?account=10&seqnum=69> (accessed April 8, 2010). The proposal had 3,564,090 votes for and 3,871,704 votes against.

## Effect of Bill

The joint resolution proposes to remove the alien land law provision from Article 1, section 2, of the Florida 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.<sup>16</sup>

### B. SECTION DIRECTORY:

The joint resolution is not divided into sections.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The joint resolution appears to have a fiscal impact on state government. The Department of State, Division of Elections, estimates a non-recurring cost of approximately \$16,853.04 for FY 2010-11. The cost is a result of publishing required notices in newspapers.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

Not applicable because Article 7, Section 18 of the Florida Constitution applies only to general laws.

#### 2. Other:

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<sup>16</sup> Article 11, Section 5, of the Florida Constitution.

A potential equal protection issue relating to laws that might be enacted pursuant to Florida's alien land law provision was discussed in section 1 of this analysis.

Armstrong v. Harris, 773 So.2d 7 (Fla. 2000), requires that ballot summaries must accurately explain proposed constitutional amendments submitted by the Legislature. The ballot summary contained in this proposed joint resolution reads:

This amendment to the State Constitution eliminates authority granted to the Legislature by a constitutional amendment adopted in 1926 which allowed the Legislature to regulate or eliminate the real property rights of individuals **based on race** or national origin. The Florida Constitution will now state that all natural persons, female and male alike, are equal before the law and have an inalienable right to acquire, possess, and protect property, without exception.

(emphasis added).

It could be argued that the current language in the Constitution does not grant the Legislature the authority to restrict or eliminate property rights of aliens based on race. In response, it could be argued that the history of alien land laws supports the position that they were race-based. If a court were to find the use of "race" to be misleading, it could find the ballot summary inaccurate and remove the amendment from the Constitution if it ultimately is adopted.

The ballot summary appears to accurately state the result if the amendment is adopted.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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