

STORAGE NAME: h0263.cp

DATE: January 22, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HJR 263

RELATING TO: Suffrage and Elections

SPONSOR(S): Representative Logan

COMPANION BILL(S): SB 208(I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HJR 263 is a House Joint Resolution to amend Article VI, Section 4, of the Florida Constitution. The Resolution provides that a convicted felon or a person adjudicated mentally incompetent may not vote or hold office until that right has been restored, as *provided by law...*

The Resolution amends Article VI, Section 4 as follows:

- (a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until the person's right to register or vote has been restored, as provided by law, or until restoration of civil rights or removal of disability.

Each house of the legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be put on the ballot.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Convicted Felons Prohibited from Voting.

Article VI, Section 4 of the Florida Constitution limits the ability of convicted felons to vote as follows:

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

Section 97.041(2), F.S., provides that the following persons are not entitled to register or vote:

(a) A person who has been adjudicated mentally incapacitated with respect to voting in this or any other state and who has not had his or her right to vote restored pursuant to law.

(b) A person who has been convicted of any felony by any court of record and who has not had his or her right to vote restored pursuant to law.

Section 104.15, F.S. makes it a third degree felony for a convicted felon to vote if the person is aware that he or she is not qualified to vote.

The prohibition against voting by convicted felons is further expressed in section 944.292(1), F.S.:

(1) Upon conviction of a felony as defined in section 10, Article X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to section 8, Article IV of the State Constitution.

First time felony offenders who do not commit violent crimes typically receive a withhold of adjudication instead an adjudication of guilt. A withhold of adjudication is not considered a conviction and does not prohibit a person from voting or possessing a firearm.

Clemency

Article IV, Section 8(a) establishes the authority for clemency as follows:

(a) Except in cases of treason and in cases where impeachment results in conviction, the governor may, ...

with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

Clemency Hearings

The Florida Administrative Code (27 F.A.C. T. 27, App.) sets forth the procedure and requirements for clemency that includes the following:

1. All applications for clemency must be filed with the Coordinator for the Office of Executive Clemency on standard forms provided by that office.
2. The Florida Parole Commission investigates the applicants and issues a report and recommendation.
3. All criminal sentences imposed must be completed unless a waiver of the rules is granted by the Governor and two members of the Cabinet.
4. The Parole Commission shall inform the victim of the application if possible.
5. The Governor and two members of the Cabinet may require the coordinator for the office of Executive Clemency to place a case on the agenda to be heard by the Clemency Board. The Clemency Board is the Cabinet and the Governor.

Restoration of Civil Rights without a Hearing

Relatively few people have a clemency hearing which must take place before the Governor and Cabinet, however, the Rules of Executive Clemency establish an expedited procedure for a convicted felon to have his or her civil rights restored without a hearing if the person meets a number of requirements including:

1. The entire sentence imposed including all supervision has been completed.
2. There are no pending criminal charges.
3. No money is owed for fines, cost of supervision or restitution resulting from a criminal charge.
4. The person has not been convicted of a capital or life felony.
5. The person has not had his or her civil rights restored in Florida.
6. The person does not have more than two felony conviction if the convictions were separate transactions.

This review occurs automatically and no application or other action is required by the convicted felon. The Department of Corrections automatically notifies the Florida Parole Commission of all persons who complete a criminal sentence. If the Florida Parole Commission determines that the above criteria have been met, then the Coordinator shall issue a certificate that would grant restoration of civil rights or residence rights in the State of Florida without the specific authority to possess a firearm. If any member of

the Cabinet objects to the restoration of civil rights without a hearing then the applicant must have a clemency hearing or partial clemency before the Cabinet and Governor. In 1998, The Parole Commission reviewed 9,989 inmates released from prison and 7,676 persons whose community supervision including probation had terminated. A total of 1,254 persons received the restoration of their civil rights without a hearing.

Florida is one of 12 states that permanently disenfranchise felony offenders who have completed their criminal sentences. (In two of the 12 states, the offenders are disenfranchised after a second felony) *The Sentencing Project*, internet address: www.hrw.org/reports98/vote or *Criminal Justice Newsletter*, vol. 29, number 16. However, a person may have the right to vote automatically restored in Florida, subject to a veto by any member of the Cabinet, if the person has two or fewer felony convictions and all terms of the sentence are completed including monetary conditions.

B. EFFECT OF PROPOSED CHANGES:

HJR 263 is a House Joint Resolution to amend Article VI, Section 4, of the Florida Constitution. The Resolution provides that a convicted felon or a person adjudicated mentally incompetent may not vote or hold office until that right has been restored, as *provided by law*.

Each house of the legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be put on the ballot.

HB 265 sponsored by Rep. Logan is a related bill that would only come into effect if HJR 263 is approved by the voters. HB 265 provides that convicted felons automatically have their right to vote restored one year after "completion and satisfaction of all sentences imposed."

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The resolution gives the legislature authority to determine when a convicted felon may vote.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The resolution would authorize the legislature to give more convicted felons the right to vote.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Article VI, section 4 of the Florida Constitution.

E. SECTION-BY-SECTION ANALYSIS:

Joint Resolutions do not have sections.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The resolution gives more authority to the legislature, but the resolution itself without related legislation does not have an impact.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The house resolution does not impose mandates upon the counties or municipalities.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The house resolution does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The house resolution does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The Resolution amends Article VI, Section 4 as follows:

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until the person's right to register or vote has been restored, as provided by law, or until restoration of civil rights or removal of disability.

According to Blacks Law Dictionary, a "disability" is generally used to indicate an incapacity for the full enjoyment of ordinary legal rights. Thus the phrase in the constitution "removal of disability" probably includes within its meaning the phrase stricken by the amendment "~~restoration of civil rights.~~" However, there is some question as to whether the ability of the Governor and three members of the Cabinet to restore civil rights is trumped by this resolution. By providing that the restoration of the right to vote will be "as provided by law", and by removing the reference to "restoration of civil rights, the intent of the bill appears to be to make general law the exclusive authority for the restoration of civil rights. Thus the procedure for restoration of civil rights without a hearing as authorized by the Rules of Executive Clemency would no longer be lawful. While the Governor and Cabinet would retain the ability to commute sentences and pardon criminal offenders, it is not clear that a pardon would include restoration of the right to vote unless the right to vote were also authorized by general law.

On the other hand, the term "as provided by law" would include the current process for clemency as authorized by Article 4 of the Florida Constitution. Furthermore, the ballot summary does not mention the taking of any authority to restore the right to vote from the Cabinet and the Governor. Florida law requires a ballot summary "to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." Health Care Providers, 705 So.2d at 566 (quoting Fee on Everglades Sugar Prod., 681 So.2d at 1127). If a ballot summary does not give sufficient notice, the Florida Supreme Court may order that the proposed amendment not be placed on the ballot. Advisory opinion to the Attorney General Re Term Limits Pledge 23 Fla. L. Weekly S505 (Oct. 1998).

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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