

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SJR 270

INTRODUCER: Senator Thurston

SUBJECT: Restoration of Civil Rights

DATE: March 3, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	<b>Favorable</b>
2.			JU	
3.			RC	

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**I. Summary:**

SJR 270 proposes an amendment to Article IV, section 8 of the State Constitution, relating to the restoration of civil rights. It authorizes the Legislature to prescribe additional circumstances under which certain fines and forfeitures may be suspended or remitted, reprieves may be granted (pardons), civil rights restored, and punishments may be commuted.

The joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

If approved by the voters in the general election held November 2017, the joint resolution will become effective on January 1, 2018.

**II. Present Situation:**

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights.<sup>1</sup> The Florida Constitution specifies only the loss of the right to vote and the right to hold public office as consequences of a felony conviction.<sup>2</sup> Other civil rights that are lost in accordance with statute include the right to serve on a jury<sup>3</sup> and the right to possess a firearm.<sup>4</sup>

The power to pardon, restore civil rights, commute punishment, or remit fines and forfeitures is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members.<sup>5</sup> Section 940.05, F.S., provides that any person convicted of a felony may be entitled

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<sup>1</sup> Section 944.292, F.S.

<sup>2</sup> Article IV, s. 4, Fla. Const.

<sup>3</sup> Section 40.013, F.S.

<sup>4</sup> Sections 790.06(2)(d) and (k) and 790.23, F.S.

<sup>5</sup> Article IV, s. 8(a), Fla. Const. See also s. 940.01, F.S.

to the restoration of all the rights of citizenship enjoyed by him or her before conviction<sup>6</sup> if the person has:

- Received a full pardon from the Board of Executive Clemency;
- Served the maximum term of the sentence imposed upon him or her; or
- Been granted his or her final release by the Florida Commission on Offender Review.

The Governor and Cabinet sit as the Board of Executive Clemency (Clemency Board) and the Office of Executive Clemency assists in the acceptance, review, and recommendation of applications for clemency.<sup>7</sup> The Rules of Executive Clemency set forth the eligibility and requirements for an individual to seek a full or conditional pardon, restore civil rights, commute punishment, or remit fines and forfeitures.<sup>8</sup> An individual seeking clemency submits an application to the Office of Executive Clemency and the application is forwarded to the Florida Commission on Offender Review for investigation, report, and recommendation.<sup>9</sup>

Eligibility for restoration of civil rights without a hearing is for less serious offenses and requires that five years have passed since the date of completion of all sentences and conditions of supervision imposed. The person may not have pending criminal charges and must have paid all restitution, be a citizen of the United States, and, if convicted in a court other than a Florida court, be a legal resident of Florida.<sup>10</sup> The person also is not eligible for restoration of civil rights if he or she committed one of a number of crimes, such as murder, sexual battery, or kidnapping.<sup>11</sup>

Eligibility for restoration of civil rights with a hearing requires that seven years have passed since the date of completion of all sentences and conditions of supervision imposed for all felony convictions. The person must have paid all restitution, be a citizen of the United States, and, if convicted in a court other than a Florida court, be a legal resident of Florida.<sup>12</sup>

### **III. Effect of Proposed Changes:**

The joint resolution proposes an amendment to Article IV, section 8 of the State Constitution, relating to the restoration of civil rights. It authorizes the Legislature to prescribe additional circumstances under which certain fines and forfeitures may be suspended or remitted, reprieves may be granted (pardons), civil rights restored, and punishments may be commuted. The joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

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<sup>6</sup> Restoration does not relieve a person of “registration and notification requirements or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.” Rules of Executive Clemency 4.I.(G). Additionally, the Rules of Executive Clemency require a separate application to restore the rights to possess, own, or use a firearm. Rules of Executive Clemency 4I.(F) and (G) and 5(D) and (E).

<sup>7</sup> Rules of Executive Clemency (2)(B).

<sup>8</sup> Rules of Executive Clemency 4. Art. IV, s. 8, Fla. Const.

<sup>9</sup> Rules of Executive Clemency 6(A) and 7. *See also* s. 940.03, F.S.

<sup>10</sup> Rule of Executive Clemency 9(A)

<sup>11</sup> Rules of Executive Clemency 9(A)4.

<sup>12</sup> Rule of Executive Clemency 10(A)

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Division of Elections within the Department of State 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 where a newspaper is published – once in the tenth week and again in the sixth week immediately preceding the week the election is held.<sup>13</sup> The division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments.

An estimate of the full publication costs for advertising the proposed amendment is approximately \$135.97 per word, for a total publishing cost of \$47,589.50.

## D. Other Constitutional Issues:

**Amendments to the Florida Constitution**

Article XI, section 1 of the Florida Constitution, authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

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<sup>13</sup> Article XI, sec. 5(d), Fla. Const.

Article XI, section 5(a) of the Florida Constitution, and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”<sup>14</sup>

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective on January 1, 2018.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In 1975, Florida Governor Askew requested an advisory opinion on whether the Florida Correctional Reform Act presented an infringement upon the constitutional power of the governor and cabinet to restore civil rights. The Florida Correctional Reform Act provided for suspension and automatic reinstatement of civil rights for prisoners through statute. The Florida Supreme Court answered in the affirmative and determined that it was a clear infringement upon the constitutional power of the governor to restore civil rights through executive clemency.<sup>15</sup>

**VIII. Statutes Affected:**

This joint resolution substantially amends Article IV 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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>14</sup> *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

<sup>15</sup> *In re Advisory Opinion of Governor Civil Rights*, 306 So. 2d 520 (Fla. 1975).