

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1951 Limiting Subject Matter of Initiative Amendments
SPONSOR(S): Procedures Committee
TIED BILLS: **IDEN./SIM. BILLS:** SJR 2396

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Ethics and Elections Subcommittee</u>	<u>8 Y, 3 N</u>	<u>Rubottom</u>	<u>Randle</u>
2) <u>Procedures</u>	<u>22 Y, 12 N</u>	<u>Rubottom</u>	<u>Randle</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The joint resolution proposes an amendment to Section 3 of Article XI of the State Constitution relating to amendments or revisions to the State Constitution proposed by citizen initiative. The joint resolution limits the purposes that may be advanced by citizen initiative to those purposes that may not be advanced by general law. The proposal would leave initiative available to make policy changes that may only be made by constitutional amendment, but would leave all other policy changes to the legislative authority of the state, or to other methods of proposing constitutional amendments.

Pursuant to Article XI, section 1 of the State Constitution, amendments or revisions to the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment or revision shall then be submitted to the electors at the next general election held more than ninety days after the joint resolution is filed with the custodian of state records, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision.

This joint resolution does not appear to have any fiscal impact on state or local governments other than those costs related to placing the joint resolution on the ballot and publishing required notices. The Division of Elections estimates that these costs would be approximately \$35,000.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect January 4, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1951.pr.doc
DATE: April 21, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|------------------------------|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a “no” above, please explain:

The amendment would directly reduce the freedom of voters in that fewer policy objectives could be attained by constitutional amendments proposed by initiative. Since many such amendments, however, are directed at reducing individual freedom, the full effect may not reduce the freedom Floridians enjoy in their daily lives.

* The amendment would reduce government in that it would prohibit proposing most new regulations or new programs via the initiative process. The amendment would increase personal responsibility in that those who propose amendments by initiative would face higher standard of proposing an amendment that truly alters the balance of governmental powers, rather than attempting to direct those powers by constitutional amendment. It would also require that citizens engage their legislature in order to make other public policy, or engage other republican institutions empowered to proposed amendments if the amendatory process is the preferred choice in making such policy.

B. EFFECT OF PROPOSED CHANGES:

Revision or Amendment to the Constitution

Amendments to Florida’s State Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) by the revision commission, 3) citizen’s initiative, 4) a constitutional convention, or 5) the taxation and budget reform commission.¹

Citizen’s Initiative Process

The citizen’s initiative provision is a self-executing constitutional amendment. However, the citizen’s initiative process has and can be refined by statute or administrative rule, provided it is necessary to ensure ballot integrity.² The Division of Elections must pre-approve the petition³ format prior to a person’s or group’s circulation of the petition for signatures.⁴ Once sufficient signatures are collected, the signatures are submitted to each county’s supervisor of elections, who verifies the validity and registered-electoral status of each signatory. Each supervisor then certifies the number of valid signatures to the Secretary of State, no later than the 91st day (about 3 months) before the general election.⁵

¹ See ss. 1-4 & 6, Art. XI, FLA. CONST.

² See *State ex rel. Citizens Proposition for Tax Relief v. Firestone*, 386 So.2d 561 (1980); *Smith v. Coalition to Reduce Class Size*, 827 So.2d 959 (2002).

³ A petition form is deemed a political advertisement as defined in s. 106.011(17), F.S.

⁴ According to the Department of State’s Division of Elections website, the turn-around time for approval is a few days. See <http://election.dos.state.fl.us>.

⁵ The deadline for the current year for filing an initiative petition is August 3, 2004.

The Division of Elections then compiles and certifies the total number of verified signatures to determine whether the requisite number of signatures has been obtained.⁶ If the requisite number of signatures is obtained, then the Secretary of State issues a certification of the ballot to the appropriate sponsoring political committee.⁷

Citizen initiative provided in Section 3, Article XI of the Florida Constitution has been part of the constitution for only 36 years. It was originally included in the 1968 constitution. The legislature proposed an amendment to it that was adopted in 1972 and it has been amended two additional times, once by initiative and once via the constitutional revision commission.

Section 3 of Article XI of Florida's State Constitution provides for citizen initiatives to propose amendments or revisions to the Constitution, specifically providing that:

[A]ny such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith.

While the single subject requirement is very restrictive and has been applied to keep a number of proposals off the general election ballot in recent years, there is no restriction on the content permitted in amendments or revisions proposed by initiative.

According to the Division of Elections web site, 21 initiative proposals have been on the ballot since November 1, 1976. Of those, 16 were approved by voters. Only three, term limits and 2 revenue limit proposals, appear to have been directed at purposes that could not have been achieved by general law. Two homestead exemption proposals and the creation of a state lottery may have required constitutional amendments based upon general policy matter already contained in the constitution. The purposes of the remaining 11 clearly could have been achieved by general law.

House Select Committee on Constitutional Amendments

On October 20, 2003, Speaker Byrd appointed the Select Committee on Constitutional Amendments to assess how Florida amends its constitution and to make recommendations for possible change to the process. The Select Committee held ten public hearings and on March 15, 2004, completed its work by identifying the numerous comments and concerns regarding the existing constitutional amendment process and making its recommendations. This joint resolution reflects one of the Select Committee's recommendations. The committee's first recommended reform was to define the proper subject matter for initiative proposals. The committee explained as follows:

Many citizens who spoke in favor of the initiative process acknowledged that many subjects should not be enshrined in the constitution. They agreed that voters should not put regular public policy in the constitution. If the constitution is to remain a basic document of government that defines and limits governmental powers and fundamental rights the state should rely upon general law or rulemaking powers to enact policy objectives that are not prohibited by the constitution. Additionally, the permanence and difficulty of amending constitutional provisions makes it a cumbersome device for establishing and implementing non-fundamental, non-structural public policy.

Effect of Joint Resolution

The PCB proposes to add the following new subsection to Section 3, Article XI:

⁶ Rule 1S-2.010, F.A.C.

⁷ Id.

(b) The subject matter of a revision or amendment to this constitution proposed by initiative may not have as its purpose any purpose that may be accomplished by general law. For purposes of this subsection, a purpose that may not be accomplished by general law includes, but is not limited to, a purpose to increase or decrease constitutional limits on governmental power. For purposes of this subsection, a purpose that may be accomplished by general law includes, but is not limited to, a purpose to direct the exercise of existing governmental power.

If added to the constitution, initiatives would be limited to purposes that can only be accomplished by constitutional amendment. Matters permitted would include many matters of governmental structure, altering the liberties enshrined in the declaration of rights, or any substantive change in any existing provision of the constitution. It would also include any regulation that is now prohibited by the state constitution. It would also permit any realignment of powers between the branches of government. Matters prohibited would be anything that the legislature or other governmental authority already has power to accomplish without constitutional direction. This would include most legislation, appropriations, most regulation and most execution of the laws.

The Senate has proposed a similar amendment to Section 3 that would list types of amendments permitted, such as structural, fundamental rights and changes to particular articles presently making up the Florida Constitution. That proposal would still permit some purposes that may presently be enacted by general law to be added to the constitution, such as a further restriction on public school class sizes,⁸ environmental regulation,⁹ or regulation of the confinement of pigs.¹⁰ Moreover, specific legislation that has been rejected by the Florida judiciary on general grounds such as “substantive due process” would likely require amendments to the general constitutional provision, such as the due process clause, in order to be proposed by initiative. Under the PCB, the result would likely be different on each issue: specific regulatory authority previously rejected could be granted without amending a provision like due process, and the further regulation of pigs would be left to the legislature, excepting possibly repeal of the pig amendment.

Under either proposal, the decision on what is permitted in an initiative would be left to the Supreme Court, and it is not possible to speculate how every particular proposal might fair under that scrutiny. Under the PCB, a judicial decision to prohibit the offering of an initiative amendment under the PCB’s proposed subject matter limitation would constitute a decision that the purpose can be accomplished by general law. Similarly, a decision on judicial review striking some exercise of government power as violative of the state constitution would be tantamount to a decision authorizing an initiative amendment to accomplish the overruled purpose.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The joint resolution does not appear to have any impact on state revenues.

2. Expenditures:

The State Constitution requires that a proposed amendment or revision to the constitution be published in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in

⁸ Such amendment would alter or amend Section 1, Article IX, Florida Constitution.

⁹ Such amendment would alter or amend Section 7, Article II, Florida Constitution.

¹⁰ Such amendment would alter or amend Section 21, Article X, Florida Constitution.

which the election is held.¹¹ The Division of Elections estimates that the cost of compliance would be approximately \$35,000.¹²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have any impact on local governments' revenues.

2. Expenditures:

The joint resolution does not appear to have any impact on local governments' expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Many citizen initiative proposals are directed at private activities or particular industries. When they are approved by voters, those activities or industries are affected. Such direct political intervention in the private sector often impacts the private economy, both positively and negatively. Requiring initiatives to have broader public approval should reduce the number of times such impacts will occur.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this joint resolution does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

Article XI, s. 1, Fla. Const., provides that a constitutional amendment or revision may be proposed by joint resolution of the Legislature. Final passage in the House and Senate requires a three-fifths vote in each house. Passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2004 general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.¹³ Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.¹⁴

B. RULE-MAKING AUTHORITY:

The joint resolution does not raise the need for rules or rulemaking authority.

¹¹ See Article XI, section (5)(c), FLA. CONST.

¹² Estimate based on 2002 advertising rates.

¹³ See s. 5, Art. XI, FLA. CONST. The 2004 general election is on November 2, 2004.

¹⁴ See s. 5(c), Art. XI, FLA. CONST.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Ballot summaries for constitutional amendments in Florida have been subjected to extreme judicial scrutiny. Section 101.161, Florida Statutes, requires ballot summaries to clearly communicate the chief purpose of an amendment. The Supreme Court, in Armstrong v. Harris, 773 So.2d 7 (Fla. 2002), declared that the constitution itself impliedly requires a high standard of ballot clarity, although the court did not define that standard other than to apply the statutory standard in s. 101.161. As a result, ballot language on any controversial measure can be expected to be challenged and closely scrutinized.

The summary proposed in the PCB appears to clearly communicate the content of the amendment to the voter.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.