

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SCR 1166
SPONSOR: Senator Margolis
SUBJECT: Equal Rights for Men and Women
DATE: March 31, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	Roberts	JU	Favorable
2.	_____	_____	EE	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This senate concurrent resolution proposes state ratification of the proposed Equal Rights Amendment to the *United States Constitution*.

II. Present Situation:

In 1972, Congress passed the proposed Equal Rights Amendment (ERA) to the *United States Constitution*. The proposed ERA provides:

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification.

A proposed constitutional amendment requires ratification by three-fourths (3/4) of the states (i.e., 38 states). The ERA failed ratification initially in 1979. In response to public pressure and disputes over the ratification deadline, Congress extended the deadline to 1982.

However, political interests and publicity regarding the potential legal and social ramifications of the ratification of the proposed amendment stymied full ratification. By 1982, only 35 states (of which Florida was not one) had adopted state ratification of the proposed ERA.

Since 1982, the proposed ERA amendment has been reintroduced annually in Congress in the form of House and Senate resolutions but they did not pass. This year, resolutions have been

filed again. *See e.g.* H.Res. 37 and S.J.R. 11 (108th Congress). No limiting ratification period has ever been included in these resolutions. The resolutions require two-thirds vote of each house of Congress and subsequent assent to ratification by the 38 states.

An alternative approach to ratification developed recently based on the argument that the existing state ratifications to the ERA were still viable.¹ First, Congress had already established precedence for dispensing with a ratification deadline when it extended the original ratification deadline of the proposed ERA. Second, Congress established precedence when it ratified many years after its ratification deadline, the “Madison Amendment” relating to Congressional pay raises.” Therefore, the rationale is that only 3 more states need to actually ratify the proposed ERA. Congress would then have to take the necessary steps to finalize the ratification of the proposed ERA. This means Congress could choose to adjust or repeal the existing deadline on the ERA, determine whether existing state ratifications are still valid, and declare that the ERA is ratified.

In Florida, efforts for state ratification of the proposed United States ERA or adoption of similar state constitutional language has been ongoing since 1972. Between the years 1972 through 1982, proposed legislative resolutions to ratify the ERA were filed annually but did not pass. In 1978, a modified version of an ERA amendment proposed by the 1977-1978 Constitutional Revision Commission which stated that “no person will be deprived of any right because of sex” failed on the ballot. However, in 1998, Florida voters approved a constitutional amendment to section 2, article I of the *Florida Constitution*, explicitly stating and reinforcing the recognition that “natural persons” mean men and women alike and that they are equal before the law for which discrimination based on gender is constitutionally prohibited.² Florida is one of twenty plus states to have adopted constitutional language relating to equal protection for men and women. Most of the texts of these amendments are based either on the proposed ERA or some restatement of the Equal Protection Clause of the 14th Amendment of the *United States Constitution*.

Supporters of the proposed United States ERA have attempted to introduce similar resolutions or equal rights legislation in the 15 outstanding states³, of which Florida is one, who have not yet ratified the ERA.

III. Effect of Proposed Changes:

This senate concurrent resolution includes a statement of the state’s ratification of the proposed Equal Rights Amendment (ERA) to the *United States Constitution*. It provides a number of whereas clauses regarding the background of the ERA first proposed in 1972. It provides the text of the proposed federal amendment. This resolution is offered on the premise that states may still ratify the proposed ERA under the authority of the Article V of the United States Constitution.

¹ *See* The Equal Rights Amendment: Why the ERA Remains Legally Viable and Properly Before the States, Allison Held, Sheryl Herndon, and Danielle Stager, William and Mary Jnl of Women and the Law (1997).

² *See* Revision 9, 1997 Constitution Revision Commission Proposal.

³ Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah, and Virginia.

The resolution requires that certified copies of the resolution under the seal of the Secretary of the State of Florida be forwarded to the United States President, Secretary of State, Senate President, Speaker of the House, and the Administrator of the General Services.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Constitutional Issues:

Final ratification of the proposed United States Equal Rights Amendment would subject gender-based laws to strict scrutiny in lieu of intermediate scrutiny. Strict scrutiny requires a determination of whether enforcement of discriminatory laws serves a compelling state interest that can not be protected in any other way. Laws based on “race, color or previous condition or servitude” under Article XV of the United States Constitution and “race, religion, national origin, or physical disability” under section 2 of article I of the *Florida Constitution* are reviewed under strict scrutiny. Intermediate scrutiny requires a determination of whether the discriminatory law achieves a governmental objective and that the differential treatment or application is rationally related to that objective.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Subject to final ratification by Congress of the proposed Equal Rights Amendment in the *United States Constitution*, men and women may benefit from increased equal protection against gender-based discrimination which reinforces existing language in the *Florida Constitution*.

C. Government Sector Impact:

This resolution will affect state government only to the extent that final ratification by Congress of the proposed United States Equal Rights Amendment may invalidate any state program or act that promotes gender inequity or continues to discriminate

against someone on the basis of gender. However, Florida law already prohibits such conduct under the Equal Protection Clause in section 2 of Article I of the *Florida Constitution* and under the Florida Civil Rights Act of 1992 in chapter 760, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
