

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 Judiciary

BILL: SJR 1740
INTRODUCER: Senator Negrón
SUBJECT: Postconviction Death Penalty Proceedings
DATE: March 29, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Favorable
2.	_____	_____	AP	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SJR 1740 proposes an amendment to the Florida Constitution to create an exception to the Supreme Court’s jurisdiction over practice and procedure in the courts. Under the exception, the Legislature, through general law, will have exclusive authority to govern the postconviction or collateral review of capital cases that result in a sentence of death.

This resolution amends section 2, Article III of the Florida Constitution.

This resolution creates section 34, Article XII of the Florida Constitution.

II. Present Situation:

Florida State Constitution

The Florida Constitution grants the Supreme Court jurisdiction over all aspects of practice and procedure in state courts. This authority includes jurisdiction over the administration of capital cases.

Section 2, Article V of the Florida Constitution provides, in part:

Administration; practice and procedure.—

(a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no

cause shall be dismissed because an improper remedy has been sought. ... Rules of court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

Rules of Procedure

The Florida Supreme Court adopts rules of procedure in the areas of appellate, civil, criminal, family, judicial administration, juvenile, probate, small claims, and traffic court practice.¹ The Criminal Procedure Rules Committee of the Florida Bar is responsible for proposing new rules and amendments to the existing Rules of Criminal Procedure to the Florida Supreme Court.² Various rules pertain specifically to postconviction and collateral review of capital cases. These are:

- Rule 3.851, Fla. R. Crim. P.: Collateral Relief after Death Sentence has been Imposed and Affirmed on Direct Appeal
- Rule 3.852, Fla. R. Crim. P.: Capital Postconviction Public Records Production

Rule 3.851, Fla. R. Crim. P., addresses the appointment of postconviction counsel, preliminary procedures, time limits, motions, evidentiary hearings, case management conferences, competency of the defendant, post-death warrant procedure, and dismissal of postconviction proceedings. Rule 3.852, Fla. R. Crim. P., addresses the production of records, including the production of exempt and confidential public records.

III. Effect of Proposed Changes:

This joint resolution proposes an amendment to the Florida Constitution to create an exception to the Supreme Court's jurisdiction over practice and procedure in the courts. Under the exception, the Legislature, through general law, will have exclusive authority to govern the postconviction or collateral review of capital cases that result in a sentence of death.

This amendment requires implementing legislation, which is provided by SB 1750.

If approved by the electors, the constitutional amendment will take effect July 1, 2015, and apply to capital cases in which the conviction and death sentence have been affirmed on direct appeal on or after July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹The Florida Rules of Court Procedure are available:

<http://www.floridabar.org/tfb/TFBLegalRes.nsf/basic+view/E1A89A0DC5248D1785256B2F006CCCEE?OpenDocument#FLORIDA%20RULES%20OF%20PROCEDURE%3A>.

²See, e.g., *In re Amendments to Florida Rules of Criminal Procedure*, 104 So. 3d 304 (Fla.2012).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Constitutional Amendments

Article XI of the Florida Constitution provides 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.³ 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.⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Ballot-related Costs

A proposed 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.⁵ The Department of State (DOS) is responsible for having proposed amendments published in newspapers. The cost of publishing amendments depends on their length. The DOS estimates the costs of publishing amendments to be \$67.68 per word.⁶ At 628 words, the estimated cost to publish the amendment is \$42,503.⁷ These funds must be spent regardless of whether the amendment passes. Should the amendment

³ Fla. Const., art. XI, s. 1.

⁴ Fla. Const., art. XI, s. 5(a).

⁵ Fla. Const., art. XI, s. 5(d).

⁶ Fiscal Note on SJR 1740, Florida Department of State, March 22, 2013.

⁷ *Id.*

be legally challenged, the DOS is typically the defendant in these suits.⁸ Estimates for legal defense range anywhere from \$10,000 to \$150,000.⁹

Impact on the Courts

According to the Office of State Courts Administrator, this constitutional amendment will reduce the workload of the Florida Supreme Court and its committees regarding review, proposal, and adoption of procedural rules governing post-conviction and collateral review in death penalty cases. The fiscal impact, however, is unknown.

VI. Technical Deficiencies:

The ballot summary's description of the approval or veto of a general law by the Governor is not complete. The description does not explain that a bill can become a law if the Governor does not sign or veto the bill. Rather than describe how a bill becomes a law, the Legislature may wish to state: A general law is a law of statewide application that is enacted by the Legislature.

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.

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

⁸ *Id.*

⁹ *Id.*