

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 Committee on Ethics and Elections

BILL: SJR 1238

INTRODUCER: Senator Rodriguez

SUBJECT: Percentage of Elector Votes Required to Approve an Amendment or a Revision

DATE: March 9, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Rey | Roberts | EE | Favorable |
| 2. | | | RC | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

SJR 1238 proposes an amendment to the state constitution to increase the percentage of elector votes required to pass a constitutional amendment or revision from 60 percent to two-thirds (66 2/3%) of those voting on the measure, and to allow an amendment to or a revision of the State Constitution to be repealed by the same percentage of electors that was required at the time of passage of such amendment or revision.

The SJR requires three-fifths vote of the membership of each house of the Legislature for passage.¹

If adopted by at least 60% of electors voting on the measure at the 2022 general election, the passage threshold change would apply to all proposed amendments or revisions voted on or after January 10, 2023.²

II. Present Situation:

Amendments to the Florida Constitution can be proposed by four distinct methods: 1) joint legislative resolution 2) the Constitutional Revision Commission, 3) citizen’s initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.³ Depending on the method, all proposed amendments or revisions to the State Constitution must be submitted to

¹ Fla. Const. art. XI, s.1 (2020).

² Fla. Const. art. XI, s.5(e) (2020).

³ See Fla. Const. art XI, ss. 1-4 and 6 (2020).

the electors at the next general election held more than ninety (90) days after the joint resolution or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the custodian of state records, or for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election will be held.⁴

The Florida Constitution mandates that all proposed amendments or revisions⁵ be adopted by at least a 60% affirmative vote of those electors voting on the measure. The voters adopted the current threshold in 2006, approving a legislative proposal to increase the percentage from a simple majority of those voting on the measure.⁶

Since adopting the 60% passage threshold, voters have weighed in on 50 proposed constitutional amendments, approving 31 (62%) and rejecting 19 (38%).⁷ However, in the last two general election cycles, voters have approved an overwhelming 14 of 18, or 78% of all proposed amendments. This limited data suggests a *possible* recent trend toward easier voter approval.

Repealing an amendment to or a revision of the Florida Constitution requires the same 60% passage threshold as amendments and revisions.

III. Effect of Proposed Changes:

Had the SJR’s two-thirds passage threshold been in place since 2008, when the 60% threshold went into effect, more than half of the amendments that passed (17 of 31) would have been defeated — reducing the overall passage rate from almost two-thirds (62%; 31/50) to just over a quarter (28%; 14/50). The passage rate for the 2018 election cycle would have been significantly reduced, from over 90% to just one-third (33%) — with 7 additional amendments failing. The following chart summarizes the general election breakdown of approved amendments under each passage rate:

| YEAR | 60% Passage Rate | 66 2/3% (two-thirds) Passage Rate |
|-------------|---------------------|-----------------------------------|
| 2008 | 71% (5 of 7) | 29% (2 of 7) |
| 2010 | 50% (3 of 6) | 17% (1 of 6) |
| 2012 | 27% (3 of 11) | 0% (0 of 11) |
| 2014 | 33% (1 of 3) | 33% (1 of 3) |
| 2016 | 80 % (4 of 5) | 80% (4 of 5) |
| 2018 | 92% (11 of 12) | 33 % (4 of 12) |
| 2020 | 67% (4 of 6) | 50% (3 of 6) |

The available data indicates that increasing the passage rate from 60% to 66 2/3% could have a consequential impact on marginal amendments and revisions.

⁴ See Fla. Const. art XI, s. 5 (2020).

⁵ When the State Constitution uses the word ‘amendment’ it is in reference to a section of the constitution, while the word ‘revision’ relates to one or more articles or the whole constitution. See Fla. Const. art. XI, s1 (2020).

⁶ Am. HJR 1723, 2005, was adopted in 2006.

⁷ Florida Div. of Elections, Initiatives/Amendments/Revisions Database, available at <https://dos.elections.myflorida.com/initiatives/> (last accessed February 19, 2021).

The passage threshold for a repeal will be dependent on the amendment and revision it is repealing. The SJR creates a tiered system to repealing amendments and revisions to the State Constitution. Amendments and revisions to the State Constitution passed prior to 2006 can be repealed by a simple majority of the electors voting on the measure. Those amendments and revisions passed between 2006 and up to the passage of SJR would have a passage threshold of 60%. Repeals of amendments and revisions passed after the SJR goes into effect will require a 66 2/3% affirmative vote of the electors voting on the measure.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments.

The Division has not completed an agency bill analysis for this bill or for the identical House Bill. Using the Division's 2019 general election estimate of \$92.93 per word, this 432-word amendment should cost about **\$40,145.76**.

VI. Technical Deficiencies:

None.

VII. Related Issues:

“An ‘amendment’ of a constitution repeals or changes some provision in, or adds something to, the instrument amended.”⁸ If SJR 1238 passes, proposed amendments would have to be reviewed to identify if they are repeals, and, in the case of repeals, to determine their passage threshold. For an amendment by initiative petition, the Attorney General could petition the Florida Supreme Court to include in its advisory opinion the passage threshold of the amendment.⁹ Since “[t]he constitution does not expressly authorize judicial review of amendments proposed by the Legislature,”¹⁰ the Legislature may wish to include in its analysis of legislative amendments whether the proposed amendment is a repeal and the passage threshold.

VIII. Statutes Affected:

The bill substantially amends Article XI, s. 5 of the Florida Constitution.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

⁸ *Board of Public Instruction of Polk County v. Board of Com'rs of Polk County*, 58 Fla. 391, 392 (Fla. 1909).

⁹ Section 16.061(1), F.S. Upon receipt from the Secretary of State of a proposed revision or amendment by initiative petition, the Attorney General has 30 days to petition the Supreme Court for an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution, whether the proposed amendment is facially invalid under the United States constitution, and the compliance of the proposed ballot title and substance with s. 101.161, F.S.

¹⁰ *Armstrong v. Harris*, 773 So.2d 7, 13 – 14 (Fla. 2000).