

STORAGE NAME: h0825.ree.doc

DATE: April 9, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
RULES, ETHICS, & ELECTIONS (PRC)
ANALYSIS**

BILL #: HJR 825

RELATING TO: Constitutional Amendments / Approval

SPONSOR(S): Representative Gardiner

TIED BILL(S): None

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

- (1) JUDICIAL OVERSIGHT (SGC) YEAS 6 NAYS 3
- (2) RULES, ETHICS, & ELECTIONS (PRC)
- (3) SMARTER GOVERNMENT COUNCIL
- (4)
- (5)

I. SUMMARY:

This joint resolution amends Art. XI, s.5(c), Fla.Const., to require approval of proposed constitutional amendments by a two-thirds majority vote of the electors voting on the proposed amendment or revision, rather than a simple majority vote.

There is an estimated fiscal impact of \$25,000 associated with advertising this amendment.

The constitutional amendment will be effective on the first Tuesday after the first Monday in January following the approval of the amendment by the voters in Florida.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Amending the Florida Constitution

Article XI of the Florida Constitution provides the following four methods for proposing constitutional amendments:

- **Proposal by legislature** – Art.XI, s.1, Fla.Const., provides that an amendment of a section or revision of one or more articles, or the whole, of the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature.
- **Revision commission** – Art. XI, s.2, Fla.Const., provides that a revision of all or part of the Florida Constitution may be proposed at the conclusion of the meeting of a Constitutional Revision Commission. This commission is required to be established within thirty days before the convening of the 2017 regular session of the legislature, and each twentieth year thereafter, and is to be composed of thirty-seven members.
- **Initiative** – Art.XI, s.3, Fla.Const., reserves the right of the people to propose a revision or amendment of any portion or portions of the constitution by initiative. Section 3 requires that any such revision or amendment, except for those limiting the power of government to raise revenue, shall have one subject matter. The right of initiative may be invoked by filing with the secretary of state a petition signed by eight percent of the electors in half of the state congressional districts and eight percent of the electors statewide in the preceding presidential election.
- **Constitutional convention** – Art.XI, s.4, Fla.Const., reserves to the people the power to call a convention to consider a revision of the entire state constitution.

Adoption of Constitutional Amendments

Art. XI, s. 5(a), Fla. Const., provides that a proposed amendment to or revision of the constitution shall be submitted to the electors at the next general election held more than ninety days after the joint resolution, initiative petition or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the custodian of state records. An exception is provided for an earlier special election held more than ninety days after such filing if enacted by the affirmative vote of three-fourths of the membership of each house of the legislature, and it is limited to a single amendment or revision.

Art.XI, s.5(c), Fla.Const., provides that if the proposed amendment or revision is approved by vote of the electors (a simple majority), it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.

Amending Other State Constitutions

The states do not have uniform methods for amending their constitutions. The states have roughly five different methods of making amendments, with several variations upon these basic themes. There are currently 14 states that use a 2/3 majority in the legislature, 10 that use a 3/5 majority, 8 that use a majority of each house, 8 that use a majority of each house in two successive meetings of the legislature, and 4 that use the voter initiative as the sole means of amending their constitutions.

- **Two-Third Majority**

Fourteen states require a 2/3 majority of the legislators in each house to vote for a proposed constitutional amendment, before the amendment can be submitted to the electorate, and a majority of electors voting in an election to ratify. These states are as follows: Alaska, Colorado, Georgia, Kansas, Louisiana, Maine, Michigan, Mississippi, South Carolina, Texas, Utah, Washington, West Virginia, and Wyoming. Additionally, there are 6 other states that base their amendment process on a 2/3 majority in the legislature and a majority of electors, but differ in various other ways.

- Hawaii requires a 2/3 majority of the legislators in each house, ratified by a majority constituting at least 35 percent of votes cast at a general election or 30 percent of the total number of registered voters at a special election.
- Vermont requires a 2/3 majority of the senate, a simple majority of the house, and a majority of the electorate.
- Delaware requires a 2/3 majority of the legislators of each house, in two successive legislative assemblies, to amend its constitution. Delaware forgoes the requirement of ratification by the electorate.
- California requires a 2/3 majority of each house of the legislature, or a voter initiative, to propose constitutional amendments, and a majority of the electorate to ratify.
- Idaho requires a 2/3 majority of each house of the legislature, and requires the proposed amendment to be published 3 times in every newspaper along with arguments for and against before the next general election, where a majority of electors are required in order to ratify.
- Montana requires a 2/3 majority of either house of the legislature, or an initiative signed by at least 10 percent of the electors, to propose an amendment, and a majority of the electors to ratify.

- **Three-Fifths Majority**

Ten states require a 3/5 majority of the legislators in each house to submit proposed amendments to the electors, and a majority of the electors to ratify. These states are Alabama, Florida, Kentucky, Maryland, New Jersey, North Carolina, Ohio, Illinois, Nebraska, and New Hampshire. Of these, Florida and Illinois allow amendments to be proposed by voter initiative. Illinois, Nebraska, and New Hampshire all share the common characteristic, however, of requiring more than a simple majority of the electorate to ratify amendments.

- Illinois requires a 3/5 majority of the electors voting on the question, or a majority of those voting in the election.
- Nebraska requires a majority of not less than 35 percent of the total number of votes cast in the election.
- New Hampshire requires a 2/3 majority of the electors voting in order to ratify amendments.

- **Majority of Each House**

Eight states require a majority of the legislators in each house to vote for a proposed amendment, before it is submitted to the electorate, and a majority of the electors to ratify. These states are as follows: Minnesota, Missouri, New Mexico, Oklahoma, Oregon, South Dakota, Arizona, and Rhode Island. Of these states, Oklahoma, Oregon, South Dakota, and Arizona provide the additional amendment option of voter initiative.

- **Majority of House in Two Successive Assemblies**

Eight states require a majority of the legislators in each house to vote for a proposed constitutional amendment during two separate meetings of the legislature, before the amendment can be submitted to the electorate, which decides whether to adopt the amendment by a majority vote. These states are Pennsylvania, Connecticut, Indiana, Iowa, New York, Virginia, Wisconsin, and Tennessee.

- Pennsylvania requires a 3/4 majority (not merely a majority) in both houses at both legislative assemblies.
- Tennessee requires a plain majority in the first legislative assembly and a 2/3 majority in the second assembly.

- **Voter Initiative**

Four states allow constitutional amendments to be proposed solely through implementation of the voter initiative. These are Arkansas, Massachusetts, Nevada, and North Dakota. Arkansas and North Dakota provide for ratification of amendments by majority of electors.

- Massachusetts ratifies by majority vote of legislature in two consecutive sessions, finally followed by majority vote of the electors.
- Nevada requires amendments to be ratified by a majority of electors in two successive elections.

C. EFFECT OF PROPOSED CHANGES:

This resolution amends Art.XI, s.5(c), Fla.Const., to require approval of a constitutional amendment by two-thirds of the electors voting on the proposed amendment or revision, rather than just a simple majority.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Art. XI, s. 5(b), Fla. Const., requires that each proposed amendment to the constitution be published in a newspaper of general circulation in each county two times prior to the general election. It is estimated that the cost to the Division of Elections would be approximately \$25,000 statewide.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the mandates of Art. VII, s. 18, Fla. Const.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Election laws are exempt from the mandates of Art. VII, s. 18, Fla. Const.

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

Election laws are exempt from the mandates of Art. VII, s. 18, Fla. Const.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Art. XI, s. 1, Fla. Const., provides that a constitutional amendment may be proposed by joint resolution of the Legislature. Final passage in the House and Senate requires a three-fifths vote in each house; passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, Art. XI, s. 5, Fla. Const., provides that that the proposed amendment would be placed before the electorate at the 2002 general election. Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published. If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT (SGC):

Prepared by:

Richard Mast

Staff Director:

Lynne Overton, JD

AS REVISED BY THE COMMITTEE ON RULES, ETHICS, & ELECTIONS (PRC):

Prepared by:

Dawn K. Roberts, Esq.

Staff Director:

R. Philip Twogood