

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.)

Prepared By: Judiciary Committee

BILL: SJR 78

SPONSOR: Senator Geller

SUBJECT: Basic Rights

DATE: April 25, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	JU	Favorable
2.	_____	_____	DS	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Joint Resolution 566 amends Article I, Section 2 of the Florida Constitution to delete provisions authorizing the Legislature to regulate or prohibit the ownership, inheritance, disposition, and possession of real property by aliens ineligible for citizenship.

This Senate joint resolution amends Article 1, Section 2 of the Florida Constitution.

II. Present Situation:

Constitutional Amendment Process

Article XI of the Florida Constitution provides for five methods amending the Constitution. They are: 1) proposal by the Legislature; 2) revision commission; 3) initiative; 4) constitutional convention; and 5) taxation and budget reform commission.

Article XI, s. 1 of the Florida Constitution provides for proposed changes to the Constitution originating with the Legislature:

SECTION 1. Proposal by legislature.--Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

Margin of Approval by Electors

The Constitution provides that a proposed amendment or revision must pass by a simple majority of electors voting on the measure.¹

Submission to Electors

A proposed amendment to the Constitution may be submitted to the electors at two different times. The default provision is that a proposed amendment is submitted to the electors at the next general election more than 90 days after the proposed amendment is filed.² However, the Legislature can move up the date of submission to the electors of a single amendment by enacting a law providing for submission at an earlier special election more than 90 days after the proposed amendment is filed.³

Effective Date of Amendment

An amendment approved by the electors may take effect at two different times. The default provision is that an approved amendment is effective on the first Tuesday after the first Monday in January following the election.⁴ An amendment also may be effective on another date specified in the amendment.⁵

Under s. 101.161(1), F.S., unlike ballot statements for amendments proposed by citizen initiative, the ballot statement for an amendment proposed in a joint resolution may exceed 75 words.

Basic Rights

Article I, s. 2 of the Florida Constitution, which sets forth Florida's constitutional guaranty of property rights, provides:

Basic Rights.--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.

(Emphasis added.)

This constitutional provision has its genesis in the Florida Constitution of 1868, which provided that “[f]oreigners who are or who may hereafter become bona fide residents of the State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens.”

¹ The actual language in the Constitution provides that a proposed amendment or revision must be approved by “vote of the electors,” defined as “... the majority of those voting on the matter in the election, general or special” Art. XI, s. 5(d); Art. X, s. 12(d), FLA CONST.

² Art XI, s. 5(a), FLA CONST.

³ *Id.*

⁴ Art XI, s. 5(d), FLA CONST.

⁵ *Id.*

This provision was transferred to the Florida Constitution of 1885 and amended by the voters in 1926 to provide that “[f]oreigners who are eligible to become citizens of the United States under the provisions of the laws and treaties of the United States shall have the same rights as to the ownership, inheritance and disposition of property in the State as citizens of the State, but the Legislature shall have power to limit, regulate, and prohibit the ownership, inheritance, disposition, possession and enjoyment of real estate in the State of Florida by foreigners who are not eligible to become citizens of the United States under the provisions of the laws and treaties of the United States.”

The current provision pertaining to the Legislature’s ability to regulate or prohibit an alien’s right to own, inherit, dispose, and possess real property has been in the Florida Constitution since 1968.⁶ There is no Florida case law construing this provision. Additionally, there are only two Florida Statutes currently in existence that pertain to an alien’s real property rights. Section 198.04, F. S., provides for a tax to be imposed upon the real property of an alien that is located in this state upon the death of the alien. Section 732.1101, F.S., simply provides that aliens shall have the same rights of inheritance as citizens.

Under Florida’s constitutional provision, property ownership by “aliens ineligible for citizenship” may be limited, regulated or prohibited. When this provision was added to the Constitution, the phrase “alien ineligible for citizenship” referred primarily to Asians, because at the time federal law limited naturalization to “white persons and persons of African nativity or descent.”⁷ In 1923, the United States Supreme Court determined: “Generally speaking, the natives of European countries are eligible [for citizenship]. Japanese, Chinese and Malays are not.”⁸

Alien Land Laws in Other States

Florida is one of only two states that currently provide for the regulation of property ownership by aliens ineligible for citizenship. During the general election on November 5, 2002, New Mexico voters rejected a constitutional amendment repealing a section which mandates that unless otherwise provided by law, aliens who are not eligible to become citizens, and corporations majority-owned by such aliens, are prohibited from acquiring any interest in real property in New Mexico.

Supreme Courts in California, Oregon, and Montana have ruled that their states’ Alien Land Laws were unconstitutional. *Sei Fujii v. State*, 242 P. 2d 617 (Cal.1952); *Namba v. McCourt*, 204 P. 2d 569 (Or. 1949); *Oakland v. State*, 287 P. 2d 39 (Mont. 1955). In *Sei Fujii v. State*, the California Supreme Court stated, “By its terms the land law classifies persons on the basis of eligibility to citizenship, but in fact it classifies on the basis of race or nationality. This is a necessary consequence of the use of the express racial qualifications found in the federal code.”

⁶ The Florida Constitution does not define the term “alien.” Only one Florida Statute, s. 327.02(1), defines the term “alien” by providing that an alien is “a person who is not a citizen of the United States.” The Federal Code defines an alien as any person not a citizen or national of the United States. *See* 8 U.S.C.A. s. 1101(a)(3).

⁷ *Terrace v. Thompson*, 263 U.S. 197, 220 (1923).

⁸ *Id.*

Immigration Law

The Immigration and Nationality Act⁹ contains provisions that relate to the immigration, temporary admission, naturalization, and removal of aliens. Generally, aliens ineligible to naturalize, that is, to become naturalized U.S. citizens, include but are not limited to, persons who:

- Are not yet 18 years of age (with some exceptions).
- Have not been lawfully admitted for *permanent residence*. Permanent residence means having been legally accorded the privilege of residing permanently in the United States in accordance with the immigration laws.
- Have not resided continuously as a lawful permanent resident in the United States for at least five years prior to the filing of an application for naturalization (some brief departures from the United States do not disrupt continuity).
- Cannot demonstrate that he or she has been a person of good moral character for five years prior to the filing of the application for naturalization. A person cannot be found to be a person of good moral character if, during the last five years, he or she has committed certain crimes or given false information in order to gain immigration benefits.
- Are not able to read, write, speak and understand the English language (there are certain exemptions based on age and medical impairments).
- Cannot demonstrate knowledge and understanding of the fundamentals of the history and principles and form of government of the United States (there are certain exemptions based on age and medical impairments).¹⁰

Generally, *illegal aliens* include non-U.S. citizens present in the United States in violation of the U.S. immigration laws, such as a person who entered the United States without being inspected by an immigration officer, or a non-U.S. citizen who entered legally but overstays or violates his or her immigration status. Examples include, but are not limited to:

- Aliens who enter the United States by crossing the border at a place other than a designated entry point in order to avoid inspection.
- Aliens who enter the United States at an entry point but who lack valid admission documents.
- Aliens who enter the United States legally as visitors or students but who stay beyond the permitted time or do not continue their studies as required.
- Aliens, who enter the United States legally, but commit certain crimes while in the United States.¹¹

III. Effect of Proposed Changes:

This resolution would amend Article I, s. 2 of the Florida Constitution to delete the provision that currently allows the Legislature to prohibit or regulate the right of an alien ineligible for

⁹ Laws relating to naturalization are provided at Immigration and Nationality Act (INA), s. 301 et seq; laws relating to removal of illegal aliens are generally found at INA s. 212 and s. 237.

¹⁰ Information provided by Andrea Rogers, Assistant District Counsel, Office of the District Counsel, Department of Homeland Security, Miami, Florida, on March 26, 2003.

¹¹ *Id.*

citizenship to own, inherit, dispose, and possess real property. This would allow all aliens to enjoy property rights similar to those currently afforded to citizens of the state.

This resolution provides no effective date for the constitutional amendment. In accordance with s. 5 of Article XI of the Florida Constitution, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate.

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 publication cost per amendment is estimated to be approximately \$37,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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