

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HJR 1727 CS    PCB JU 05-06    Constitutional Revision Process/Subject Matter  
**SPONSOR(S):** Judiciary Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 4

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Committee	10 Y, 2 N	Thomas	Hogge
1) Ethics & Elections Committee	7 Y, 3 N, w/CS	West	Mitchell
2) Justice Council			
3)			
4)			
5)			

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**SUMMARY ANALYSIS**

HJR 1727 proposes an amendment to Article XI, section 3, of the Florida Constitution, relating to amendments or revisions. The joint resolution, if approved by the voters, would limit the subject matter of constitutional amendments and revisions that can be placed on the ballot by *citizen initiative* to include only those proposed measures that:

- Amend or repeal an existing section of the Florida Constitution on the same subject and matter;
- Address a right of a citizen of the state related to Article I of the Florida Constitution; or
- Change the basic structure of state government as established in Articles II through V of the Florida Constitution.

The joint resolution does not appear to have any fiscal impact on state or local government other than those costs related to placing the joint resolution on the ballot and publishing required notices. The Department of State estimates non-recurring publication costs of approximately \$37,000 for FY 2006-07.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect January 2, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Expand Individual Freedom – by limiting the available subject matter for amendments and revisions to the State Constitution proposed by citizen initiative, the joint resolution, if approved by the voters, would reduce such opportunities.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Revision or Amendment to the State Constitution**

Amendments to Florida's Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizen's initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.<sup>1</sup> Depending on the method, all proposed amendments or revisions to the constitution must be submitted to the electors at the next general election 1) held more than ninety days after the joint resolution, 2) 180 days after the report of the Constitutional Revision Commission or Taxation Budget Reform Commission, or 3) for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election is to be held.<sup>2</sup>

##### **Background**

The citizen initiative process provided in Article XI, section 3, of the Florida Constitution has been part of the Constitution since 1968. The subject matter of such a proposal is only limited in requiring a proposed amendment or revision to "embrace but one subject and matter directly connected therewith." Twenty-seven initiative proposals have been on the ballot since the inception of Florida's citizen initiative process, with the first being in 1976. Of these, twenty-two proposals were approved by voters.

Article I of the Florida Constitution is entitled the "Declaration of Rights" and provides an enumerated listing of the basic rights guaranteed to the citizens of Florida. These rights are :

SECTION 1. Political power.	SECTION 14. Pretrial release and detention.
SECTION 2. Basic rights.	SECTION 15. Prosecution; offenses by children.
SECTION 3. Religious freedom.	SECTION 16. Rights of accused and of victims.
SECTION 4. Freedom of speech/press.	SECTION 17. Excessive punishments.
SECTION 5. Right to assemble.	SECTION 18. Administrative penalties.
SECTION 6. Right to work.	SECTION 19. Costs.
SECTION 7. Military power.	SECTION 20. Treason.
SECTION 8. Right to bear arms.	SECTION 21. Access to courts.
SECTION 9. Due process.	SECTION 22. Trial by jury.
SECTION 10. Prohibited laws.	SECTION 23. Right of privacy.
SECTION 11. Imprisonment for debt.	SECTION 24. Access to public records and meetings.
SECTION 12. Searches and seizures.	SECTION 25. Taxpayers' Bill of Rights.
SECTION 13. Habeas corpus.	SECTION 26. Claimant's right to fair compensation.

<sup>1</sup> See Art. XI, ss. 1-4, and 6, Fla. Const.

<sup>2</sup> See Art. XI, ss. 2, 5, and 6, Fla. Const.

Article II of the Florida Constitution is entitled “General Provisions” and provides the following:

- SECTION 1. State boundaries.
- SECTION 2. Seat of government.
- SECTION 3. Branches of government.
- SECTION 4. State seal and flag.
- SECTION 5. Public officers.
- SECTION 6. Enemy attack.
- SECTION 7. Natural resources and scenic beauty.
- SECTION 8. Ethics in government.
- SECTION 9. English is the official language of Florida.

Articles III, IV, and V of the Florida Constitution are entitled “Legislature,” “Executive,” and “Judiciary,” respectively. These articles provide for the basic structure of Florida’s three separate branches of government.

### **Effect of Joint Resolution**

The joint resolution, if approved by the voters, would limit the subject matter of constitutional amendments and revisions that can be placed on the ballot by citizen initiative to include only those proposed measures that:

- Amend or repeal an existing section of the Florida Constitution on the same subject and matter;
- Address a right of a citizen of the state related to Article I of the Florida Constitution; or
- Change the basic structure of state government as established in Articles II through V of the Florida Constitution.

While the joint resolution is silent on the process of determining whether a citizen initiative is within the proposed subject matter limitations, it is anticipated that such a decision would be made in the same manner as determinations regarding whether a proposed initiative meets constitutional single-subject limitations or ballot summary clarity requirements.<sup>3</sup> Single-subject and ballot summary clarity requirements are determined by the Florida Supreme Court. Once a petition has obtained at least ten percent of the required verified signatures from at least one-fourth of the congressional districts, the Secretary of State must immediately submit the petition to the Attorney General.<sup>4</sup> Within thirty days of receipt of the petition, the Attorney General must petition the Supreme Court “requesting an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with s. 101.161.”<sup>5</sup> Because both the Florida Constitution and general law require the Supreme Court’s review to include compliance with Article XI, section 3, it is anticipated that such review would include the changes proposed by this joint resolution Article XI, section 3, of the Florida Constitution, regarding limited subject matter.

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<sup>3</sup> Art. XI, s. 3, Fla. Const., which is applicable to initiatives, provides that “any such revision or amendment, except for those limiting the power of government to raise revenue, embrace but one subject and matter directly connected therewith.” Section 101.161, F.S., provides that “the substance of such amendment... shall be printed in clear and unambiguous language on the ballot..., the substance of the amendment... shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.”

<sup>4</sup> Section 15.21, F.S.

<sup>5</sup> Section 16.061(1), F.S. Art. IV, s 10, Fla. Const., provides that the “attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion no later than April 1 of the year in which the initiative is to be submitted to the voters pursuant to Section 5 of Article XI.”

While it is impossible to predict how every amendment will fare under this joint resolution, recent amendments to the Florida Constitution that might not have been within the proposed subject matter limits include marine nets, high speed rail, class size, voluntary universal pre-kindergarten, smoking in the workplace, minimum wage, medical liability claimant's compensation, a patient's right to know about adverse incidents, and public protection from repeated malpractice. Recent amendments to the Florida Constitution that might have been within the proposed subject matter limits include state operated lotteries; homestead value limitations, term limits, and the governing board to manage the university system. Because the joint resolution would allow any existing section of the constitution to be amended or repealed, all of these may be subject to future citizen initiatives.

### **Appearance on the Ballot**

If enacted, the proposed constitutional amendment will appear on the November 2006 ballot as follows:

#### **PERMISSIBLE SUBJECT MATTER OF CONSTITUTIONAL AMENDMENTS OR REVISIONS PROPOSED BY INITIATIVE**

Proposes an amendment to Section 3 of Article XI of the State Constitution to provide that a constitutional amendment or revision proposed by initiative must amend or repeal an existing section of the State Constitution on the same subject and matter; must address a right of a citizen of this state established in Article I of the State Constitution; or must change the basic structure of state government as established in Article II, Article III, Article IV, or Article V of the State Constitution.

### **C. SECTION DIRECTORY:**

The legislation is a joint resolution proposing a constitutional amendment and, therefore, does not contain bill sections. The joint resolution proposes to amend Article XI, section 3, of the Florida Constitution, relating to amendments and revisions.

## **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:**

##### **Non-Recurring**

**FY 2006-07**

Department Of State, Division of Elections

Publication Costs

\$37,000 (General Revenue)

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

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

#### **2. Expenditures:**

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

While this proposal does not have a direct economic impact on the private sector, limiting the subject matter of amendments and revisions proposed by citizen initiative may reduce the number of such proposals in the future. See Effect of Proposed Changes for amendments proposed by initiative in the past that may have been affected under such a limitation.

D. FISCAL COMMENTS:

The Florida Constitution requires publication of a proposed amendment or revision to the constitution 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 which the election is held.<sup>6</sup> The Department of State estimates that the non-recurring cost of compliance would be approximately \$37,000 in FY 2006-07.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision relates only to general bills and therefore would not apply to this joint resolution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The joint resolution does not raise the need for rules or rulemaking authority or direct an agency to adopt rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Amendments or revisions to the Florida Constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.<sup>7</sup> 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 2006 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.<sup>8</sup> 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.<sup>9</sup>

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

An amendment was adopted in the Ethics and Elections Committee on April 13, 2005, clarifying that a citizen initiative cannot deprive the branches of government of any existing powers granted in the current articles of the constitution.

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<sup>6</sup> See Art. XI, s. 5(c), Fla. Const.

<sup>7</sup> See Art. XI, s. 1, Fla. Const.

<sup>8</sup> See Art. XI, s. 5(a), Fla. Const. The 2006 general election is on November 7, 2006.

<sup>9</sup> See Art. XI, s. 5(c), Fla. Const.