

**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 Governmental Oversight and Accountability

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BILL: SJR 362

INTRODUCER: Senator Brandes

SUBJECT: Abolishing the Constitution Revision Commission

DATE: February 18, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SJR 362 abolishes the Constitution Revision Commission by repealing provisions establishing it in the Florida Constitution. Currently, the Constitution requires that a constitution revision commission be convened once every 20 years to examine the State Constitution and propose any amendments that it deems appropriate.

If this joint resolution is approved by three-fifths of the membership of each house of the Legislature, the constitutional amendment proposed in the resolution will be placed on the 2020 General Election ballot and will take effect if approved by at least 60 percent of the votes cast on the measure.

**II. Present Situation:**

**Overview**

The Florida Constitution requires that a constitution revision commission be established every 20 years and that it have the authority to propose to voters a revision of all or any part of the Florida Constitution. The most recent Commission convened in 2017-2018, and proposed seven amendments to the Florida Constitution, which appeared on the 2018 General Election ballot.

**Constitution Revision Commission**

***Origin and History***

The Florida Constitution was revised extensively in 1968 by way of three joint resolutions proposed by the Legislature and approved by the voters. The revisions included the establishment of the Constitution Revision Commission as a means of proposing constitutional revisions to the voters, and the requirement that it convene once every 20 years, beginning in

1977. Accordingly, three Commissions have convened: in 1977-1978, 1997-1998, and most recently in 2017-2018.<sup>1</sup>

### ***Members***

The Constitution requires that the Commission be comprised of 37 members, and it provides guidelines for the selection of these members. The Attorney General must serve on the Commission, and the rest of the members must be chosen by the Governor (15), Speaker of the House (9), President of the Senate (9), and the Chief Justice of the Florida Supreme Court (3). Additionally, the Governor must appoint a chair from among the 37 members.<sup>2</sup>

### ***Task, Procedures, and Authority***

The Commission's task is to examine the Constitution and decide which, if any, amendments to propose to the voters. The amendments must be submitted to the Secretary of State at least 180 days before the next general election.<sup>3</sup> In turn, the amendments must be submitted to the voters at the next general election held more than 90 days after submission to the Secretary of State. To become effective, an amendment must be approved by at least 60 percent of the votes cast on the measure.<sup>4</sup>

The constitutional provision giving rise to the Commission does little to prescribe how a Commission must go about its task. Indeed, it says only that the Commission must convene at the call of its chair, adopt rules of procedure, and "hold [an unspecified number of] public hearings."<sup>5</sup>

### **The Constitution May Be Amended Only through the Processes it Prescribes**

The Constitution provides that it may be amended if the voters approve an amendment originating from one of five sources: the legislature, a constitution revision commission, a citizen initiative, a constitutional convention, or the taxation and budget reform commission.<sup>6</sup>

Further, the Florida Supreme Court has stated that these processes are the *only* ways by which it may be amended:

The Constitution is the charter of our liberties. It cannot be changed, modified or amended by [governmental] fiat. It provides within itself the only method for its amendment, and . . . When a constitution directs how a thing shall be done, that is in effect a prohibition to its being done in any other way.<sup>7</sup>

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<sup>1</sup> Constitution Revision Commission, *History*, <http://flcrc.gov/about/history.html> (last visited Jan. 29, 2019).

<sup>2</sup> FLA. CONST. art. XI, s. 2.

<sup>3</sup> FLA. CONST. art. XI, s. 2.

<sup>4</sup> FLA. CONST. art. XI, s. 5.

<sup>5</sup> FLA. CONST. art. XI, s. 2.

<sup>6</sup> FLA. CONST. art. XI.

<sup>7</sup> *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1064 (Fla. 2010) (internal citations and quotations omitted); *accord State v. Florida State Imp. Com'n*, 60 So. 2d 747, 754 (Fla. 1952) (Terrell, J., and Adams, C.J., concurring) *abrogated on other grounds by Boschen v. City of Clearwater*, 777 So. 2d 958 (Fla. 2001).

## **Joint Resolution**

A joint resolution by the Legislature is one of the ways in which an amendment to the Florida Constitution may originate.<sup>8</sup> Like a bill, it may begin in either house of the Legislature.

To pass out of the Legislature and be submitted to the voters, a joint resolution must be agreed to by three-fifths of the membership of each house.<sup>9</sup> Unless expedited by the Legislature, the joint resolution is then submitted to the voters at the next general election. If the amendment proposed in the resolution is approved by at least 60 percent of the votes cast on the measure, it becomes effective in the January following the election unless otherwise specified in the amendment or in the Constitution.<sup>10</sup>

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

This joint resolution proposes to amend the Florida Constitution to repeal the provisions that establish a constitution revision commission. The joint resolution also amends other constitutional provisions that reference a constitution revision commission. These changes effectively abolish the constitution revision commission and the commission's authority to propose constitutional amendments to be placed on the ballot for approval by the voters.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. State Tax or Fee Increases:**

None.

#### **E. Other Constitutional Issues:**

None identified.

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<sup>8</sup> FLA. CONST. art. XI. An amendment or revision may originate as a proposal by the Legislature, the Constitution Revision Commission, a Constitutional Convention, the Taxation and Budget Reform Commission, or the people directly, by way of an initiative.

<sup>9</sup> FLA. CONST. art. XI, s. 1.

<sup>10</sup> FLA. CONST. art XI, s. 5.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Department of State, Division of Elections, provided the following information regarding the cost of advertising the proposed amendment contained in the resolution:

The Division of Elections 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 before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be \$62,448.96, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election by either joint resolution of the Florida Legislature or by the initiative petition process.<sup>11</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Considering that a taxation and budget reform commission (TBRC) is substantially similar to a constitution revision commission, the Legislature may wish to consider abolishing the TBRC.

A TBRC, created by Article VI, s. 6 of the Florida Constitution, is comprised of appointees who have the power to propose constitutional amendments directly to the electors. These amendments

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<sup>11</sup> Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Feb. 1, 2019) (on file with the Senate Committee on Judiciary).

may include a “revision of this constitution or any part of it dealing with taxation or the state budgetary process.”<sup>12</sup>

**VIII. Statutes Affected:**

This resolution amends the following sections of the Florida Constitution: Article II, section 5, Article XI, section 2, and Article XI, section 5.

**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>12</sup> FLA. CONST. art. XI, s. 6(e).