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.)

Prepared By: The Professional Staff of the Committee on Ethics and Elections

BILL:	SJR 74
INTRODUCER:	Senator Bradley and others
SUBJECT:	Single-subject Limitation for Constitution Revision Commission Proposals
DATE:	January 23, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	**Favorable**
2.	Fox	Roberts	EE	**Pre-meeting**
3.			RC	

I. Summary:

SJR 74 limits any amendment to the Constitution proposed by the Constitution Revision Commission ("CRC") to "one subject and matter connected therewith." Under current law, each CRC proposal may embrace multiple subjects. It may even propose a singular, comprehensive revision of the Constitution. The next CRC convenes in 2037, and thus it would be the first Commission to be governed by the proposed single-subject limitation.

If approved by three-fifths of the membership of each House of the Legislature, SJR 74 will appear on the 2020 General Election ballot. It 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 a revision of all or any part of the Florida Constitution. Accordingly, the CRC may propose single-subject amendments, multi-subject amendments, or a revision of the entire Constitution.

Context – Proposed Amendments that Appeared on the 2018 General Election Ballot

The CRC proposed seven of the amendments on the 2018 General Election ballot, at least two of which were regarded by many as including two or more substantially unrelated, or "bundled," changes.[1] Accordingly, voters in many cases were forced to choose between voting for a change

[1] *See, e.g.*, The News Service of Florida, *Constitutional Amendments? One subject only, please*, THE GAINESVILLE SUN (Nov. 23, 2018), https://www.gainesville.com/news/20181123/constitutional-amendments-one-subject-only-please.

they did not support (because it was paired with one they wanted) or voting against a change they desired (because it was paired with a change they did *not* like).[2]

CRC Amendments 6 and 9 were widely cited as embracing multiple subjects. Amendment 6 combined what many regarded as three different subjects: a crime-victim-rights proposal, a prohibition on judges deferring to agencies' interpretation of statutes or rules, and a 5-year increase in the mandatory retirement age for judges. Amendment 9 combined a ban on oil drilling in state waters with a ban on "vaping" in indoor workplaces.

Constitution Revision Commission

Origin

The Florida Constitution was revised extensively in 1968 by three joint resolutions that were proposed during a Special Session of the Legislature. One of the resolutions included a provision requiring a Constitution Revision Commission to convene once every 20 years, beginning in 1977. Accordingly, three CRCs have convened: in 1977-1978, 1997-1998, and most recently in 2017-2018.[3]

Members

The CRC is comprised of 37 members, including the Attorney General plus: 15 members appointed by the Governor, including one designated to serve as Chair; nine (9) members *each* appointed by the Senate President and House Speaker; three (3) members appointed by the Chief Justice of the Florida Supreme Court.[4]

Task, Procedures, and Authority

The CRC's task is to examine the Constitution and decide which, if any, amendments to submit for voter approval. The amendments must be submitted to the Secretary of State at least 180 days before the next general election.[5] 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.[6]

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[2] *See* Brendan Rivers and News Service of Florida Staff, *Bill Filed to Ban Bundled Amendments from Constitution Revision Commission*, WJCT FIRST COAST CONNECT (Nov. 26, 2018), http://news.wjct.org/post/bill-filed-ban-bundled-amendments-constitution-revision-commission; *see generally*, Editorial Board, *Florida's constitutional amendments: Vote 'yes' on 4 and 11, 'no' on rest*, TALLAHASSEE DEMOCRAT (Oct. 7, 2018), https://www.tallahassee.com/story/opinion/editorials/2018/10/07/floridas-amendments-yes-4-and-11-no-rest-our-opinion/1494375002/ (arguing that amendment 6 and amendment 9 each included a proposal worthy of approval, but should be voted against on account of at least one unworthy proposal in each); Kelley H. Armitage, *Constitution Revision Commissions Avoid Logrolling, Don't They?*, 72 FLA. B.J. 62 (Nov. 1998) (arguing that the Constitution Revision Commission does not have sufficient safeguards against logrolling).

[3] Constitution Revision Commission, *History*, http://flcrc.gov/about/history.html (last visited Dec. 31, 2018).

[4] FLA. CONST. art. XI, s. 2.

[5] FLA. CONST. art. XI, s. 2.

[6] FLA. CONST. art. XI, s. 5.

The constitutional provision authorizing the CRC does not address the issue of multi-subject amendments. Indeed, it says only that the CRC must convene at the call of its chair, adopt rules of procedure, and "hold [an unspecified number of] public hearings."[7]

The Single-Subject Requirement

Amendments that are Limited to One Subject

The Constitution authorizes five sources from which an amendment may originate: the Legislature, the CRC, a citizen initiative, a constitutional convention, or the Taxation and Budget Reform Commission. Only citizen initiative proposals are limited to one subject. Accordingly, as the Florida Supreme Court stated in a case challenging a 2018 proposed amendment, the CRC need not limit its proposals to one subject:

> Unlike proposed amendments that originate through initiative petitions, amendments proposed by the Constitution Revision Commission are not bound by the single-subject rule limiting amendments to one subject. . . . Moreover, the Florida Constitution expressly authorizes bundling, as it gives the Commission authority to revise the entire constitution or any part of it. The power to amend the whole constitution in one proposal necessarily includes the lesser power to amend parts of the constitution in one proposal.[8]

Policy Reasons for the Single-Subject Limitation on Amendments Originating as Initiatives

The Florida Supreme Court has repeatedly explained the purposes for the single-subject requirement, at least with regard to citizen-initiative amendments. In its decision in *Fine v. Firestone*, the Court stated that the single-subject limitation allows:

> …[T]he citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support.[9]

Moreover, the Court stated that the single-subject limitation protects the Constitution "against precipitous and spasmodic changes in the organic law."[10] Making a similar point in a later case, the Florida Supreme Court stated that the:

> …[S]ingle-subject requirement in article XI, section 3, mandates that the electorate's attention be directed to a change regarding one specific

[7] FLA. CONST. art. XI, s. 2.
[8] *Detzner v. Anstead*, 256 So.3d 820, 823-24 (Fla. 2018) (citation omitted); *see also*, *County of Volusia v. Detzner*, 253 So.3d 507, 512 (Fla. 2018) ("Appellants have conceded, however, that CRC proposals are not bound by the single subject requirement . . . ."); *Charter Review Commission of Orange Cty. v. Scott*, 647 So.2d 835, 837 (Fla. 1994) ("Only proposals originating through a petition initiative are subject to the single-subject rule.").
[9] *Fine v. Firestone*, 448 So.2d 984, 994 (Fla. 1984).
[10] *Id.* at 832 (quoting *Adams v. Gunter*, 238 So.2d 824, 832 (Fla. 1970) (Thornal, J., concurring)).

> subject of government to protect against multiple precipitous changes in our state constitution.[11]

As to why this reasoning should not apply to prohibit multi-subject amendments that originate from sources other than a citizen initiative, such as the CRC, the Court noted that the other methods of propounding a constitutional amendment "all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal."[12] This is not true, the Court noted, of citizen initiatives.[13]

What "One Subject" Means

Over the years, the Florida Supreme Court has issued several opinions in which it explained what it means for an amendment to be limited to one subject.

In these opinions, the Court has stated, the single-subject limitation is "functional and not locational."[14] In other words, the question is primarily one of what the amendment does, rather than a question of what part(s) of the Constitution it alters. As such, the single-subject limitation requires of each amendment a "natural and logical oneness of purpose."[15] Moreover, the single-subject limitation prohibits an amendment from:

> … (1) [E]ngaging in "logrolling" or (2) "substantially altering or performing the functions of multiple aspects of government." The term logrolling refers to a practice whereby an amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed.[16]

In addition, although "no single proposal can substantially *alter* or *perform* the functions of multiple branches," the single-subject limitation does not prohibit a proposal that would "*affect* several branches of government."[17] How an initiative proposal affects other articles or sections of the constitution, however, *is an appropriate factor* to be considered in determining whether there is more than one subject included in an initiative proposal."[18]

A brief look at three Supreme Court opinions will help illuminate what "one subject" really means.

In a recent advisory opinion, the Court analyzed an amendment that would have guaranteed a:

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[11] *In re Advisory Op. to the Att'y Gen.—Save Our Everglades*, 636 So.2d 1336, 1339 (Fla. 1994) (quoting *Fine v. Firestone*, 448 So.2d 984, 988 (Fla. 1984)).
[12] *Id*. at 1339.
[13] *Id*.
[14] *Evans v. Firestone*, 457 So.2d 1351, 1354 (Fla. 1984).
[15] *Advisory Op. to Att'y Gen. re Rights of Electricity Consumers regarding Solar Energy Choice (FIS)*, 188 So.3d 822, 828 (Fla. 2016).
[16] *Id.* at 827-28 (internal citations omitted).
[17] *In re Advisory Op. to the Att'y Gen.—Save Our Everglades*, 636 So.2d 1336, 1339 (Fla. 1994) (emphasis in the original).
[18] *Fine v. Firestone*, 448 So.2d 984, 990 (Fla. 1984) (emphasis added).

> …r[R]ight for electricity consumers "to own or lease solar equipment installed on their property to generate electricity for their own use" while simultaneously ensuring that "State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do."[19]

In the Court's analysis of the amendment, it identified two basic "components"—the establishment of a right and a guarantee of the government's authority to regulate that right. The Court rejected the argument that these components embraced different subjects as a matter of law, stating instead that the components were "two sides of the same coin," were therefore "component parts or aspects of a single dominant plan or scheme," and accordingly were "naturally related and connected to the amendment's oneness of purpose."[20] The Court also noted that the amendment did not engage in impermissible logrolling, as it did not combine a popular measure with an unpopular measure in hopes of compelling sufficient support for the unpopular measure.[21]

In another advisory opinion, the Court examined an amendment proposed by citizen initiative that would have created a "trust to restore the Everglades funded by a fee on raw sugar."[22] The Court held that the amendment violated the single-subject rule because it "perform[ed] the functions of multiple branches of government."[23] The amendment performed the legislative functions of imposing a levy, establishing a trust, and granting the trustees with power to set and redefine the boundaries of the "Everglades Ecosystem." Additionally, the amendment "contemplate[d] the exercise of vast executive powers" by the trustees, including the "management, construction, and operation of water storage and sewer systems."[24] Finally, the Court stated that the amendment would have performed a judicial function by essentially adjudicating that the sugar cane industry had polluted the Everglades and by imposing a judgment-like fee on that industry to cover cleanup costs.[25]

Finally, in *Fine v. Firestone*, the Court disapproved a proposed amendment that contained three subjects.[26] The Court did so without specifying that the subjects were related to the functions of various branches of government or that the amendment was an attempt at logrolling. Instead, the Court stated that the amendment:

> …[L]imits the way in which governmental entities can tax; it limits what government can provide in services which are paid for by the users of such services; and it changes how governments can finance the construction of capital

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[19] *Advisory Op. to Att'y Gen. re Rights of Electricity Consumers regarding Solar Energy Choice (FIS)*, 188 So.3d 822, 828 (Fla. 2016) (quoting the language of the proposed amendment at issue, titled, "Rights of Electricity Consumers Regarding Solar Energy Choice").
[20] *Id*. at 828.
[21] *Id*.
[22] *In re Advisory Op. to the Att'y Gen.—Save Our Everglades*, 636 So.2d 1336, 1337 (Fla. 1994).
[23] *Id*. at 1340.
[24] *Id*.
[25] *Id*.
[26] *Fine v. Firestone*, 448 So.2d 984 (Fla. 1984).

improvements with revenue bonds that are paid for from revenue generated by the improvements.[27]

Joint Resolution

A joint resolution by the Legislature is one of the ways in which an amendment to the Florida Constitution may originate.[28] 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 of the Legislature.[29] Unless expedited by the Legislature, the joint resolution is then submitted to the voters at the next general election. If the legislatively proposed amendment is approved by at least 60 percent of the people voting on the measure, it becomes effective in the January following the election (unless otherwise specified in the amendment or in the Constitution).[30]

III. Effect of Proposed Changes:

The joint resolution limits future CRC amendment proposals (beginning in 2037) to "one subject and matter directly connected therewith," thereby eliminating the political tactic of bundling and logrolling to effect passage of unpopular or marginally-popular proposals by packaging them with more popular measures.

Because the wording of the single subject requirement in the joint resolution is identical to that used in the Constitution for citizen initiatives, the Supreme Court will likely interpret the single-subject requirements similarly.[31]

If passed by a three-fifths supermajority vote of each House of the Legislature, the proposed amendment will appear on the ballot at the 2020 General Election for voter approval.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[27] *Id.* at 992 (Fla. 1984).
[28] 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.
[29] FLA. CONST. art. XI, s. 1.
[30] FLA. CONST. art XI, s. 5.
[31] *See e.g., State v. Hackley*, 95 So. 3d 92, 95 (Fla. 2012); *State v. Hearns*, 961 So. 2d 211, 217 (Fla. 2007) ("We have held that where the Legislature uses the exact same words or phrases in two different statutes, we may assume it intended the same meaning to apply.").

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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 $29,737.60, 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.[32]

[32] Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Jan. 10, 2019) (on file with the Senate Committee on Judiciary).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This resolution amends Article XI, section 2 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.