

# 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.)

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Prepared By: Judiciary Committee

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BILL: CS/SJR 4

SPONSOR: Judiciary Committee and Senator King and others

SUBJECT: Citizen Initiative/Amendments

DATE: March 31, 2005

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubinas	Rubinas	EE	<b>Fav/1 amendment</b>
2.			RC	<b>Withdrawn</b>
3.	Cibula	Maclure	JU	<b>Fav/CS</b>
4.				
5.				
6.				

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## I. Summary:

This committee substitute provides that constitutional amendments proposed by citizens' initiative must:

- Alter, amend, or repeal an existing article of or amendment to the Constitution;
- Address a basic or fundamental right of a citizen of Florida; or
- Change the basic structure of state government as established in Articles II through V of the Constitution.

This committee substitute substantially amends section 3, Article XI, of the Florida Constitution.

## II. Present Situation:

Proposal by the Legislature and citizens' initiative are two of the five different methods by which proposed constitutional amendments may be placed before the voters for approval.<sup>1</sup>

### Legislative Proposal

Under s. 1, Art. XI, State Const., the Legislature may propose an amendment of a section, one or more articles, or the whole of the State Constitution. Such amendments must be proposed in a joint resolution agreed to by three-fifths of the membership of each house of the Legislature. Amendments proposed by joint resolution are submitted to the voters at the next general election held more than 90 days after the amendment is filed with the custodian of state records.<sup>2</sup> The

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<sup>1</sup> SECTIONS 1-4 and 6, ART. XI, STATE CONST.

<sup>2</sup> SECTION 5(a), ART. XI, STATE CONST.

next general election is scheduled for November 7, 2006.<sup>3</sup> Unless stated otherwise in a constitutional amendment, amendments adopted at the next general election take effect on January 2, 2007.<sup>4</sup>

### **Citizens' Initiative**

Under s. 3, Art. XI, State Const., citizens' initiatives, "except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith."

### **Supreme Court Review**

The Florida Supreme Court currently reviews citizens' initiative petitions to determine: (1) whether a petition satisfies the single-subject requirement of the Florida Constitution; and (2) whether the ballot title and summary are printed in clear and unambiguous language, as required by statute.<sup>5</sup> The Court does not review the subject matter of a proposed amendment by citizens' initiative.<sup>6</sup>

The Supreme Court's review of the initiative commonly known as the "pregnant pig" amendment, however, generated the following plea from three of the justices for subject-matter review of initiatives:

The technical requirements, such as the single-subject rule and the [statutory] requirements [for ballot summaries and ballot titles], appear insufficient to prevent abuse of the amendment process. At this juncture, I merely express my thought that some issues are better suited as legislatively enacted statutes than as constitutional amendments. It is my hope that the next [Constitutional] Revision Commission will have the opportunity to establish some criteria regarding the

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<sup>3</sup> DEPARTMENT OF STATE, DIVISION OF ELECTIONS, ELECTION DATES, at <http://election.dos.state.fl.us/online/elecdate.shtml>.

<sup>4</sup> SECTION 5(e), ART. XI, STATE CONST.

<sup>5</sup> *Advisory Opinion to the Atty. Gen. re: Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 164 (Fla. 2002) and s. 101.161(1), F.S. Section 101.161(1), F.S., states:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(6). The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

<sup>6</sup> *Advisory Opinion to the Atty. Gen. re Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy*, 815 So. 2d 597, 601 (Fla. 2002) (Pariente, J., concurring, with Anstead and Lewis, JJ., concurring).

subject matter of initiatives that will preserve the constitution as a document of fundamental laws, while still preserving the popular power of the people. . . . Unless changes are made to the citizen's initiative process, this Court has no choice but to restrict its review solely to whether the proposed constitutional amendment comports with the single subject and ballot summary requirements.<sup>7</sup>

### **Basic and Fundamental Rights**

Section 2, Art. I, State Const., titled "Basic rights," states:

All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

Case law, however, suggests that the concept of basic rights is broader than the rights described in s. 2, Art. I, State Const.<sup>8</sup> "A fundamental right is one which has its source in and is explicitly guaranteed by the federal or Florida Constitution."<sup>9</sup>

### **Structure of Government**

The powers and certain procedures of the Legislative, Executive, and Judicial branches of government are set forth in Arts. III, IV, and V, State Const. Other general provisions, related to the structure and function of the state government, are codified in Art. II, State Const.

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

This committee substitute provides that constitutional amendments proposed by citizens' initiative must:

- Alter, amend, or repeal an existing article of or amendment to the Constitution;<sup>10</sup>
- Address a basic or fundamental right of a citizen of Florida; or
- Change the basic structure of state government as established in Articles II through V of the Constitution.

The committee substitute, if passed by a three-fifths vote of each house of the Legislature, will be voted on in the November 7, 2006, general election.<sup>11</sup> If approved by a majority of those

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<sup>7</sup> *Id.*

<sup>8</sup> *See Crain v. State*, 2004 WL 2404057 \*7 (Fla. 2004) (describing the right of an accused to know the charges against him or her as a basic right).

<sup>9</sup> *State v. J.P.*, 2004 WL 2609242 \*5 (Fla. 2004).

<sup>10</sup> Because, in a broad sense, any amendment to the State Constitution may "alter, amend, or repeal an existing article of or amendment to [the] constitution," the impact of this particular provision of the committee substitute on the citizens' initiative process is somewhat unclear.

voting on the measure, the provisions of the committee substitute will take effect on January 2, 2007. The provisions of the committee substitute will not affect other proposed amendments submitted to voters in the November 7, 2006, general election.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election. Costs for advertising vary depending upon the length of the amendment; however, the cost per amendment is estimated to be approximately \$37,000.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 16.061, F.S., states in part:

The Attorney General shall . . . petition the Supreme Court, requesting an advisory opinion regarding the compliance of the text of the proposed

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<sup>11</sup> A single amendment or revision to the Constitution, however, can be submitted to the voters in a special election, provided each house of the Legislature so requires by a law enacted by an affirmative three-fourths vote. SECTION (5)(a), ART. XI, FLA. CONST.

amendment or revision with s. 3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with s. 101.161.

The Legislature may wish to revise s. 16.061(1), F.S., to direct the Attorney General to petition the Supreme Court to determine whether a citizen initiative complies with the subject matter limitations in the committee substitute.

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

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## VIII. **Summary of Amendments:**

None.

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