

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 74

INTRODUCER: Senator Bradley and others

SUBJECT: Single-subject Limitation for Constitution Revision Commission Proposals

DATE: January 18, 2019

REVISED: 1/23/19

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

I. Summary:

SJR 74 limits any amendment to the Constitution proposed by the Constitution Revision Commission to “one subject and matter connected therewith.” Under current law, each proposal of the Commission may embrace multiple subjects, and the Commission may even propose a singular, comprehensive revision of the Constitution.

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. The next Constitution Revision Commission convenes in 2037, and thus it would be the first Commission to be governed by the amendment.

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 a revision of all or any part of the Florida Constitution. Accordingly, a Constitution Revision Commission may propose single-subject amendments, multi-subject amendments, or a revision of the entire Constitution.

Context – Proposed Amendments that Appeared on the 2018 General Election Ballot

Seven of the amendments on the 2018 General Election ballot were proposed by the Commission. And at least two of the Commission-proposed amendments were regarded by many as including two or more changes that were substantially unrelated; in other words, each of these

amendments were considered by many to involve the “bundling” of multiple subjects.¹ Accordingly, voters who wanted to vote for only one of the changes set forth in a given multi-subject amendment may have been frustrated by having to choose between voting for a change they did not desire (because it was paired with one they wanted) or having to vote against a change they desired (because it was paired with a change 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

The Florida Constitution was revised extensively in 1968 by way of three joint resolutions that were proposed during a Special Session of the Legislature. One of the resolutions included a provision requiring a Constitution Revision Commission to 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). 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 submit for voter approval. 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

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>.

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 Dec. 31, 2018).

⁴ FLA. CONST. art. XI, s. 2.

⁵ FLA. CONST. art. XI, s. 2.

voters at the next general election held more than 90 days after submission to the Secretary of State. To 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 Single-Subject Requirement

Amendments that are Limited to One Subject

The Constitution authorizes five sources from which an amendment may originate: the Legislature, the Constitution Revision Commission, a citizen initiative, a constitutional convention, or the Taxation and Budget Reform Commission. Only amendments that originate by way of citizen initiative are limited to one subject. Accordingly, as the Florida Supreme Court stated in a case challenging a 2018 Commission-proposed amendment, the Constitution Revision Commission need not limit its proposals to one subject:

Unlike proposed amendments that originate through initiative petitions, amendments proposed by the CRC are not bound by the single-subject rule limiting amendments to one subject. . . . Moreover, the Florida Constitution expressly authorizes bundling, as it gives the CRC authority to revise the entire constitution or any part of it. The power to amend the whole constitution in one proposal necessarily includes the lesser power to amend parts of the constitution in one proposal.⁸

Policy Reasons for the Single-Subject Limitation on Amendments Originating as Initiatives

The Florida Supreme Court has repeatedly explained the purposes for the single-subject requirement, at least with regard to citizen-initiative amendments. In its decision in *Fine v. Firestone*, the Court stated that the single-subject limitation allows

the citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support.⁹

⁶ FLA. CONST. art. XI, s. 5.

⁷ FLA. CONST. art. XI, s. 2.

⁸ *Detzner v. Anstead*, 256 So. 3d 820, 823-24 (Fla. 2018) (citation omitted); *see also, County of Volusia v. Detzner*, 253 So. 3d 507, 512 (Fla. 2018) (“Appellants have conceded, however, that CRC proposals are not bound by the single subject requirement”); *Charter Review Commission of Orange Cty. v. Scott*, 647 So. 2d 835, 837 (Fla. 1994) (“Only proposals originating through a petition initiative are subject to the single-subject rule.”).

⁹ *Fine v. Firestone*, 448 So. 2d 984, 994 (Fla. 1984).

Moreover, the Court stated, the single-subject limitation protects the Constitution “against precipitous and spasmodic changes in the organic law.”¹⁰ Making a similar point in a later case, the Florida Supreme Court stated that the

single-subject requirement in article XI, section 3, mandates that the electorate’s attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution.¹¹

As to why this reasoning should not apply to prohibit multi-subject amendments that originate from other than a citizen initiative, such as the Constitution Revision Commission, the Court noted that the other methods of propounding a constitutional amendment “all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal.”¹² This is not true, the Court noted, of citizen initiatives.¹³

What “One Subject” Means

Over the years, the Florida Supreme Court has issued several opinions in which it explained what it means for an amendment to be limited to one subject.

In these opinions, the Court has stated, the single-subject limitation is “functional and not locational.”¹⁴ In other words, the question is primarily one of what the amendment does, rather than a question of what part(s) of the Constitution it alters. As such, the single-subject limitation requires of each amendment a “natural and logical oneness of purpose.”¹⁵ Moreover, the single-subject limitation prohibits an amendment from

(1) engaging in “logrolling” or (2) “substantially altering or performing the functions of multiple aspects of government.” The term logrolling refers to a practice whereby an amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed.¹⁶

And although “no single proposal can substantially *alter* or *perform* the functions of multiple branches,” the single-subject limitation does not prohibit a proposal that would “*affect* several branches of government.”¹⁷ However, “how an initiative proposal *affects* other articles or sections of the constitution *is an appropriate factor* to be considered in determining whether there is more than one subject included in an initiative proposal.”¹⁸

¹⁰ *Id.* at 832 (quoting *Adams v. Gunter*, 238 So. 2d 824, 832 (Fla. 1970) (Thornal, J., concurring)).

¹¹ *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994) (quoting *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984)).

¹² *Id.* at 1339.

¹³ *Id.*

¹⁴ *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984).

¹⁵ *Advisory Op. to Att’y Gen. re Rights of Electricity Consumers regarding Solar Energy Choice (FIS)*, 188 So. 3d 822, 828 (Fla. 2016).

¹⁶ *Id.* at 827-28 (internal citations omitted).

¹⁷ *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994) (emphasis in the original).

¹⁸ *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984) (emphasis added).

A brief look at three Supreme Court opinions will help illuminate the Court's understanding of these legal principles, and therefore of what "one subject" really means.

In a recent advisory opinion, the Court analyzed an amendment that would have guaranteed a

right for electricity consumers "to own or lease solar equipment installed on their property to generate electricity for their own use" while simultaneously ensuring that "State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do."¹⁹

In the Court's analysis of the amendment, it identified two basic "components"—the establishment of a right and a guarantee of the government's authority to regulate that right. And the Court rejected the argument that these components embraced different subjects as a matter of law, stating instead that the components were "two sides of the same coin," and were therefore "component parts or aspects of a single dominant plan or scheme," and accordingly were, "naturally related and connected to the amendment's oneness of purpose."²⁰ The Court also noted that the amendment did not engage in impermissible logrolling, as it did not combine a popular measure with an unpopular measure in hopes of compelling sufficient support for the unpopular measure.²¹

In another advisory opinion, the Court examined an amendment proposed by citizen initiative that would have created a "trust to restore the Everglades funded by a fee on raw sugar."²² The Court held that the amendment violated the single-subject rule because it "perform[ed] the functions of multiple branches of government."²³ The amendment performed the legislative functions of imposing a levy, establishing a trust, and granting the trustees with power to set and redefine the boundaries of the "Everglades Ecosystem." Additionally, the amendment "contemplate[d] the exercise of vast executive powers" by the trustees, including the "management, construction, and operation of water storage and sewer systems."²⁴ Finally, the Court stated that the amendment would have performed a judicial function by essentially adjudicating that the sugar cane industry had polluted the Everglades and by imposing a judgment-like fee on that industry to cover cleanup costs.²⁵

In yet another opinion, issued in *Fine v. Firestone*, the Court disapproved of a proposed amendment that contained three subjects.²⁶ But the Court did so without specifying that the

¹⁹ *Advisory Op. to Att'y Gen. re Rights of Electricity Consumers regarding Solar Energy Choice (FIS)*, 188 So. 3d 822, 828 (Fla. 2016) (quoting the language of the proposed amendment at issue, titled, "Rights of Electricity Consumers Regarding Solar Energy Choice").

²⁰ *Id.* at 828.

²¹ *Id.*

²² *In re Advisory Op. to the Att'y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1337 (Fla. 1994).

²³ *Id.* at 1340.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984).

subjects were related to the functions of various branches of government or that the amendment was an attempt at logrolling. Instead, the Court stated that the amendment

limits the way in which governmental entities can tax; it limits what government can provide in services which are paid for by the users of such services; and it changes how governments can finance the construction of capital improvements with revenue bonds that are paid for from revenue generated by the improvements.²⁷

Joint Resolution

A joint resolution by the Legislature is one of the ways in which an amendment to the Florida Constitution may originate.²⁸ 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 of the Legislature.²⁹ 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 people voting on the measure, it becomes effective in the January following the election unless otherwise specified in the amendment or in the Constitution.³⁰

III. Effect of Proposed Changes:

The constitutional amendment proposed in the joint resolution, if approved by the voters at the general election in 2020, requires that any amendment proposed by a future Constitution Revision Commission be limited to “one subject and matter directly connected therewith.” Under current law, each proposal of the Commission may embrace multiple subjects, and the Commission may even propose a singular, comprehensive revision of the Constitution.

Because the wording of the single subject requirement for Commission proposals is identical to that used in the Constitution for citizen initiatives, the Supreme Court will likely presume that the single-subject requirements are the same.³¹

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁷ *Id.* at 992 (Fla. 1984).

²⁸ 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.

²⁹ FLA. CONST. art. XI, s. 1.

³⁰ FLA. CONST. art. XI, s. 5.

³¹ See *e.g.*, *State v. Hackley*, 95 So. 3d 92, 95 (Fla. 2012); *State v. Hearn*, 961 So. 2d 211, 217 (Fla. 2007) (“We have held that where the Legislature uses the exact same words or phrases in two different statutes, we may assume it intended the same meaning to apply.”).

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 \$29,737.60, 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.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Legislature may wish to consider whether to limit the proposals of the Taxation and Budget Reform Commission consistently with the way it proposes to limit amendments proposed by the Constitution Revision Commission. The TBRC, created by Article VI, s. 6 of the Florida Constitution, is substantially similar to the Constitution Revision Commission. Like the Constitution Revision Commission, the TBRC 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.”³³ The narrower focus of the TBRC, however, does not preclude it from proposing multi-subject amendments.

VIII. Statutes Affected:

This resolution amends Article XI, section 2 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.

³² Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Jan. 10, 2019) (on file with the Senate Committee on Judiciary).

³³ FLA. CONST. art. XI, s. 6(e).