

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

House Principals are not implicated by the bill.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Article I, section 2 of the Florida Constitution currently states:

Basic rights.—All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; *except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law.* No person shall be deprived of any right because of race, religion, national origin or physical disability. [italics added]

The provision in italics is known as an “alien land law.” It was added to the 1885 Florida Constitution in 1926 and carried over into the current constitution promulgated in 1968. It is similar or identical to language once found in the constitutions or statutes of many other states. These provisions, while facially neutral with respect to nationality, were widely adopted in the late 19th and early 20th centuries to comport with federal statutes excluding Asian immigrants from naturalization, thus authorizing those states that adopted them to bar such immigrants from acquiring land.

Over the course of the 1940’s, the exclusion of particular Asian nationalities from U.S. citizenship was eliminated, until federal naturalization law was made entirely race- and nationality-neutral in the Immigration and Nationality Act of 1952, also known as the McCarran Act. The only persons ineligible for citizenship under current federal law are ineligible on an individualized, not national or racial basis. Unless granted one of a limited number of waivers under certain extremely narrow circumstances related to national security, to be eligible for naturalization, an immigrant must:

- have been a legal permanent resident of the United States for five years;
- demonstrate knowledge of the English language and of the history, principles and form of government of the United States;
- be of “good moral character;” and
- not be a deserter from the U.S. military.

Because an applicant for naturalization must be a legal permanent resident, eligibility for naturalization also relates back to initial eligibility for admission into the United States. Federal law provides that aliens are inadmissible if they:

- are infected with a communicable disease designated by the Secretary of Health and Human Services as being of public health significance;
- fail to present documentation of having received vaccination against vaccine-preventable diseases, including at least mumps, measles, rubella, polio, tetanus, diphtheria, pertussis, influenza type B and hepatitis B, as well as any other vaccinations recommended by the Advisory Committee for Immunization Practices;
- have a physical or mental disorder and behavior or a history of behavior associated with that disorder that is a threat to their own or others’ property, safety or welfare;
- are a drug user or addict;
- have been convicted of a crime of moral turpitude, or of any federal, state or foreign crime relating to trafficking in controlled substances;

- have been convicted of two or more crimes, of any kind other than purely political offenses, the aggregate sentences for which were five years or more;
- are reasonably believed by the Attorney General or a consular officer to have been involved in drug trafficking, or are the spouse or child of such a person and has profited from those activities within five years;
- seek entry to engage in or profit from any unlawful commercialized vice, including but not limited to prostitution, or have engaged in or profited from such activities in the past ten years;
- have ever asserted diplomatic immunity to escape criminal prosecution in the U.S.;
- have engaged in severe violations of religious freedom as an official of a foreign government;
- are reasonably believed to have trafficked in persons or benefited from traffic in persons;
- are reasonably believed to be involved in money laundering;
- are reasonably believed to be seeking entry to engage in sabotage, espionage, or attempts to overthrow the U.S. government by force;
- have engaged in or are reasonably expected to engage in or incite, terrorist activity; or
- are representatives or members of a foreign terrorist organization.

Since all such categories of aliens are literally “ineligible for citizenship,” the Legislature could arguably regulate or prohibit their acquisition or disposition of real property in Florida under the alien land law provision of the state constitution.

Proposed Changes

This joint resolution proposes to remove the alien land law provision from Art. I, s. 2, Fla. Const. Since it does not appear that any provisions of the Florida Statutes currently in effect were enacted pursuant to this constitutional provision, this joint resolution does not appear to render any statutes void.

C. SECTION DIRECTORY:

This joint resolution, proposing an amendment to Article I, section 2 of the Florida Constitution, and containing ballot summary language describing the proposed amendment, is not divided into sections.

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:

See D: FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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.¹ The Division of Elections with 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:

By its own terms, Article VII, s. 18, Fla. Const., the local mandates provision of the state constitution, applies only to general laws, not to other constitutional provisions.

2. Other:

CONSTITUTIONAL AMENDMENT PROCESS

This is a legislative joint resolution, which is one of the methods for proposing, approving or rejecting amendments to the Florida Constitution. The joint resolution requires passage by a three-fifths vote of the membership of each house of the Legislature. The proposed constitutional amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. If approved by a majority of the electors voting on the question, the proposed amendment becomes effective on the Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.

EQUAL PROTECTION

The Fourteenth Amendment to the United States Constitution guarantees the equal protection of the laws to "persons," not only to citizens. This joint resolution may be redundant in light of this federal guarantee, since any legislation enacted pursuant to the alien land law provision of Art. I, s. 2, Fla. Const., would probably be successfully challenged as an equal-protection violation.

While Congress may, in light of its plenary power over immigration, generally make classifications based on citizenship as long as they are not arbitrary and unreasonable, state or local laws which do so are subject to strict scrutiny: i.e., such laws must seek to advance a compelling governmental interest and must be narrowly tailored to advancing that interest. Although some state and local classifications based on citizenship have not been held subject to strict scrutiny, this has primarily been in the field of public employment. Overcoming strict scrutiny can be difficult; however, even if applied in a race- and nationality-blind manner, it is unclear how legislation barring ownership of real property in the state to certain specified aliens could satisfy the requirements of strict scrutiny. Indeed, the Supreme Court of the United States has treated very similar legislation as unconstitutional since at least the 1940's, as have several state supreme courts in analyzing their own alien land law provisions before they were repealed.

B. RULE-MAKING AUTHORITY:

Not applicable.

¹ See Art. XI, s. 5(c), Fla. Const.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.