

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 67 Amending the State Constitution
SPONSOR(S): Kallinger
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Select Comm. on Const. Amendments</u>	_____	<u>Mitchell</u>	<u>Rubottom</u>
2) <u>Ethics & Elections (Sub.)</u>	_____	_____	_____
3) <u>Procedures</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

SUMMARY ANALYSIS

HJR 67 is a joint resolution that amends several sections of article XI of the State Constitution. The joint resolution does the following:

- changes the method by which constitutional amendments are proposed by the Legislature;
- creates an "advisory initiative" process by which proposals are submitted to the Legislature for consideration as constitutional or statutory amendments; and
- permits the Legislature to call a constitutional convention.

Finally, the joint resolution eliminates the direct citizen initiative process currently provided in article XI, section 3, of the State Constitution.

If enacted, the proposed amendment will appear on the November 2004 general election ballot for approval or rejection by the voters of Florida.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

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

For any principle that received a “no” above, please explain: The joint resolution creates an “advisory initiative” process by which proposals are submitted to the Legislature for consideration as constitutional or statutory amendments.

B. EFFECT OF PROPOSED CHANGES:

Article XI, Florida Constitution, governs amendments to the Constitution. Currently, a proposed amendment is presented to the voters pursuant to one of the following methods¹:

- Joint resolution passed by 3/5 vote of each house of the Legislature;
- Initiative petition;
- Proposal by the Constitution Revision Commission;
- Proposal by the Taxation and Budget Reform Commission; or
- Proposal by a constitutional convention.

Prior to the 1968 revision of the Florida Constitution, amendments could be proposed only by constitutional convention or through resolutions adopted by the Legislature.

HJR 67 changes the method by which amendments are proposed by the Legislature, creates an “advisory initiative” process by which proposals are submitted to the Legislature for consideration as constitutional or statutory amendments, and changes the method by which a constitutional convention may be called. Finally, the joint resolution eliminates the direct citizen initiative process currently provided in article XI, section 3, of the State Constitution.

Proposals by the Legislature. Pursuant to article XI, section 1, of the State Constitution, the legislature through joint resolution may propose amendments or revisions to the Constitution. A joint resolution must be approved by three-fifths of the membership of both houses before it can be placed on the general election ballot for voter approval or rejection.

HJR 67 would require submissions of any amendments or revisions proposed by the Legislature to the Attorney General at least 7 days prior to a final vote in either house. The Attorney General may render an opinion as to the effect of any proposal on other provisions of the Constitution, whether the proposal affects the basic structure of government, its officers and agencies, their powers and duties, and the people’s constitutional rights. Publication in the journals of both houses of the date the proposal is submitted to the Attorney General and the date of receipt of his opinion, if any, constitute compliance with these requirements.

¹ Art. XI, s. 1, Fla. Const. (legislature); Art. XI, s. 2, Fla. Const. (Revision Commission); Art. XI, s. 3, Fla. Const. (citizen initiative); Art. XI, s. 4, Fla. Const. (constitutional convention); Art. XI, s. 6, Fla. Const. (Taxation and Budget Reform Commission).

HJR 67 also provides that if any lower court determines that the text or ballot summary of a legislative proposal is unconstitutional, the proposal shall be immediately reviewed by the Florida Supreme Court. If that Court upholds such a lower court determination, it must remand the proposal to the Legislature for possible modification, consistent with the Court's opinion. The Legislature may then amend the proposal by majority vote of the membership of both houses.²

Advisory Initiatives. HJR 67 substantially amends article XI, section 3, of the State Constitution and eliminates the citizen initiative process. In lieu of such initiative, the bill creates an "advisory initiative" process. Under the advisory initiative, citizens may propose statutory or constitutional amendments to the Legislature for consideration. The power to advise the Legislature by initiative is invoked by filing a petition with the Secretary of State that is signed by the same number of electors required under the current citizen initiative process.³ If the required signatures are collected, the President of the Senate and Speaker of the House must refer the advisory initiative to the committee(s) of their respective houses. If the committee of first reference determines that the advisory initiative requires a constitutional amendment, it shall prepare a joint resolution for submission to the voters at the next general election. If the committee determines that the initiative does not require a constitutional amendment, it must file appropriate legislation to implement the advisory initiative. The committee of first reference may determine that the advisory initiative should not be implemented in either form.

Constitutional Convention. HJR 67 amends article XI, section 4, of the State Constitution to permit the Legislature to call by joint resolution, adopted by two-thirds of the membership of each house, a convention to propose a general revision or specific amendments to the State Constitution. The bill does not eliminate the power of the citizens to call a convention under the current petition process.⁴ The bill also authorizes the Legislature to provide by general law for election of delegates to any convention, and the beginning and ending dates of such convention.

If HJR 67 is enacted by the Legislature, the following language will appear on the November 2004 general election ballot for consideration by the voters of Florida:

AMENDING THE STATE CONSTITUTION

Proposes a revision of Article XI of the State Constitution to require submissions of constitutional amendments proposed by the Legislature to the Attorney General at least 7 days prior to final vote by the Legislature; provides that compliance with this requirement shall be established by the journals of each house of the Legislature; permits the Attorney General to render an opinion in writing to the Legislature as to the effect of such amendment or revision upon other provisions of the Constitution and whether the amendment or revision affects the basic structure of

² Such modification and subsequent adoption may occur during any current regular session, or if not in session, in the immediately succeeding regular session.

³ A petition must be signed by a number of electors in one-half of the Congressional districts, and by the electors of the state as a whole, equal to 8% of the votes cast in such districts and of the state in the last preceding presidential election. According to the Division of Elections web site, the 8% statewide figure for 2004 ballot position is 488,722 signatures.

⁴ A petition to convene a constitutional convention must be signed by a number of electors in one-half of the Congressional districts, and by the electors of the state as a whole, equal to 15% of the votes cast in such districts and of the state in the last preceding presidential election.

government, its officers and agencies, their powers and duties, and the people's constitutional rights; requires review by the Supreme Court of lower court decisions declaring a legislatively proposed constitutional amendment to be unconstitutional; allows the Legislature to develop by majority vote language consistent with the opinion of the Florida Supreme Court if the Florida Supreme Court rejects particular language of the joint resolution proposing the original constitutional amendment; eliminates the ability to amend the State Constitution through the initiative process; allows the ability for the people to propose statutory or constitutional revisions to the legislature for its consideration through advisory initiatives proposed by a signature process; authorizes the public to convene a constitutional convention on specific amendments to the Constitution; permits the Legislature by a 2/3 vote of the membership of each house to convene a constitutional convention and to limit the subject matter thereof; and requires the Legislature to provide by law for the election of delegates, the convening, and final adjournment date of constitutional conventions called by the people or the Legislature.

C. SECTION DIRECTORY:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures: Article XI, section 5, of the State Constitution, requires that each proposed amendment to the State Constitution be published in a newspaper of general circulation in each county two times prior to the general election. The Division of Elections has estimated that the cost of publication would be approximately \$58,767. ⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

⁵ The exact cost will depend on the length of each advertisement, according to the Division of Elections.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other: The provisions of HJR 67 relating to legislative proposals and the advisory initiative process raise a number of questions that may be considered:

1. What is the effect of the Attorney General's opinion, if one is rendered?
2. Can such an opinion somehow be held against a Legislative proposal or does it create a presumption of validity?
3. Should the Legislature be permitted to revise its proposal immediately after a lower court determines (i.e., *before* Florida Supreme Court review) that the text and ballot summary of the proposal are unconstitutional?
4. What is implied by a court's determination that the text and ballot summary of a Legislative proposal are unconstitutional? What is the effect if the ballot language does not comply with general law?
5. Following court review, may the Legislature revise the text of the amendment or only the ballot summary?
6. What must occur if the final version of the text of a legislative proposal is substantially different from "the most recent version" submitted to the Attorney General?
7. What is the consequence if the Florida Supreme Court fails to "immediately" review a lower court decision?
8. May the Florida Supreme Court dictate the changes to be made to a Legislative proposal?
9. Under the "advisory initiative" process, what is the consequence if a Senate committee determines that an issue is appropriate for constitutional amendment, but the House committee determines that the issue is better suited to statutory amendment?
10. Does the advisory process requiring referral to legislative committees effectively mandate particular parliamentary organization heretofore under the exclusive authority of each legislative chamber? Would the constitution require a committee to vote on a proposal as submitted by the petitioners? If the committee approved, would there be a due process right to a vote of the full House or Senate?

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES