

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 362

INTRODUCER: Senator Brandes

SUBJECT: Abolishing the Constitution Revision Commission

DATE: February 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Favorable
2.			GO	
3.			RC	

I. Summary:

SJR 362 abolishes the Constitution Revision Commission by repealing provisions establishing it in the Florida Constitution. Currently, the Constitution requires that a Constitution Revision Commission be convened once every 20 years to examine the Constitution and propose any amendments that it deems appropriate.

As a joint resolution, this legislation must be agreed to by three-fifths of the membership of each house of the Legislature. Then, the constitutional amendment proposed in the resolution will be placed on the 2020 General Election ballot, and will take effect if approved by at least 60 percent of the votes cast on the measure.

II. Present Situation:

Overview

The Florida Constitution requires that a Constitution Revision Commission be established every 20 years and that it have the authority to propose to voters a revision of all or any part of the Florida Constitution. The most recent Commission convened in 2017-2018, and proposed seven amendments to the Florida Constitution, which appeared on the 2018 General Election ballot.

Context – Multi-Subject Amendments on the 2018 General Election Ballot

At least two of the seven Commission-proposed amendments that appeared on the 2018 General Election ballot were regarded by many voters as containing at least two unrelated subjects.¹ This

¹ See, e.g., The News Service of Florida, *Constitutional Amendments? One subject only, please*, THE GAINESVILLE SUN (Nov. 23, 2018), <https://www.gainesville.com/news/20181123/constitutional-amendments-one-subject-only-please>; see generally, The News Service of Florida, *There's now a push to repeal the Florida Constitution Revision Commission*,

frustrated those voters, including some lawmakers, who had to choose whether to vote for an amendment that combined changes they liked with unrelated changes that they did not like.²

Examples of Commission-proposed amendments that many regarded as multi-subject were amendment 9 and amendment 6. Amendment 9 combined a ban on oil-drilling in state seawaters with a ban on “vaping” in indoor workplaces. Amendment 6 combined what many regarded as three different subjects: a crime-victim-rights proposal, a prohibition on judges deferring to agencies’ interpretation of statutes or rules, and a 5-year increase in the mandatory retirement age for judges.

Constitution Revision Commission

Origin and History

The Florida Constitution was revised extensively in 1968 by way of three joint resolutions proposed by the Legislature and approved by the voters. The revisions included the establishment of the Constitution Revision Commission as a means of proposing constitutional revisions to the voters, and the requirement that it convene once every 20 years, beginning in 1977. Accordingly, three Commissions have convened: in 1977-1978, 1997-1998, and most recently in 2017-2018.³

Members

The Constitution requires that the Commission be comprised of 37 members, and it provides guidelines for the selection of these members. The Attorney General must serve on the Commission, and the rest of the members must be chosen by the Governor (15), Speaker of the House (9), President of the Senate (9), and the Chief Justice of the Florida Supreme Court (3). Additionally, the Governor must appoint a chair from among the 37 members.⁴

Task, Procedures, and Authority

The Commission’s task is to examine the Constitution and decide which, if any, amendments to propose to the voters. The amendments must be submitted to the Secretary of State at least 180 days before the next general election.⁵ In turn, the amendments must be submitted to the voters at the next general election held more than 90 days after submission to the Secretary of State. To

ORLANDO WEEKLY (Jan. 18, 2019), <https://www.orlandoweekly.com/Blogs/archives/2019/01/18/theres-now-a-push-to-repeal-the-florida-constitution-revision-commission>.

² See Brendan Rivers and News Service of Florida Staff, *Bill Filed to Ban Bundled Amendments from Constitution Revision Commission*, WJCT FIRST COAST CONNECT (Nov. 26, 2018), <http://news.wjct.org/post/bill-filed-ban-bundled-amendments-constitution-revision-commission>; see generally, Editorial Board, *Florida’s constitutional amendments: Vote ‘yes’ on 4 and 11, ‘no’ on rest*, TALLAHASSEE DEMOCRAT (Oct. 7, 2018), <https://www.tallahassee.com/story/opinion/editorials/2018/10/07/floridas-amendments-yes-4-and-11-no-rest-our-opinion/1494375002/> (arguing that amendment 6 and amendment 9 each included a proposal worthy of approval, but should be voted against on account of at least one unworthy proposal in each); Kelley H. Armitage, *Constitution Revision Commissions Avoid Logrolling, Don’t They?*, 72 FLA. B.J. 62 (Nov. 1998) (arguing that the Constitution Revision Commission does not have sufficient safeguards against logrolling).

³ Constitution Revision Commission, *History*, <http://flcrc.gov/about/history.html> (last visited Jan. 29, 2019).

⁴ FLA. CONST. art. XI, s. 2.

⁵ FLA. CONST. art. XI, s. 2.

become effective, an amendment must be approved by at least 60 percent of the votes cast on the measure.⁶

The constitutional provision giving rise to the Commission does little to prescribe how a Commission must go about its task. Indeed, it says only that the Commission must convene at the call of its chair, adopt rules of procedure, and “hold [an unspecified number of] public hearings.”⁷

The Constitution May Be Amended Only through the Processes it Prescribes

The Constitution provides that it may be amended if the voters approve an amendment originating from one of five sources: the Legislature, the Constitution Revision Commission, a citizen initiative, a constitutional convention, or the Taxation and Budget Reform Commission.⁸

And the Supreme Court has stated that these processes are the *only* ways by which it may be amended:

The Constitution is the charter of our liberties. It cannot be changed, modified or amended by [governmental] fiat. It provides within itself the only method for its amendment, and . . . When a constitution directs how a thing shall be done, that is in effect a prohibition to its being done in any other way.⁹

Joint Resolution

A joint resolution by the Legislature is one of the ways in which an amendment to the Florida Constitution may originate.¹⁰ Like a bill, it may begin in either house of the Legislature.

To pass out of the Legislature and be submitted to the voters, a joint resolution must be agreed to by three-fifths of the membership of each house.¹¹ Unless expedited by the Legislature, the joint resolution is then submitted to the voters at the next general election. If the amendment proposed in the resolution is approved by at least 60 percent of the votes cast on the measure, it becomes effective in the January following the election unless otherwise specified in the amendment or in the Constitution.¹²

⁶ FLA. CONST. art. XI, s. 5.

⁷ FLA. CONST. art. XI, s. 2.

⁸ FLA. CONST. art. XI.

⁹ *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1064 (Fla. 2010) (internal citations and quotations omitted); *accord State v. Florida State Imp. Com'n*, 60 So. 2d 747, 754 (Fla. 1952) (Terrell, J., and Adams, C.J., concurring) *abrogated on other grounds by Boschen v. City of Clearwater*, 777 So. 2d 958 (Fla. 2001).

¹⁰ FLA. CONST. art. XI. An amendment or revision may originate as a proposal by the Legislature, the Constitution Revision Commission, a Constitutional Convention, the Taxation and Budget Reform Commission, or the people directly, by way of an initiative.

¹¹ FLA. CONST. art. XI, s. 1.

¹² FLA. CONST. art XI, s. 5.

III. Effect of Proposed Changes:

SJR 362 abolishes the Constitution Revision Commission by repealing the provisions establishing it in the Florida Constitution.

If another “Constitution Revision Commission” were created, such as by general law or executive order, that Commission could have the authority to make recommendations, but it would not have authority to propose constitutional amendments to be placed on the ballot for approval by the voters.

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 identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State, Division of Elections, provided the following information regarding the cost of advertising the proposed amendment contained in the resolution:

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 English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be \$62,448.96, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election by either joint resolution of the Florida Legislature or by the initiative petition process.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

Considering that the Taxation and Budget Reform Commission is substantially similar to the Constitution Revision Commission, the Legislature may wish to consider abolishing the TBRC. The TBRC, created by Article VI, s. 6 of the Florida Constitution, is comprised of appointees who have the power to propose constitutional amendments directly to the electors. These amendments may include a “revision of this constitution or any part of it dealing with taxation or the state budgetary process.”¹⁴ The narrower focus of the TBRC, however, does not preclude it from proposing multi-subject amendments.

VIII. Statutes Affected:

This resolution amends the following sections of the Florida Constitution: Article II, section 5, Article XI, section 2, and Article XI, section 5.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

¹³ Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Feb. 1, 2019) (on file with the Senate Committee on Judiciary).

¹⁴ FLA. CONST. art. XI, s. 6(e).

B. Amendments:

None.

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