

The Florida Senate
PROFESSIONAL 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 166

INTRODUCER: Senator Geller

SUBJECT: Property Rights/Ineligible Aliens

DATE: March 7, 2007

REVISED: _____

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

I. Summary:

Senate Joint Resolution 166 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 I, Section 2 of the Florida Constitution.

II. Present Situation:

Alien Land Laws

Beginning in the early 1900s, alien land laws enacted by states restricted the ownership of property by aliens ineligible for citizenship. A California alien land law, for example, prohibited aliens ineligible for citizenship from owning agricultural land. Under federal law at that time, the right to become a naturalized U.S. citizen “extended only to free white persons and persons of African nativity or descent.”¹ Although the alien land law applied to Asians and other racial groups, the alien land laws were motivated mainly by resentment of the Japanese.²

¹ Oyama v. California, 332 U.S. 633, 635 n.3 (1948).

² See *id.* at 650-654 (Black, J., concurring).

The arguments advanced in support of alien land laws at the time they were adopted and challenged were as follows:

First. It is said that the rule established by Congress for determining those classes of aliens who may become citizens furnishes in and of itself a reasonable basis for the discrimination involved in the Alien Land Law.

Second. It is said that eligibility for American citizenship is inherently related to loyal allegiance and desire to work for the success and welfare of the state, which has a vital interest in the farm lands within its borders. Hence it may limit the ownership and use of farms to those who are or who may become citizens.

Third. It has been said that if ineligible aliens could lease or own farms, it is within the realm of possibility that they might acquire every foot of land in California which is fit for agriculture.

Fourth. It is stated that Japanese aliens are so efficient in their farming operations and that their living standard is so low that American farmers cannot compete successfully with them. Their right to own and use farm lands must therefore be denied if economic conflicts are to be avoided.

Fifth. Closely knit with the foregoing are a host of other contentions which make no pretense at concealing racial bigotry and which have been used so successfully by proponents and supporters of the Alien Land Law. These relate to the alleged disloyalty, clannishness, inability to assimilate, racial inferiority and racial undesirability of the Japanese, whether citizens or aliens.³

In the 1920s, the U.S. Supreme Court found that alien land laws were clearly constitutional.⁴ In 1948, the U.S. Supreme Court found alien land laws constitutionally suspect at best.⁵ Over the next decade, the Supreme Courts of California, Oregon, and Montana held that alien land laws were invalid as a form of racial discrimination prohibited by the Fourteenth Amendment.⁶

History of Florida Alien Land Law

The equal protection clause provided in Article I, Section 2, Florida Constitution, generally requires the state to treat everyone equally. However, an exception within the equal protection clause permits the Legislature to regulate or prohibit the ownership of property by aliens ineligible for citizenship. Article I, Section 2, Florida Constitution, states:

³ *Id.* at 663-671 (identifying and refuting the arguments in support of the California alien land law).

⁴ *Webb v. O'Brien*, 263 U.S. 313, 321-322 (1923) (stating that “[i]n the absence of a treaty to the contrary, the state has power to deny to aliens the right to own land within its borders” and that alien land laws do not conflict with the Fourteenth Amendment to the U.S. Constitution); *Frick v. Webb*, 263 U.S. 326, 334 (1923) (stating that a state may “forbid indirect as well as direct ownership and control of agricultural land by ineligible aliens”).

⁵ *See Oyama*, 332 U.S. 633 (invalidating a portion of the California alien land law with four of the nine U.S. Supreme Court justices suggesting that the entire California alien land law should have been invalidated).

⁶ *Namba v. McCourt*, 204 P.2d 569 (Or. 1949); *Fujii v. State*, 242 P.2d 617 (Ca. 1952); *State v. Oakland*, 287 P.2d 39 (Mont. 1955).

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.

The authority for the Legislature to regulate or prohibit property ownership by aliens ineligible for citizenship was amended into to the Florida Constitution of 1885 in 1926.⁷ A newspaper article on the original measure reported:

Senator Calkins stated that the provisions of the measure followed closely those of the California plan. He said that there seemed no necessity for such regulation at present but it was well to provide for it now, in anticipation of future contingencies.⁸

Notwithstanding Senator Calkins concerns of “future contingencies,” the Legislature never has exercised its constitutional authority to regulate or prohibit property ownership by aliens ineligible for citizenship.⁹

U.S. Naturalization Law

Racial Barriers to Naturalization

In the early 1900s, the right to become a naturalized U.S. citizen “extended only to free white persons and persons of African nativity or descent.”¹⁰ Gradually, Congress permitted all racial groups to become naturalized U.S. citizens. “In 1940, descendants of races indigenous to the Western Hemisphere were . . . made eligible . . .; in 1943 Chinese were made eligible . . .; and in 1946, Filipinos and persons of races indigenous to India were made eligible . . .”¹¹ In 1952, Congress eliminated race as a bar to naturalization.¹² Today, federal law provides that “[t]he

⁷ The Declaration of Rights, Section 18, of the Constitution of 1885, as amended in 1926, stated:

Equal rights for aliens and citizens.—Foreigners 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.

⁸ *Joint Committee Drafts New Appropriation Measure*, ST. PETE. TIMES, June 4, 1925, at Section 2.

⁹ Staff of the Committee on Judiciary reviewed Florida statutes adopted since 1847 and was unable to locate any statute regulating or prohibiting the ownership of property by aliens ineligible for citizenship.

¹⁰ *Oyama*, 332 U.S. at 635 n.3.

¹¹ *Id.*

¹² U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *Legislation from 1941-1960*, 5, <http://www.uscis.gov/portal/site/uscis> (follow “Education & Resources” hyperlink; then follow “Immigration Legal History” hyperlink) (last visited Mar. 1, 2007).

right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race.”¹³

Current Aliens Ineligible for Citizenship

Under current U.S. immigration law, aliens ineligible for citizenship include aliens who:

- Have a communicable disease of public health significance;
- Have failed to present documentation of certain vaccinations;
- Have a physical or mental disorder that may pose a threat to the property, safety, or welfare of the alien or others;
- Abuse drugs;
- Have been convicted of a crime of moral turpitude;
- Have a conviction relating to controlled substances;
- Are believed to have been involved in the trafficking of a controlled substance or certain chemicals;
- Have engaged in prostitution or intend to engage in prostitution in the United States;
- Intend to engage in an unlawful commercialized vice in the United States;
- Have committed a serious criminal offense in the United States, but exercised immunity from prosecution;
- Have, as a foreign government official, been involved with certain severe violations of religious freedom;
- Have been involved with the trafficking of persons;
- Have been involved with money laundering;
- Intend to engage in espionage, or sabotage, or export certain prohibited technology or information or engage in other unlawful activity;
- Intend to act in opposition to, or for the purpose of controlling or overthrowing, the Government of the United States by force, violence, or other unlawful means;
- Have engaged or intend to engage in terrorist activity;
- Have been involved with terrorist activity;
- Have been a member of a totalitarian party or the Communist party;
- Have participated in Nazi persecutions or genocide;
- Have unlawfully entered the United States or failed to attend a removal hearing or sought admission into the United States through fraud; or
- Have falsely claimed to be a U.S. citizen.¹⁴

III. Effect of Proposed Changes:

Senate Joint Resolution 166 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 joint resolution provides no effective date for the constitutional amendment. In accordance with Article XI, Section 5 of the Florida Constitution, it would take effect on the first Tuesday

¹³ 8 U.S.C. s. 1422.

¹⁴ Section 212(a), Immigration and Nationality Act, 8 U.S.C. s. 1182.

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.

D. Other Constitutional Issues

In order for the Legislature to submit SJR 166 to the voters for approval, the joint resolution must be agreed to by three-fifths of the membership of each house.¹⁵ If SJR 166 is agreed to by the Legislature, it will be submitted to the voters at the next general election held more than 90 days after the amendment is filed with the Department of State.¹⁶ As such, SJR 166 would be submitted to the voters at the 2008 General Election. In order for SJR 166 to take effect, it must be approved by at least 60 percent of the voters voting on the measure.¹⁷

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 by the Department of State to be \$60,000.

¹⁵ See FLA. CONST. art. XI, s. 1.

¹⁶ See FLA. CONST. art. XI, s. 5(a).

¹⁷ See FLA. CONST. art XI, s. 5(e).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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