

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: CS/SJR 2396

SPONSOR: Judiciary Committee, Senators Atwater and Smith

SUBJECT: Constitutional Amendments and Revisions; Initiatives Petition Subjects; Judicial Review

DATE: March 16, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Joint Resolution 2396 limits the scope of constitutional amendments and revisions that can be placed on the ballot by citizen initiative to include only those proposed measures that:

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

as determined by the Florida Supreme Court.

This joint resolution embodies a recommendation of the Senate Select Committee on Constitutional Amendment Reform.

This joint resolution substantially amends Article XI, section 3 of the Florida Constitution.

II. Present Situation:

Ballot Initiatives

To place a citizen’s initiative on the ballot, the first step requires registration as a political committee, pursuant to s. 106.03, F.S. A format of the petition is then required to be submitted to the Division of Elections of the Department of State for approval of the format, to include the ballot title. The particular format, specified text, and word limit required is delineated in statute, under s. 101.161, F.S. The Department of State assigns a designating number to each proposed

constitutional amendment, and provides this, along with the ballot title and the substance of each amendment, to the supervisor of elections of each county in which the vote will occur.¹

The total number of petition signatures required is based on a formula, which is:

...a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.²

The supervisors of elections are required to verify the petition signatures submitted, and are authorized to charge \$.10 per signature as a fee for this service.³

The deadline set out in statute for a measure to be placed on a general election ballot requires the constitutionally mandated number of geographically diverse, certified signatures supporting placing the measure on the ballot to be received by the Secretary of State at least 91 days before a general election.⁴

The Secretary of State immediately submits an initiative petition to the Attorney General once the Division of Elections within the Department of State provides a letter confirming that the committee has received verification from the supervisors of elections of 10 percent of the required eight percent electors statewide, and at least one-fourth of the congressional districts constitutionally required.⁵ This provision triggers the Attorney General's and the Supreme Court's participation even before signatures are gathered in their entirety.

Judicial Review of Ballot Initiatives

Section 10 of Article IV of the State Constitution requires the Attorney General to request an advisory opinion of the Florida Supreme Court regarding the validity of any initiative petition submitted by the Division of Elections. Section 16.061, F.S. requires the Attorney General to request this opinion within 30 days of receiving the initiative petition. Although the Court is not required to hold a hearing within a specified time, the Court is constitutionally required to render their written opinion expeditiously.⁶

The language contained in the initiative is constitutionally required to relate to a single subject.⁷ Regarding the standard of review for amendments that are proposed by the Legislature, the Supreme Court has typically applied a presumption of validity to these amendments.⁸ Citizen

¹ s. 101.161(2), F.S.

² s. 3, art. XI, *Fla. Const.*

³ s. 99.097(4), F.S.

⁴ s. 100.371(1), F.S.

⁵ s. 15.21, F.S.; s. 3 of Article XI of the State Constitution requires signatures from 12 of the 23 Congressional Districts. Based on the 2000 numbers, eight percent of the electors in the last Presidential election is 488,722; 10 percent multiplied by eight percent equals 48,872 required signatures. These signatures must come from electors in one-fourth of the 12 districts as required by s. 3 of Article XI, State Constitution, so that 48,872 signatures from at least three congressional districts triggers the forwarding requirement from the Secretary of State to the Attorney General.

⁶ s. 10, art. IV, *Fla. Const.*

⁷ s. 3, art. XI, *Fla. Const.*

initiatives were originally granted a wide berth in terms of what was permissible under the single subject standard, and generally treated the same as the legislative one-subject restriction.⁹ The Court significantly retreated from this position in *Fine v. Firestone*,¹⁰ in its holding that if an initiative substantially impacts more than one function, branch, or level of government, it is most likely multi-subject. This test continues to be applied exclusively to citizen initiatives, on the theory that constitutional amendments brought in this manner do not afford the same opportunity for public hearing and debate that other methods provide, such as legislative proposals and constitutional revision commission amendments.¹¹

Therefore, the Florida Supreme Court reviews initiatives to determine (1) whether the petition satisfies the single-subject requirement of the Florida Constitution; and also (2) whether the ballot title and summary are printed in clear and unambiguous language as required by statute.¹² There is no limitation or judicial review as to the *subject matter* of a proposed amendment or revision by citizen initiative. However, the inclusion of the citizen initiative commonly known as the “pregnant pig” amendment has generated discussion on this point by Supreme Court justices:

The technical requirements...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 Revision Commission will have the opportunity to establish some criteria regarding the 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.¹³

III. Effect of Proposed Changes:

Senate Joint Resolution 2396 limits the scope of citizen initiatives to include only those proposed amendments or revisions that:

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

The Florida Supreme Court decides whether a proposed citizen initiative meets one of these criteria in conjunction with its *single subject* determination.

⁸ Thomas R. Rutherford, *The People Drunk or the People Sober? Direct Democracy Meets the Supreme Court of Florida*, St. Thomas Law Review, page 75 (Fall 2002).

⁹ See *Floridians Against Casino Takeover v. Let’s Help Florida*, 363 So.2d 337 (Fla. 1978).

¹⁰ 448 So.2d 984 (Fla. 1984); See also *Evans v. Firestone*, 457 So.2d 1351 (Fla. 1984).

¹¹ Advisory Opinion to the Attorney General Re Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy, 815 So.2d 597 (Fla. 2002).

¹² Advisory Opinion to the Atty. Gen. re: Voluntary Universal Pre-Kindergarten Educ., 824 So.2d 161 (2002).

¹³ Pariente, J., in concurrence with Anstead and Lewis, JJ., Advisory Opinion to the Attorney General Re Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy, 815 So.2d 597 (Fla. 2002).

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 \$35,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This joint resolution is linked to SB 2402, authorizing that the measure be submitted to the voters for approval or rejection at a special election to be held in conjunction with the August 31, 2004 primary election.

VIII. Amendments:

None.