1998 Approved Amendments to the Constitution of the State of Florida

By

John F. Asmar

For

Senior Justice Ben F. Overton's Florida Constitutional Law Seminar

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The commentary and analysis provided within this document were primarily taken from the following sources:

1) Florida Statutes Annotated (2004)
2) The State of Florida's publications and archives located via that web at www.myflorida.com
3) Reference material obtain from Senior Justice Ben F. Overton

The author does not represent to the reader that this document is wholly an original work. Rather the author edited excerpts taken from the noted sources in order to meet the Digest's objective.

Article I, Section 2

I. Sponsor: Constitution Revision Commission

II. Summary of the Amendment

This amendment defined “natural persons” who are equal before the law and who have inalienable rights, as “ female and male alike”; provided that no person shall be deprived of any right because of national origin; changed “physical handicap” to “physical disability”.

4) Analysis

Three changes were made to Article I, section 2 by 1998 Revision 9. The term "female and male alike" was added after and modifies the term "natural persons;" "national origin" was added to the listing of protected classes; and the term "physical handicap" was changed to "physical disability."

In adding the term "female and male alike," the Commission's intent was to secure equality for women in the Constitution. Florida had failed to pass the Equal Rights Amendment proposed for the United States Constitution, as well as the so-called "little equal rights proposal" offered by the 1977-1978 Constitution Revision Commission.

As initially filed, the proposal would have added the term "sex" to the listing of protected classes. Questions arose as to whether that proposal could lead Florida courts to require recognition of same-sex marriages. An opinion of the Supreme Court of Hawaii, Baehr v. Lewin, 852 p. 2d 44 (Haw. 1993), had interpreted Hawaii's constitutional prohibition against discrimination "because of sex" to require strict scrutiny of Hawaii's marriage statute limiting marriages to heterosexual unions. On remand, the trial court struck the statute. Baehr v. Miike, 1996 WL 694235 (Hawai’I Cir. Ct.).

To address these concerns, the following statement of intent was placed into the Journal of the Constitution Revision Commission:

The intent of ... [this proposal], as adopted, was to affirm explicitly that all natural persons, female and male alike, are equal before the law. The proposal as adopted was not intended, to confer any right to same-sex marriages in this state. Many in the body were concerned that the proposal as it was originally proposed, if adopted by the people, would have opened the door to same-sex marriages in Florida. That was not an acceptable result to many members of the Commission. Consequently, the purpose of amending the original proposal and adopting it in its amended form was to assure that the proposal would not be deemed in any way to countenance same-sex marriages. The addition of "national origin" to the listing of protected classes will require strict scrutiny of classifications based upon the place of a person's birth, ancestry or ethnicity.

The amendment was not intended to protect illegal immigrants from federal immigration laws.

The change in terminology from "physical handicap" to "physical disability" was not intended to make a substantive change, but was simply recognition that many disabled persons regard the term "handicap" as derogatory.

5) Approval

The voters approved the proposed amendment during the November 3, 1998, general election.

6) Case Law

No case law has been reported regarding this amendment.

III. Legislation

A. Implementing Legislation

This amendment was self – executing.

B. 2004 Proposed Legislation

Currently, several bills have been filed during the 2004 Florida Legislative Session referencing Section 2, of Article I of the State Constitution.

Senate Joint Resolution 46

A joint resolution proposing an amendment to Section 2 of Article I of the State Constitution, relating to basic rights.

ARTICLE I, DECLARATION OF RIGHTS

SECTION 2. 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.

Senate Joint Resolution 566

A joint resolution proposing an amendment to Section 2 of Article I of the State Constitution, relating to basic rights.

ARTICLE I, DECLARATION OF RIGHTS

SECTION 2. 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.

Note: Citizen initiative proposed by RIGHTS OF NONCITIZENS TO OWN REAL PROPERTY. This group proposes an amendment to Section 2 of Article I of the State Constitution to eliminate the authority of the state to regulate or prohibit the ownership, inheritance, disposition, and possession of real property by aliens ineligible for citizenship.

Article I, Section 17

Sponsor: Florida Legislature, 1998 House Joint Resolution 3505

7) Summary of the Amendment

Excessive fines, cruel and or unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden. The death penalty is an authorized punishment for capital crimes designated by the legislature. The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution. Any method of execution shall be allowed, unless prohibited by the United States Constitution. Methods of execution may be designated by the legislature, and a change in any method of execution may be applied retroactively. A sentence of death shall not be reduced on the basis that a method of execution is invalid. In any case in which an execution method is declared invalid, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method. This section shall apply retroactively.

IV. Analysis

This amendment engrossed the death penalty into the Florida Constitution for the first time. It authorizes the death penalty as a punishment for crimes designated as capital crimes by the Legislature.

The prohibition against cruel or unusual punishment is changed to a prohibition against cruel and unusual punishment. This change conforms the prohibition with the parallel statement in the federal constitution. It also raises the bar on the part of a defendant by requiring proof of prohibitions rather than one or the other. Decisions construing the prohibition against cruel or unusual punishment must be made in conformity with decisions of the United States Supreme Court on the parallel language. Thus, the amendment adds a second instance wherein the citizens have directed our courts to construe state constitutional provisions in accord with the United States Supreme Court based upon parallel federal statements. See, Article I, § 12.

The amendment also allows the Legislature to provide for any method of execution not prohibited by the United States Constitution. Changes in the method of execution may be applied retroactively. Should the method of execution be held invalid, sentences of death will remain in force until a valid method of execution is enacted.

This amendment was proposed in the wake of challenges to the use of electrocution as the method of execution in Florida. After Florida's electric chair malfunctioned for a second time, causing burns to the condemned, a claim was made that this method of execution constitutes cruel or unusual punishment. Jones v. State, 701 So. 2d 76 (Fla. 1997). The Jones sentence was upheld in a 4-3 decision. The Legislature wished to ensure that should electrocution be held unconstitutional sometime in the future, death

sentences would not be commuted to life sentences, as happened in 1972. See, e.g., Furman v. Georgia, 408 U.S. 238 (1972); Anderson v. State, 267 So. 2d 8 (Fla. 1972).

Approval

The amendment was first proposed in 1998. The voters approved the 1998 proposed amendment during the November 3, 1998 general election. However, despite voter approval, the Florida Supreme Court found the amendment unconstitutional because the ballot title and summary did not meet the accuracy requirement. Armstrong v. Harris. 773 So. 2d 7 (2000). The amendment was re-introduced in 2002 and was again passed by Florida voters on November 5, 2002.

Case Law

Prior to the approval of the amendment by the electorate, the proposal received judicial review.

Sancho v. Smith, App. 1 Dist., 830 So. 2d 856 (2002), review denied 828 So. 2d 389.
Ballot summary for proposed amendment to State Constitution's prohibition against cruel or unusual punishment accurately described proposed amendment, and thus summary for proposed amendment gave fair notice of purpose and effect of proposed amendment, where summary specifically pointed out to voters that proposed amendment reduced the rights of State's citizens to minimum rights afforded under Eighth Amendment of the Federal Constitution, summary no longer introduced proposed amendment as measure to preserve only death penalty, summary made it clear that the proposed change would apply to any punishment alleged to be excessive, and summary included a copy of the full text of the amendment showing exactly how provision would be changed should amendment be approved.

Since the Amendment's approval, the following decisions have been noted:

Morrow v. State, App 5 Dist., 856 So. 2d 1043 (2003).
A criminal sentence may qualify as a cruel and unusual punishment if it, among other things, involves the unnecessary and wanton infliction of pain, or otherwise shocks the conscience and sense of justice of the people, based on "evolving standards of decency.
Morrow v. State, App 5 Dist., 856 So. 2d 1043 (2003).
Neither the federal or state constitutional provisions prohibiting cruel or unusual punishment requires strict proportionality between crime and sentence; instead, they prohibit only extreme sentences that are grossly disproportionate to the crime.

Conahan v. State, 844 So. 2d 629 (2003).
Supreme Court performs proportionality review of a death sentence to prevent the imposition of "unusual" punishments contrary to the state constitution. "Proportionality review" of a death sentence is not a comparison between the number of aggravating and mitigating circumstances. In deciding whether death is a proportionate penalty, the Supreme Court must consider the totality of the circumstances of the case and compare the case with other capital cases.

Legislation

Implementing Legislation

This Amendment was self-executing.

2004 Proposed Legislation

Currently, there are no bills filed during the 2004 Florida Legislative Session referencing this amendment.

Article I, Section 24

V. **Sponsor:** Florida Legislature

8) Summary of the Amendment

Proposed amendment required that laws providing exemptions from public records or public meetings requirements must, after the effective date of the amendment, be passed by a two-thirds vote of each house of the Florida Legislature.

9) Analysis

Prior to the approval of the amendment the Florida Legislature could enact exemptions to the public's right of access by a majority of vote if the Legislature could show that a public necessity existed sufficiently to justify an exemption.

Florida's public records and open meetings laws have been a matter of statute since 1967. (Earlier requirements for public records had existed for some time.) Those statutes were not designed to apply to the legislative or judicial branches of state government, but were expressly intended to apply throughout the executive branch and to local governments, including counties, municipalities, and districts. The Supreme Court, the Senate and the House of Representatives each provided some form of access to records and proceedings by rule. In 1978, the Constitution Revision Commission proposed elevating these laws to constitutional status and applying them to records and meetings of the Legislature. That proposal was not adopted.

In Locke v. Hawkes, 595 So. 2d 32 (Fla. 1992), the Florida Supreme Court determined that, based on separation of powers requirements, the public records law did not apply to the legislative branch, nor to constitutional officers of the other branches. The decision meant that records of legislators, as well as those of the governor and cabinet officers, at least with respect to the exercise of their constitutional powers, were not subject to the law. The decision caused a stir among the public and particularly the press. Efforts were quickly begun for constitutional change, which concluded with the successful passage of an amendment.

The earlier amendment makes clear that all branches of state government and all local governments, and all officers, agencies, boards, and employees, are made subject to the open meetings and public records requirements of Article I, Section 24. Subsection (a) ensures the right of public access to any public record not exempted in the manner set out in the amendment, made or received in connection with the official business of any public body, officer or employee of the state, or persons acting on their behalf. Subsection (b) requires that all meetings of any collegial public body of the executive branch or collegial bodies of local governments, at which official acts are to be taken or at which business of the entity is to be transacted or discussed, must be open and noticed to the public.

On the contrary, legislative meetings are open and noticed as provided in Article III, Section 4(e), which operates quite differently. As to the executive branch and local government collegial bodies, any gathering of two or more members to discuss a matter that may foreseeably come before that body, is considered a public meeting and must be noticed and open. Hough v. Stembridge, 278 So. 2d 288 (Fla. 3d DCA 1973).

On the other hand, Article III, Section 4(e) requires that only legislative committees, subcommittees, and conference committees must be open and noticed. Prearranged meetings between more than two members of the Legislature (or between the governor, the president of the senate or the speaker of the house), "the purpose of which is to agree upon formal legislative action" must be reasonably open to the public. Notice is not required.

Subsection (c) grants the Legislature the power to enact general laws governing the enforcement of this section and to enact exemptions to the requirements for public access. Any law creating an exemption: (1) must state with specificity the public necessity justifying the exemption; (2) may be no broader than necessary to accomplish the stated purpose of the exemption; and (3) may contain no other subject except exemptions and provisions governing the enforcement of this section and must relate to a single subject.

Laws governing the enforcement of this section include those relating to maintenance, control, destruction, disposal and disposition of public records. The Legislature is authorized to enforce the section as it applies to the Legislature, through adoption of its own rules. This is an important distinction, as the courts will not become involved in interpreting and enforcing the internal activities of the Legislature. See e.g., Moffit v. Willis, 459 So. 2d 1018 (Fla. 1984).

Subsection (d) represents a savings clause so that all exemptions to the public records and open meetings laws in force on July 1, 1993, the effective date of the earlier amendment, remain in effect until they are repealed. Likewise, court rules in effect on that date remain in effect until repealed.

10) Approval

The voters did approve the proposed amendment during the November 5, 2002, general election.

11) Case Law

No case law has been reported regarding this amendment.

12) Legislation

a. Implementing

This Amendment was self-executing.

b. 2004 Proposed Legislation

Currently, there are no bills filed during the 2004 Florida Legislative Session referencing this amendment.

Article II, Section 8(h)(1); Art. III, ss. 8(b), 16(b) and (f), 19(f)(3); Art. IV, ss 3(b), 4, 7(a), and 8(a); Art. VIII, s. 1(I); Art. IX, s. 2; Art. XI, ss. 2(c), 3,4,5(a), and 6(e); Art. XII, ss. 9(c)(5) and 22.

VI. Sponsor: Constitution Revision Commission

VII. Summary of the Amendment

Merged cabinet offices of the treasurer and comptroller into one chief financial officer; reduced cabinet membership to chief financial officer, attorney general, agriculture commissioner; secretary of state and the education commissioner were eliminated from the elected cabinet; secretary of state duties defined by law; changed composition of the state board of education from governor and cabinet to board appointed by the governor; authorized the board to appoint education commissioner; defined state board of administration, trustees of internal improvement trust fund, land acquisition trust fund.

13) Analysis

This amendment was designed to streamline Florida's government and to allow the Governor more authority to implement executive programs. The 1998 revisions reduced the number of cabinet officers from six to three-- attorney general, chief financial officer and commissioner of agriculture. The
constitutional powers and duties of the comptroller and treasurer were combined to create the office of chief financial officer.

The education commissioner becomes an officer appointed by the reconstructed state board of education. See, Article IX, section 2 of the State Constitution. It was left to legislative determination how the office of secretary of state would be created and filled. To clarify that the secretary of state was no longer to be a constitutional officer, the term was changed throughout the constitution to "custodian of state records." Since the governor and cabinet together make an even number of four, provision was made that in the case of a tie vote, the side on which the governor votes would prevail.

Without going so far as to prohibit the practice, the amendment was intended to discourage the use of the cabinet form of governance except in a few specified areas in which the Constitution Revision Commission believed the public particularly desired collegial policy-making. These included administration of a state law enforcement agency, title to state lands, some environmental issues, and investment of the state retirement fund.

For this reason, four existing ex officio boards were engrossed into the constitution as boards to be headed by the governor and cabinet or some cabinet members. The trustees of the internal improvement trust fund, the land acquisition trust fund, and the department of law enforcement are headed by the governor and cabinet. The state board of administration is comprised of the governor, the chief financial officer, and the

attorney general--a change necessitated by the merging of the fiscal officers, since the state board of administration was previously comprised of the governor, comptroller and treasurer.

The changes made by Revision 8 represent one of the most significant changes in the structure of the executive branch since the groundwork was laid for Florida's unique cabinet system in the 1885 Constitution. The Commission focused on strengthening the governor's powers in order to enhance efficiency and accountability and to give the governor a greater degree of the authority that the public believes the office carries.

14) Approval

The voters approved the proposed amendment during the November 3, 1998, general election.

15) Case Law

No case law has reported regarding this amendment.

VIII. Legislation

A. Implementing Legislation

Since the adoption of this amendment, the Florida Legislature has enacted several Laws pertaining to the implementation of this initiative. They are as follows:

F. S. § 20.10. Department of State

There is created a Department of State.

(1) The head of the Department of State is the Secretary of State. The Secretary of State shall be appointed by the Governor, subject to confirmation by the Senate, and shall serve at the pleasure of the Governor. The Secretary of State shall perform the functions conferred by the State Constitution upon the custodian of state records.

(2) The following divisions of the Department of State are established:

(a) Division of Elections.
(b) Division of Historical Resources.
(c) Division of Corporations.
(d) Division of Library and Information Services.
(e) Division of Licensing.
(f) Division of Cultural Affairs.
(g) Division of Administration.

F. S. § 20.15. Department of Education

There is created a Department of Education.

(1) State board of education.--In accordance with section 2, IX of the State Constitution, the State Board of Education is a body corporate and must supervise the system of free public education as is provided by law. The State Board of Education is the head of the Department of Education.

(2) Commissioner of education.--The Commissioner of Education is appointed by the State Board of Education and serves as the Executive Director of the Department of Education.

(3) Divisions.--The following divisions of the Department of Education are established:

(a) Division of Community Colleges.
(b) Division of Public Schools.
(c) Division of Colleges and Universities.
(d) Division of Vocational Rehabilitation.
(e) Division of Blind Services.

(4) Directors.-- The directors of all divisions shall be appointed by the commissioner subject to approval by the state board.

(5) Powers and duties.--The State Board of Education and the Commissioner of Education shall assign to the divisions such powers, duties, responsibilities, and functions as are necessary to ensure the greatest possible coordination, efficiency, and effectiveness of education for students in K-20 education.

(6) Councils and committees.--Notwithstanding anything contained in law to the contrary, the commissioner shall appoint all members of all councils and committees of the Department of Education, except the Commission for Independent Education and the Education Practices Commission.

(7) Boards.--Notwithstanding anything contained in law to the contrary, all members of the university and community college boards of trustees must be appointed according to chapter 1001.

F. S. §17.001. Chief Financial Officer

As provided in section 4(c), Article. IV of the State Constitution, the Chief Financial Officer is the chief fiscal officer of the state and is responsible for settling and approving accounts against the state and keeping all state funds and securities.

B. 2004 Proposed Legislation

Currently, no bills have been filed during the 2004 Florida Legislative Session referencing the 1998 amendment.

Article IV, Section 5(a); Art. VI, ss. 1,2,5,7; Art. IX, s. 4(a)

IX. Sponsor: Constitution Revision Commission

X. Summary of the Amendment

This amendment provided that ballot access requirements for independent and minor party candidates could not be greater than the requirements for the majority party candidates; allowed all voters, regardless of party, to vote in any party's primary election, in the event that a winner will not have general election opposition; provided public financing of campaigns for statewide candidates who agree to campaign spending limits; permitted candidates for governor to rum in primary elections without a lieutenant governor; made school board elections non-partisan; correct voting age.

16) Analysis

Article IV, Section 5(a)

Subsection (a). Revision 11 adds the language: "In primary elections, candidates for the office of governor may choose to run without a lieutenant governor candidate" and deletes language that had required a joint ticket in party primaries as well as in the general election. The Commission intended that the gubernatorial candidate would have the choice of whether the lieutenant governor running mate will file for qualification for ballot position during the regular qualifying period or at a later time after the primary but before the general election. This change was intended to give candidates for governor more flexibility in choosing a running mate, including the ability to select a primary election opponent.

Article VI, ss. 1,2,5,7

Section 1 - Prior to the 1998 revision, the regulation of elections was left almost exclusively to general law. Revision 11 restrains the legislature from placing greater requirements on candidates to have their names placed on the ballot based upon their status as independent or minor party candidates. The last clause of the section was added as follows: "; however, the requirements for a candidate with no party affiliation or for a candidate of a minor party for placement of the candidate's name on the ballot shall be no greater than the requirements for a candidate of the party having the largest number of registered voters."

This ballot access revision was brought forward through a tremendous level of public input and upon the recognition that Florida had the most restrictive ballot access laws in the nation. At the time of its passage, a candidate from the Republican or Democratic Party could either pay a filing fee or obtain petition signatures equal in number to three percent of those voting in the last general election who were registered in the candidate's party. In contrast, an independent candidate or a candidate of a minor party was required to pay the filing fee (or file an oath of undue burden) and obtain petition signatures equal to three percent of all those voting in the last general election.

Section 2 - Revision 11 made two changes to this section--changing the voting age from twenty-one to eighteen and deleting the residence requirement for voting of one year in the state and six months in a county. Both changes are in the nature of technical amendments that conform Florida's constitutional requirements to the United States Constitution and federal case law.

The 26th Amendment to the United States Constitution, ratified on July 1, 1971, provides that citizens of the United States who are eighteen or older shall not be denied the right to vote on account of age. In Dunn v. Blumstein, 405 U. S. 330 (1972), the United States Supreme Court held that durational residency requirements for the purpose of being able to vote are unconstitutional.

Section 5 - In 1998, subsection (b) was added to allow all registered electors to vote in a primary election where all of the candidates for the office have the same party affiliation and where the winner will not be opposed in the general election. The amendment was proposed by the Constitution Revision Commission in an effort to address the low numbers of Florida voters who participate in elections. The Commission found that, prior to the amendment, in counties where a large majority of registered voters is registered with one political party, an election was often won at the primary level. Members of the minority party, as
well as members of minor parties and those with no party affiliation, would not have the opportunity to participate in the electoral process.

Section 7 - Section 7 was added in 1998 to ensure that campaign spending limits and public funding of campaigns for elective statewide offices were retained.
The Florida Elections Campaign Financing Act, adopted in 1986, established a procedure for partial public funding of campaigns for statewide office (governor/lieutenant governor and cabinet officers) for candidates who voluntarily limit campaign expenditures. Sections 10630-106.36. Fla. Stat.

At the time the Constitution Revision Commission was meeting, a number of legal challenges had been made to the Florida Elections Campaign Financing Act and strong sentiments existed in some quarters to repeal the statute. Mortham v. Milligan, et al., 704 So. 2d 152 (Fla. 1st DCA 1997); Chiles v. Dept. of State, Division of Elections, 711 So. 2d 151 (Fla. 1st DCA 1998).

Initial proposals before the Constitution Revision Commission would have proposed increased extending spending limits and extended public funding to elections for legislators. As finally proposed, the Commission's recommendation simply maintained the status quo by requiring the retention of the existing campaign financing act or a similar general law that provides public funds to those statewide candidates who limit their campaign expenditures.

Article IX, Section 4(a)

Revision 11 amended section 4(a) to provide that all school board elections shall be non-partisan. As a result of this amendment, school board members will join judicial candidates (Article V, section 13) as Florida's only other non-partisan candidates for state office.

Prior to the adoption of revision 11, section 230.08, Florida Statutes, required partisan school board elections. In addition, except for charter counties, Article III, section 11(a)(1) of the State Constitution prohibited special laws pertaining to the election of officers. Therefore, only charter counties had the option of conducting nonpartisan elections of their school board members. Kane v. Robbins, 566 So. 2d 1381 (Fla. 1989). (special act of legislature for nonpartisan school board elections was unconstitutional because it violated state constitution which prohibited special laws pertaining to election of officers); County of Volusia et al. v. Quinn, So. 2d 474 (Fla. 5th DCA 1997) (county's home rule charter could constitutionally be amended to provide for nonpartisan election of school board members). School Board of Palm Beach County v. Winchester, 565 So. 2d 1350 (Fla. 1990).

17) Approval

The voters approved the proposed amendment during the November 3, 1998, general election.

18) Case Law

No case law has been reported regarding this amendment.

XI. Legislation

A. Implementing Legislation

This amendment was self – executing.

B. 2004 Proposed Legislation

Currently, several bills have been filed during the 2004 Florida Legislative Session referencing this amendment. They are:

House Bill 389 - ARTICLE VI, SECTION 5. Primary, general, and special elections.

That the amendment to Section 5 of Article VI of the State Constitution set forth below is agreed to and shall be submitted to the electors of Florida for approval or rejection at the general election to be held in November 2004:

(a) A general election shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective state and county officer whose term will expire before the next general election and, except as provided herein, to fill each vacancy in elective office for the unexpired portion of the

term. A general election may be suspended or delayed due to a state of emergency or impending emergency pursuant to general law. Special elections and referenda shall be held as provided by law.

(b) If all candidates for an office have the same party affiliation and the winner will have either no opposition in the general election or opposition only from a write-in candidate, then all qualified electors, regardless of party affiliation, may vote in the primary elections for that office.

Senate Bill 2250 - ARTICLE IX, SECTION 4. School districts; school boards

That the following amendment of Section 4 of Article IX of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

(a) Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.

(b) The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

(c) A person may not serve as a member of a district school board for more than eight consecutive years. If a member of a district school board resigns before completing eight consecutive years of service and subsequently seeks election to the board, the time served before resignation shall be deemed to constitute one four year term of office for the purposes of determining applicability of this subsection. Time served as a member of a school board before the first term to which a person is elected following the election at which this subsection is ratified shall not be counted in determining eight consecutive years of service.

Article IV, Section 9; Article II, Section 7(a); Article VII, Section 11(e)-(f); Article X, Section 18; Article XII, Section 22

Sponsor: Constitution Revision Commission

Summary of the Amendment

The 1998 amendment authorized the consolidation of Florida's efforts regarding the conservation of the state's natural resources. The amendment, in part, stated:

Fish and wildlife conservation commission.--There shall be a fish and wildlife conservation commission, composed of seven members appointed by the governor, subject to confirmation by the senate for staggered terms of five years. The commission shall exercise the regulatory authority and executive powers of the state with respect to wild animal life and fresh water aquatic life, and shall also exercise regulatory and executive powers of the state with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission shall be prescribed by general law. The commission shall establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions. The legislature may enact laws in aid of the commission, not inconsistent with this section, except that there shall be no special law or general law of local application pertaining to hunting or fishing. The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law. Revenue derived from license fees for the taking of wild animal life and fresh water aquatic life shall be appropriated to the commission by the legislature for the purposes of management, protection, and conservation of wild animal life and fresh water aquatic life. Revenue derived from license fees relating to marine life shall be appropriated by the legislature for the purposes of management, protection, and conservation of marine life as provided by law. The commission shall not be a unit of any other state agency and shall have its own staff, which includes management, research, and enforcement. Unless provided by general law, the commission shall have no authority to regulate matters relating to air and water pollution.

19) Analysis

The Fish and Wildlife Conservation Commission was created by merging the Game and Fresh Water Fish Commission with the Marine Fisheries Commission for the purpose of unifying the state's natural resources conservation efforts. The new commission was granted regulatory and executive authority over wild animal life and fresh water aquatic life that had previously been exercised by the Game and Fresh Water Commission. It will also exercise regulatory and executive authority over marine life, which had been administered by the Marine Fisheries Commission and the Governor and Cabinet.

Of the many changes on the 1998 ballot, this proposal was one of the most widely supported by both the Constitution Revision Commission and the public. A citizen initiative on this subject had gained wide popularity and support; however, the petition was blocked from ballot placement by the Florida Supreme Court. Advisory Opinion to the Attorney General Re. Fish and Wildlife Conservation Commission, 705 So. 2d 1351 (Fla. 1998).. The Court held that the ballot summary for the initiative did not adequately state the substance of the amendment. Id.

Wider acceptance of unification of the conservation agencies resulted by the proposal's handling and amendment through the deliberative constitution revision process. Most notably, in response to objections to adding jurisdiction to an agency that is not subject to the Administrative Procedures Act (APA) when exercising constitutional jurisdiction, the Commission added a provision that requires the Fish and Wildlife Conservation Commission to establish procedures to ensure adequate due process in exercising its functions. Further, any functions delegated by the legislature will be subject to the APA. Several conservation programs were not addressed in the proposal but were left for the legislature to determine the administering entity-- namely, the Florida Marine Patrol, certain research facilities, and manatee and marine sea turtle programs. The language that specifically transfers jurisdiction is found in Section 23 of Article XII (Schedule). This schedule also sets out the procedure for merging the two commissions into one 7-member board.

Specifically, the amendment addressed four issues.

First, it allowed the legislature to continue land acquisition programs, such as Preservation 2000, by extending indefinitely the constitutional authorization for the sale of revenue bonds to purchase land.

Second, it created the Fish and Wildlife Conservation Commission as an independent constitutional entity with the combined duties of the Game and Fresh Water Commission and the Marine Fisheries Commission. The objective was to streamline the government by placing the regulation of wildlife under a single entity.

Third, the proposal clarified the general policy statement in Section 7 of Article II, to direct the legislature to make adequate provision for the conservation and protection of natural resources throughout the state.

Fourth, the proposal placed a restriction on the sale or disposal of state conservation lands requiring a minimum of two-thirds vote of the governing board of the state entity holding title to the land and a finding that the land is no longer required for conservation purposes before it can be sold.

XII. Approval

The voters approved the 1998 proposed amendment during the November 3, 1998 general election.

XIII. Case Law

Since the adoption of this amendment, there has been one reported case with respect to the amendment.

Caribbean Conservation Corp., Inc. v. Florida Fish and Wildlife, 838 So. 2d 492, (Fla.,2003)., which held:

A. Statutes requiring Fish and Wildlife Conservation Commission (FWCC) to comply with the requirements of Administrative Procedure Act (APA) with respect to regulation of endangered and threatened marine species did not usurp the constitutional authority of Fish and Wildlife Conservation Commission (FWCC) to regulate marine life, except for statute requiring compliance with APA as to regulation of marine species "of special concern."

B. Constitutional revisions, stating that Fish and Wildlife Conservation Commission (FWCC) shall exercise regulatory and executive powers of the State with respect to marine life, and that jurisdiction of Marine Fisheries Commission shall be transferred to FWCC, did not transfer to FWCC exclusive authority to regulate endangered and threatened marine species; Department of Environmental Protection (DEP) had responsibility for endangered and threatened marine species, including all marine turtles, at time of adoption of constitutional revisions

XIV. Legislation

A. Implementing Legislation

In accordance with the passage of the amendment, the Florida Legislature adopted Chapter 99-245 of Florida Laws. One part of this law is Florida Statute:

F. S. § 20.331. Fish and Wildlife Conservation Commission

(1) The Legislature, recognizing the Fish and Wildlife Conservation Commission as being specifically authorized by the State Constitution under s. 9, Art. IV, grants rights and privileges to the commission, as contemplated by Section 6, Article IV of the State Constitution, equal to those of departments established under this chapter, while preserving its constitutional designation and title as a commission.

(2) The head of the Fish and Wildlife Conservation Commission is the commission appointed by the Governor as provided for in Section 9, Article IV of the State Constitution.

(3) The following administrative units are established within the commission:
(a) Division of Administrative Services.
(b) Division of Law Enforcement.
(c) Division of Freshwater Fisheries.
(d) Division of Marine Fisheries.
(e) Division of Wildlife.
(f) Florida Marine Research Institute.

The bureaus and offices of the Game and Fresh Water Fish Commission existing on February 1, 1999, are established within the Fish and Wildlife Conservation Commission. Effective July 1, 2003, there is created within the commission an Office of Boating and Waterways with duties and responsibilities as provided in subsection (5).

(4)(a) To aid the commission in the implementation of its constitutional and statutory duties, the Legislature authorizes the commission to appoint, fix the salary of, and at its pleasure, remove a person, not a member of the commission, as the executive director. The executive director shall be reimbursed for per diem and travel expenses, as provided in Section 112.061, incurred in the discharge of official duties. The executive director shall maintain headquarters and reside in Tallahassee.

(b) Each new executive director must be confirmed by the Senate during the legislative session immediately following his or her hiring by the commission.

(5) In further exercise of its duties, the Fish and Wildlife Conservation Commission:

(a) Shall assign to the Division of Freshwater Fisheries and the Division of Marine Fisheries such powers, duties, responsibilities, and functions as are necessary to ensure compliance with the laws and rules governing the management, protection, conservation, improvement, and expansion of Florida's freshwater aquatic life and marine life resources.

(b) Shall assign to the Division of Wildlife such powers, duties, responsibilities, and functions as are necessary to ensure compliance with the laws and rules governing the management, protection, conservation, improvement, and expansion of Florida's wildlife resources.

(c) Shall assign to the Division of Law Enforcement such powers, duties, responsibilities, and functions as are necessary to ensure enforcement of the laws and rules governing the management, protection, conservation, improvement, and expansion of Florida's wildlife resources, freshwater aquatic life resources, and marine life resources. In performance of their duties as sworn law enforcement officers for the State of Florida, the division's officers also shall assist in the enforcement of all general environmental laws remaining under the responsibility of the Department of Environmental Protection.

(d) Shall assign to the Florida Marine Research Institute such powers, duties, responsibilities, and functions as are necessary to accomplish its mission. It shall be the mission of the Florida Marine Research Institute to:

1. Serve as the primary source of research and technical information and expertise on the status of Florida's saltwater resources;
2. Monitor the status and health of saltwater habitat, marine life, and wildlife;
3. Develop and implement restoration techniques for marine habitat and enhancement of saltwater plant and animal populations;
4. Respond and provide critical technical support for marine catastrophes including oil spills, ship groundings, major marine species die-offs, hazardous spills, and natural disaster;
5. Identify and monitor marine toxic red tides and their impacts, and provide technical support for state and local public health concerns; and
6. Provide state and local governments with estuarine, marine, coastal technical information and research results.

(e) Shall assign to the Office of Boating and Waterways such powers, duties, responsibilities, and functions as are necessary to manage and promote the use of state waterways for safe and enjoyable boating. Duties and responsibilities include, but are not limited to, oversight and coordination of waterway markers on state waters, providing boating education and boating safety programs, improving boating access, coordinating the removal of derelict vessels from state waters, economic development initiatives to promote boating in the state, and coordinating the submission of state comments on marine events.

(6)(a) Shall implement a system of adequate due process procedures to be accorded to any party, as defined in section 120.52, whose substantial interests will be affected by any action of the Fish and Wildlife Conservation Commission in the performance of its constitutional duties or responsibilities.
(b) The Legislature encourages the commission to incorporate in its process the provisions of section 120.54(3)(c) when adopting rules in the performance of its constitutional duties or responsibilities.
(c) The commission shall follow the provisions of chapter 120 when adopting rules in the performance of its statutory duties or responsibilities. For purposes of this subsection, statutory duties or responsibilities include, but are not limited to, the following:

1. Research and management responsibilities for marine species listed as endangered, threatened, or of special concern, including, but not limited to, manatees and marine turtles;
2. Establishment and enforcement of boating safety regulations;
3. Land acquisition;
4. Enforcement and collection of fees for all recreational and commercial hunting or fishing licenses or permits;
5. Aquatic plant removal using fish as a biological control agent;
6. Enforcement of penalties for violations of commission rules, including, but not limited to, the seizure and forfeiture of vessels and other equipment used to commit those violations;
7. Establishment of free fishing days;
8. Regulation of off-road vehicles on state lands;
9. Establishment and coordination of a statewide hunter safety course;
10. Establishment of programs and activities to develop and distribute public education materials;
11. Police powers of wildlife and marine officers;
12. Establishment of citizen support organizations to provide assistance, funding, and promotional support for programs of the commission;
13. Creation of the Voluntary Authorized Hunter Identification Program; and
14. Regulation of required clothing of persons hunting deer.

(7) Comments submitted by the commission to a permitting agency for applications for permits, licenses, or authorizations impacting the commission's jurisdiction must be based on credible, factual scientific data, and must be received by the permitting agency within the time specified by applicable statutes or rules, or within 30 days, whichever is shorter. Comments provided by the commission are not binding on any permitting agency. Comments by the commission shall be considered for consistency with the Florida Coastal Management Program and sections 373.428 and 380.23. Should a permitting agency use the commission's comments as a condition of denial, approval, or modification of a proposed permit, license, or authorization, any party to an administrative proceeding involving such proposed action may require the commission to join as a party in determining the validity of the condition. In any action where the commission is joined as a party, the commission shall only bear the actual cost of defending the validity of the credible, factual scientific data used as a basis for its comments.

(8) Shall acquire, in the name of the state, lands and waters suitable for the protection, improvement, and restoration of marine life, wildlife resources, and freshwater aquatic life resources by purchase, lease, gift, or otherwise, using state, federal, or other sources of funding. Lands acquired under this section shall be managed for recreation and other multiple-use activities that do not impede the commission's ability to perform its constitutional and statutory responsibilities and duties.

(9) May require any employee of the commission to give a bond for the faithful performance of duties. The commission may determine the amount of the bond and must approve the bond. In determining the amount of the bond, the commission may consider the amount of money or property likely to be in custody of the officer or employee at any one time. The premiums for the bond must be paid out of the funds of the commission.

B. 2004 Proposed Legislation

Furthermore, a bill has been filed in the 2004 Legislative Session: Specifically, the following:

2004 House Bill 1799 and Senate Bill 2820

This bill substantially alters the administration of the Fish and Wildlife Commission. Specifically, it reorganizes the Fish and Wildlife Conservation Commission. Revises the organization, structure, powers, and duties of the commission. Deletes obsolete provisions.

Article V, Sections 10, 11(a)(b), 12(a),(f), 14

XV. Sponsor: Constitution Revision Commission

XVI. Summary of the Amendment

Provided for future local elections to decide whether to continue electing circuit and county judges or to adopt system of appointment of those judges by the governor, with subsequent elections to retain or not retain those judges; provided election procedures for subsequent elections to selection of judges; increases county judges' terms from four to six years; corrected judicial qualifications commission term of office; allocated state courts system funding among state, counties, and users of courts.

20) Analysis

Selection of Trial Judges. The 1997-98 Constitution Revision Commission returned to the issue of merit selection and retention by allowing merit selection and retention at the trial level by local option. Pursuant to Revision 7, circuits and counties will choose the method of selecting their trial judges. The revision provides for a mandatory election during the general election in the year 2000. During that election, the voters in every circuit and county in Florida will determine whether they want to maintain a system of non-partisan elections of trial judges or switch to a system of merit selection and retention. The revision also provides that if a vote to exercise the option fails, such option shall not again be put to a vote of the electorate until the expiration of at least two years. The revision further provides that a circuit or county can subsequently opt to return to judicial elections of its trial judges by a vote of the electorate.

County Court Judges' Terms. Revision 7 changed the term of office of county court judges from four years to six years. This change made the term of office of county court judges consistent with all other judges or justices.

Judicial Qualifications Commission. Revision 7 corrected an error in the schedule to section 12 regarding the bifurcation of the JQC. The schedule failed to reference all fifteen members of the JQC and would not have allowed an orderly and complete transition from a thirteen member JQC to a fifteen member JQC.

Article V, section 14. This Section was dramatically amended by the work of the 1997-98 Constitution Revision Commission. The Commission reformatted the section and introduced a three-part plan to fund the judicial system using state and county funding in addition to a system that will be funded by user fees and costs.

Subsection (a). Revision 7 republished the first sentence of Article V, section 14 in new subsection (a). In addition, the revision explicitly stated that funding for the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel will be provided from state revenues appropriated by general revenue. The effect of this

revision was to clearly and substantially shift the burden of the funding the state courts system from the counties to the state.
Subsection (b) was created to provide that funding for the offices of the clerks of the circuit and county courts performing court-related functions was
to be provided chiefly by users of the courts through filing fees, service charges, and costs. The subsection further provided that, in the event insufficient user fees were collected to fund the clerk's offices, the state would provide supplemental funding.

Subsection (c). Pursuant to Revision 7, counties would not be totally relieved from funding the state court system's costs. The revision provided that counties would continue to fund the costs of construction, leases, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts. Additionally, counties would continue to fund the costs of communications services, existing radio systems, and multi-agency criminal justice information systems. Counties would also be required to fund the reasonable and necessary expenses of the state courts existing system, to meet local requirements as determined by general law. Under Revision 7, beginning in the year 2000, the legislature must appropriate funds to pay for the salaries, costs, and expenses pursuant to a phase-in schedule established by general law. The amendment is to be fully implemented by the year 2004.

Subsection (d). Subsection (d) republished the earlier prohibition (found in the last sentence of section 14 (1972), that the judiciary does not have the power to fix appropriations.
The revision to these respective sections must be effectuated by July, 2004.

21) Approval

The voters approved the proposed amendment during the November 3, 1998, general election.

22) Case Law

A. Election/ Selection of Judges

In re Advisory Opinion to Governor re: Appointment or Election**, 824 So .2d 132 (Fla.,2002).**
Governor requested advisory opinion on filling vacancy after involuntary retirement of circuit court judge and qualification of candidates for election. The Supreme Court held that, upon the qualification of a candidate or candidates for a circuit or county judgeship during the statutory qualification period, the election method of selection takes precedence over and forecloses the Governor's constitutional authority and obligation to fill a vacancy that occurs during the balance of the incumbent judge's term of office.

In re Advisory Opinion to the Governor – Terms of County Court Judges, 750 So. 2d 610 (Fla. 1999).
In 1999, Governor sought advice on applicability of constitutional amendment extending terms of office for county court judges. The Justices of the Supreme Court were of the

opinion that: (1) candidate's right to a specified term of office accrued on date of assuming office; (2) amendment applied to judges who assumed office on date amendment became effective; and (3) amendment did not apply to judges who began terms before effective date of amendment.

B. Funding of the Court System

Shepard & White, P.A. v. City of Jacksonville, 827 So. 2d 925 at 932 (Fla., 2002).
Florida Supreme Court expressed serious concerns as to how the system for compensating conflict counsel may develop in the very near future. The Court noted that Florida is coming to a crossroad regarding its system for the representation of indigents in capital cases. By constitutional amendment, the State will probably soon assume the full responsibility of funding for conflict counsel no later than 2004.

In re Certification of Need for Additional Judges, 806 So. 2d 466 (Fla., 2002).
Article V, Section 9 of the State Constitution requires the Florida Supreme Court to determine, prior to each year's regular legislative session, the need for increasing or decreasing the number of state judges and the need for redefining the jurisdictional boundaries of the district and circuit courts. The certification process is the mechanism that our Constitution establishes for the systematic, uniform assessment of the courts' judgeship needs.

The existing mix of supplemental resources in the trial courts, which includes senior judges, general masters, and hearing officers, trial court staff attorneys, alternative dispute resolution mediators, and case management support, are reflected in the calculation of the Delphi case weights. These resources are necessary for the effective and efficient operation of Florida's trial courts. Any diminution in supplemental resources from existing levels as a result of budget reductions or the implementation of the 1998 revision to Article V, section 14 of the Florida Constitution will increase the need for additional judges. Id. at 451.

In re Certification of Need for Additional Judges, 780 So. 2d 906 (Fla., 2001).
Florida's Supreme Court expressed confidence in the Delphi methodology suggested by the Florida Legislature as a means of improving the certification process. The Delphi system assigns weights in minutes to different case types based on an assessment of the average amount of judicial time required for each type of case. This case weighting system differs from the certification method used prior to the 2000 legislative session, which did not distinguish between case types even though the amount of judicial time and resources required to dispose of different kinds of cases varies significantly. The primary benefit of case weighting is that it measures the differential requirements of judicial workload in different types of cases. As a result, the Court found that the current certification methodology using the case weighting system offers a more accurate and fair means of determining the courts' judicial requirements. Id. at 908.

Further, the Court noted that it was important to note that these case weights include the existing mix of supplemental resources in the trial courts, including senior judges, general masters and hearing officers, trial court staff attorneys, alternative dispute resolution, and case management support. These resources are vital to the continued operating effectiveness of Florida's trial courts. Failure to maintain supplemental resources at existing levels or to transfer appropriate resources to state funding from the counties under Article V, Section 14, as revised in 1998 (revision 7), mandates will result in an increased need for additional judges. Id.

XVII. Legislation

A. Implementing Legislation

Since the adoption of the amendment in 1998, the Florida Legislature enacted:

A. Judges

F. S. § 101.161. Referenda; ballots

(1) 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, the ballot shall include a separate fiscal impact statement concerning the measure prepared by the Revenue Estimating Conference in accordance with section 100.371(6) or section 100.381. 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.

(2) The substance and ballot title of a constitutional amendment proposed by Initiative shall be prepared by the sponsor and approved by the Secretary of State in accordance with rules adopted pursuant to section 120.54. The Department of State shall give each proposed constitutional amendment a designating number for convenient reference. This number designation shall appear on the ballot. Designating numbers shall be assigned in the order of filing or certification and in accordance with rules adopted by the Department of State. The Department of State shall furnish the designating number, the ballot title, and the substance of each amendment to the supervisor of elections of each county in which such amendment is to be voted on.

(3) (a) The ballot for the general election in the year 2000 must contain a statement allowing voters to determine whether circuit or county court judges will be selected by merit selection and retention as provided in section 10, Article V of the State Constitution. The ballot in each circuit must contain the statement in paragraph (c). The ballot in each county must contain the statement in paragraph (e).

(b) For any general election in which the Secretary of State, for any circuit, or the supervisor of elections, for any county, has certified the ballot position for an initiative to change the method of selection of judges, the ballot for any circuit must contain the statement in paragraph (c) or paragraph (d) and the ballot for any county must contain the statement in paragraph (e) or paragraph (f).

(c) In any circuit where the initiative is to change the selection of circuit court judges to selection by merit selection and retention, the ballot shall state: "Shall the method of selecting circuit court judges in the (number of the circuit) judicial circuit be changed from election by a vote of the people to selection by the judicial nominating commission and appointment by the Governor with subsequent terms determined by a retention vote of the people?" This statement must be followed by the word "yes" and also by the word "no."

(d) In any circuit where the initiative is to change the selection of circuit court judges to election by the voters, the ballot shall state: "Shall the method of selecting circuit court judges in the (number of the circuit) judicial circuit be changed from selection by the judicial nominating commission and appointment by the Governor with subsequent terms determined by a retention vote of the people to election by a vote of the people?" This statement must be followed by the word "yes" and also by the word "no."

(e) In any county where the initiative is to change the selection of county court judges to merit selection and retention, the ballot shall state: "Shall the method of selecting county court judges in (name of county) be changed from election by a vote of the people to selection by the judicial nominating commission and appointment by the Governor with subsequent terms determined by a retention vote of the people?" This statement must be followed by the word "yes" and also by the word "no."

(f) In any county where the initiative is to change the selection of county court judges to election by the voters, the ballot shall state: "Shall the method of selecting county court judges in (name of the county) be changed from selection by the judicial nominating commission and appointment by the Governor with subsequent terms determined by a retention vote of the people to election by a vote of the people?" This statement must be followed by the word "yes" and also by the word "no."

B. Funding

Pursuant to the adoption of Section 14, Article V of the State Constitution, the Florida Legislature adopted Florida Law Chapter 2000 – 237. Various excerpts of this Law are as follows:

F. S. § 29.001. Intent; state courts system essential elements and definitions; funding through filing fees, service charges, and costs; county responsibilities. <Text of section effective until July 1, 2004>

(1) It is the intent of the Legislature that, for the purpose of implementing Section 14, Article v of State Constitution, the state courts system be defined to include the essential elements of the Supreme Court, district courts of appeal, circuit courts, county courts, and essential supports thereto. Similarly, the offices of public defenders and state attorneys shall include those essential elements as determined by general law. Further, the state attorneys' offices are defined to include the essential elements of the 20 state attorneys' offices and the public defenders' offices are defined to include the essential elements of the 20 public defenders' offices. Court- appointed counsel are defined as counsel appointed to ensure due process in criminal and civil proceedings in accordance with state and federal constitutional guarantees.

(2) All funding for the court-related functions of the offices of the clerks of the circuit and county courts shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions.

(3) Pursuant to general law, counties shall be required to fund the cost of communications services, existing radio systems, existing multiagency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the circuit courts and county courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts, as defined by general law. In addition, the counties will continue to fund existing elements

of the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel, and the offices of the clerks of the circuit and county courts performing court-related functions, consistent with current law and practice, until such time as the Legislature expressly assumes the responsibility for funding those elements. Counties will fund the cost of criminal cases filed by the Office of Statewide Prosecution. Additionally, the Legislature will define by general law those local requirements of the state courts system for which the counties must pay reasonable and necessary salaries, costs, and expenses.

(4) Although a program or function currently may be funded by the state or prescribed or established in general law, this does not designate the program or function as an essential element of the state courts system, state attorneys' offices, public defenders' offices, or the offices of the circuit and county court clerks performing court-related functions as described in Section 14, Article V of the State Constitution.

F. S. § 29.002. Basis for funding

(1) The Legislature's appropriation of funding in the General Appropriations Act for appropriate salaries, costs, and expenses pursuant to Section 14, Article V of the State Constitution shall be based upon reliable and auditable data substantiating the revenues and expenditures associated with each essential element.

(2) Court costs, fines, and other dispositional assessments shall be imposed and enforced by the courts, collected by the clerks of the circuit and county courts, and may be directed to the state in accordance with authorizations and procedures as determined by general law.

(3) Waiver of fees and costs for indigents in criminal or civil actions and requests for reductions in fees and costs and for a court-appointed attorney shall be determined through procedures established pursuant to general law. Similarly, requests for reductions in fees and costs and for a court-appointed attorney shall occur after examination, pursuant to general law.

F. S. § 29.003. Phase-in schedule.

(1) During fiscal years 2000-2001 and 2001-2002 the Legislature shall:

(a) Review the state courts system to determine those elements appropriate to receive state funding and, based on the availability of accurate data, determine the most appropriate means for funding such elements and provide direction regarding budgeting for the state courts system.

(b) Review selected salaries, costs, and expenses of the state courts system which may be funded from appropriate filing fees for judicial proceedings and service charges and costs.

(2) Prior to or during fiscal years 2001-2002 and 2002-2003 the Legislature shall review the offices of the state attorneys and public defenders and the use of civil indigency counsel and conflict counsel to determine those elements appropriate to receive state funding and, based on the availability of accurate data, determine the most appropriate means for funding such elements and provide direction regarding budgeting for the state attorneys' offices, public defenders' offices, and court-appointed counsel.

(3) Prior to or during fiscal years 2002-2003 and 2003-2004 the Legislature shall review the offices of the clerks of the circuit and county courts to define court-related functions. If there is accurate data on court- related functions and costs, the Legislature may determine the appropriate levels of filing fees, service charges, and court costs to fund those functions.
(4) During fiscal years 2000-2001 and 2001-2002, the Legislature shall review current law with regard to authorizations for court costs, fines, and other dispositional assessments and redirect appropriate revenues to the state.
(5) On or before July 1, 2004, the Legislature will fully effectuate the requirements of Article XII, Section 25 of the State Constitution. Prior to July 1, 2004, the counties are financially obligated to continue to fund existing elements of the state courts system, state attorneys' offices, public defenders' offices, court appointed counsel, and the offices of the clerks of the circuit and county courts performing court-related functions, consistent with current law and practice, until such time as the Legislature expressly assumes the responsibility for funding such elements. Counties will fund the cost of criminal cases filed by the office of statewide prosecution. Additionally, the Legislature will define by general law those local requirements of the state courts system for which the counties must pay reasonable and necessary salaries, costs, and expenses.
(6) Pursuant to Article XII, Section 25 and Article V, Section 14 of the State Constitution, commencing in fiscal year 2000-2001, the Legislature will appropriate funds:
    (a) To create a contingency fund to assist small counties with extraordinary case-related costs in criminal cases.
    (b) For pilot projects in at least three counties to cover reasonable and necessary conflict attorneys.

F. S. § 29.004. **State courts system**.

(1) For purposes of implementing Article V, Section 14 of the State Constitution, the essential elements of the state courts system are as follows:

(a) Judges appointed or elected pursuant to chapters 25, 26, 34 and 35, Florida Statutes, and essential staff, expenses, and costs as determined by general law.

(b) Juror compensation and expenses and reasonable juror accommodations when necessary.

(c) Reasonable court reporting services necessary to meet constitutional requirements.

(d) Auxiliary aids and services for qualified individuals with a disability which are necessary to ensure access to the courts. Such auxiliary aids and services include, but are not limited to, sign-language interpreters, translators, real-time transcription services for individuals who are hearing impaired, and assistive listening devices. This section does not include physical modifications to court facilities; noncourtroom communication services; or other accommodations, auxiliary aids, or services for which the counties are responsible pursuant to Section 14 of Article V of the State Constitution.

(e) Construction or lease of facilities, maintenance, utilities and security for the district courts of appeal and the Supreme Court.

(f) Foreign language interpreters and translators essential to comply with constitutional requirements.

(g) Staff and expenses of the Judicial Qualifications Commission.

F. S. § 29.005. State attorneys' offices and prosecution expenses

For purposes of implementing Article V, Section 14 of the State Constitution, the essential elements of the state attorneys' offices are as follows:

(1) The state attorney of each judicial circuit and assistant state attorneys and essential staff as determined by general law.

(2) Reasonable court reporting services necessary to meet constitutional requirements.

(3) Witnesses summoned to appear for an investigation, preliminary hearing, or trial in a criminal case when the witnesses are summoned by a state attorney; mental health professionals who are appointed pursuant to section 394.473, Florida Statutes, and required in a court hearing involving an indigent; and expert witnesses who are appointed pursuant to section 916.115(2), Florida Statutes, and required in a court hearing involving an indigent.

F. S. § 29.006 - Public defenders and indigent defense costs

For purposes of implementing Article V, Section 14 of the State Constitution, the essential elements of the public defenders' offices are as follows:

(1) The public defender of each judicial circuit and assistant public defenders and essential staff as determined by general law.

(2) Reasonable court reporting services necessary to meet constitutional requirements.

(3) Witnesses summoned to appear for an investigation, preliminary hearing, or trial in a criminal case when the witnesses are summoned on behalf of an indigent defendant; mental health professionals who are appointed pursuant to s. 394.473, Florida Statutes, and required in a court hearing involving an indigent; and expert witnesses who are appointed pursuant to section 916.115(2), Florida Statutes, and required in a court hearing involving an indigent.

F. S. § 29.007 - Court appointed counsel.

For purposes of implementing Article V, Section 14 of the State Constitution, the essential elements of court appointed counsel are as follows:

(1) Private attorneys assigned by the court to handle cases where the defendant is indigent and cannot be represented by the public defender.

(2) Private attorneys appointed by the court to represent indigents or other classes of litigants in civil proceedings requiring court appointed counsel in accordance with state and federal constitutional guarantees.

(3) Reasonable court reporting services necessary to meet constitutional requirements.

(4) Witnesses summoned to appear for an investigation, preliminary hearing, or trial in a criminal case when the witnesses are summoned on behalf of an indigent defendant; mental health professionals who are appointed pursuant to section 394.473, Florida Statutes, and required in a court hearing involving an indigent; and expert witnesses who are appointed pursuant to section 916.115(2), Florida Statutes, and required in a court hearing involving an indigent.

(5) Investigating and assessing the indigency of any person who seeks a waiver of court costs and fees, or any portion thereof, or applies for representation by a public defender or private attorney.

F. S. § 29.008 . County funding of court-related functions.

(1) Counties are required by Article V, Section 14 of the State Constitution to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the circuit and county courts, public defenders' offices, state attorneys' offices and the offices of the clerks of the circuit and county courts performing court-related functions. For purposes of implementing these requirements, the term:

(a) "Facility" means reasonable and necessary buildings, structures, real estate, easements, and related interests in real estate, including, but not limited to, those for the purpose of housing personnel, equipment, or functions of the circuit or county courts, public defenders' offices, state attorneys' offices, and court-related functions of the office of the clerks of the circuit and county courts and all storage. The term also includes access to parking for such facilities in connection with such court-related functions that may be available free or from a private provider or a local government for a fee.

(b) "Construction or Lease" includes, but is not limited to, all reasonable and necessary costs of the acquisition of facilities, equipment and furnishings for all judicial officers, staff, jurors, volunteers, and the public for the circuit and county courts, the public defenders' offices, state attorneys' offices, and for performing the court-related functions of the offices of the clerks of the circuit and county courts. This includes expenses related to financing such facilities and the existing and future cost and bonded indebtedness associated with placing the facilities in use.

(c) "Maintenance" includes, but is not limited to, all reasonable and necessary costs of custodial and grounds keeping services and renovation and reconstruction as needed to accommodate functions for the circuit and county courts, the public defenders' offices, and state attorneys' offices and for performing the court-related functions of the offices of the clerks of the circuit and county court and for maintaining the facilities in a condition appropriate and safe for the use intended.

(d) "Utilities" means electricity services for light, heat, or power; natural or manufactured gas services for light, heat, or power; water and wastewater services and systems, stormwater or runoff services and systems, sewer services and systems, all costs or fees associated with these services and systems, and any costs or fees associated with the mitigation of environmental impacts directly related to the facility.

(e) (e) "Security" includes but is not limited to, all reasonable and necessary costs of services of law enforcement officers or licensed security guards and all electronic, cellular, or digital monitoring and screening devices necessary to ensure the safety and security of all persons visiting or working in a facility; to provide for security of the facility, including protection of property owned by the county or the state; and for security of prisoners brought to any facility. This includes bailiffs while providing courtroom and other security for each judge and other quasi-judicial officers.

(f) "Communications systems or communications services" are defined as any reasonable and necessary transmission, emission, and reception of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems and includes all facilities and equipment owned, leased, or used by judges, clerks, public defenders, state attorneys, and all staff of the state courts system, state attorneys' offices, public defenders' offices, and clerks of the circuit and county courts performing court-related functions. Such system or services shall include, but not be limited to:

1. Telephone services and equipment, including facsimile, wireless communications, video teleconferencing, pagers, computer lines, and telephone switching equipment and the maintenance, supplies, hardware, software, and line charges, including local and long distance toll charges, and support staff or services necessary for operation.

2. Computer systems and equipment, including computer hardware and software, modems, printers, wiring, network connections, maintenance, support staff or services, training, supplies, and line charges necessary for an integrated computer system to support the operations and management of the state courts system, the offices of the public defenders, the offices of the state attorneys, and the offices of the clerks of the circuit and county courts and the capability to connect those entities and reporting data to the state as required for the transmission of revenue, performance accountability, case management, data collection, budgeting, and auditing purposes.

3. Postage, printed documents, radio, courier messenger and subpoena services, support services, all maintenance, supplies and line charges.

(g) "Existing radio systems" includes, but is not limited to, law enforcement radio systems that are used by the circuit and county courts, the offices of the public defenders, the offices of the state attorneys, and for court-related functions of the offices of the clerks of the circuit and county courts. This includes radio systems that were operational or under contract at the time Revision 7 to Article V of the State Constitution was adopted and any enhancements made thereafter, the maintenance of those systems, and the personnel and supplies necessary for operation.

(h) "Existing multi-agency criminal justice information systems" includes, but is not limited to, those components of the multi-agency criminal justice information system as defined in section 943.045, Florida Statutes, supporting the offices of the circuit or county courts, the public defenders'

offices, the state attorneys' offices, or those portions of the offices of the clerks of the circuit and county courts performing court-related functions that are used to carry out the court-related activities of those entities. This includes upgrades and maintenance of the current equipment, maintenance and upgrades of supporting technology infrastructure and associated staff, and services and expenses to assure continued information sharing and reporting of information to the state. The counties shall also provide additional information technology services, hardware, and software as needed for new judges and staff of the state courts system, state attorneys' offices, public defenders' offices, and the offices of the clerks of the circuit and county court performing court-related functions.

(2) Counties shall pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

Article V Financial Accountability and Efficiency Workgroup.

(1) The Article V Financial Accountability and Efficiency Workgroup is created to serve through January 15, 2001. The workgroup shall consist of 11 voting members and 4 ex officio members as follows:

(a) The Comptroller or his or her designee.

(b) The Auditor General or his or her designee.

(c) The Secretary of the Department of Management Services or his or her designee.

(d) A representative from the state courts system designated by the Chief Justice.

(e) The Executive Director of the Fiscal Responsibility Council from the House of Representatives or other person designated by the Speaker of the House of Representatives.

(f) The Staff Director of the Senate Budget Committee or other person designated by the President of the Senate.

(g) The Staff Director of the Legislative Committee on intergovernmental Relations or his or her designee.

(h) The director of the Governor's Office of Policy and Budget or his or her designee.

(i) The director of the Office of Program Policy Analysis and Government Accountability or his or her designee.

(j) A representative of the Florida Association of Counties as an ex- officio member.

(k) A representative of the Florida Association of Court Clerks and Comptroller as an ex-officio member.

(l) A representative of the Florida Public Defender's Association as an ex-officio member.

(m) A representative of the Florida Prosecuting Attorneys Association as an ex-officio member.

The chair and vice chair of the Joint Legislative Committee on Article V shall respectively act as chair and vice chair of the workgroup. The Joint Legislative Committee on Article V shall provide staff support for the workgroup.

(2) The workgroup shall develop recommendations concerning financial accountability systems and standards for use during and after the transition from local to state funding as required by the 1998 revisions to Article V, Section 14 of the State Constitution.

(3) The workgroup shall consider the use of the current Uniform Chart of Accounts, Florida Accounting Information System, or any other existing state accounting systems and advise the Legislature on whether any of the systems are appropriate for the long-term accounting requirements for expenditures and revenues. The workgroup shall advise the Legislature on any modifications or enhancements that may be necessary to existing systems and recommend a plan to implement the necessary modifications or enhancements.

(4) (4) If the workgroup determines that no existing state system is appropriate for long-term use, it shall provide the Legislature with a full explanation of the reasons and develop at least two options for Legislative consideration.

(5) The workgroup shall examine incentives pursuant to current law for compliance with state reporting requirements and make recommendations to further encourage local compliance.

(6) The workgroup shall consider and make recommendations regarding alternative structures for budgeting and fiscal management for the state courts system, public defenders' offices, state attorneys' offices, constitutionally required court-appointed attorneys and the clerks of the circuit and county courts. In developing the alternatives, the workgroup shall consider using existing management entities such as the Justice Administrative Commission, the Office of the State Courts Administrator, or any other appropriate entity.

(7) The workgroup will obtain data on all fees, costs, service charges, fines, forfeitures, or other court-related charges, evaluate the data, make selected audits of such data as necessary, and report to the Joint Legislative Committee on Article V regarding the accuracy of such data. The data shall be compiled by each county. The information obtained must address the authority for collection, the authorized amount, the total amount collected, identification of where the funds are collected and distributed, the amount distributed to each identified entity, and the required and actual use of the funds by the receiving entity.

(8) In addition to the review and assessment of financial accountability systems and standards, the workgroup may also assess the efficiency and effectiveness of the state court system, public defenders' offices, state attorneys' offices, clerks of the circuit and county courts, and constitutionally required court-appointed attorneys' operating policies and procedures related to financial management and reporting. The assessment may include a review of current organizational duties and responsibilities for supporting entities. The workgroup may include in its final report recommendations for improving operating policies and procedures relating to the financial management activities of the state court system, public defenders' offices, clerks of the circuit and county courts, state attorneys' offices, and constitutionally required court-appointed attorneys.

(9) Subject to the availability of specific appropriations and the approval of the President of the Senate and the Speaker of the House of Representatives, the workgroup may contract for consultants or technical assistance in carrying out its responsibilities.

(10) The workgroup shall be terminated upon the issuance of a report and final recommendations to the Joint Legislative Committee on Article V, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the Governor not later than January 15, 2001.

FL ST § 29.009. Contingency fund.

(1) Any county with a population of less than 85,000, according to the most recent decennial census, may apply to the Office of the State Courts Administrator for additional funding to cover extraordinary criminal case related costs.
(2) The Office of the State Courts Administrator, in consultation with the chairs of the appropriations committees of the Legislature, shall develop a process whereby counties may request funds pursuant to this section. Such process shall be consistent with legislative intent regarding this act. The Office of the State Courts Administrator shall review any request for funds by a county under this section and, if the Office of the State Courts Administrator determines that a request is valid, it may provide assistance upon finding a qualifying county's budget is inadequate to cover extraordinary criminal case related costs and that the deficiency will result in an impairment of the operations of the county.
(3) The State Courts Administrator shall submit a report on a quarterly basis, including a complete accounting of the contingency fund.

FL ST § 29.011. Pilot projects; conflict attorneys.

Pursuant to Article XII, Section 25 and Article V, Section 14 of the State Constitution, and section 27.52, Florida Statutes, and notwithstanding section 925.037, Florida Statutes, the Legislature creates pilot projects to reimburse three counties for reasonable and necessary conflict counsel fees, expenses, and costs. The counties designated for the pilot projects must institute cost containment and accountability processes and to provide a detailed quarterly report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Joint Legislative Committee on Article V. The report shall include, but is not limited to:

(1) The total number of conflict cases.
(2) The steps that were taken to avoid the conflict, if any.
(3) The number of each type of case identified with specificity.
(4) The length of each case.
(5) The total amount paid to each attorney.
(6) The total year-to-date payments to conflict attorneys.
(7) The method of payment, for example, hourly rate, flat fee, contract, or other.

All information must be broken down based on whether the case was given to outside counsel due to an ethical conflict or due to an overextended caseload.

F. S. § 11.75. Joint Legislative Committee on Article V.

(1) The Joint Legislative Committee on Article V of the State Constitution is created. The committee shall be composed of eight members appointed as follows: four members of the Senate appointed by the President of the Senate and four members of the House of Representatives appointed by the Speaker of the House of Representatives. The President

of the Senate shall appoint the chair in even-numbered years and the vice chair in odd-numbered years and the Speaker of the House of Representatives shall appoint the chair in odd-numbered years and the vice chair in even-numbered years from among the committee membership. A vacancy shall be filled in the same manner as the original appointment.

(2) The joint committee shall coordinate and oversee the implementation of Revision 7 to Article V of the State Constitution. The joint committee shall make recommendations to the Legislature, including proposed legislation, in an annual report to be submitted by October 15 of each year.

(3) The Legislature shall review the joint committee in 2004 to determine the necessity of its continued existence.

B. 2004 Proposed Legislation

During the 2004 Florida Legislative Session, the following bills have been filed regarding Section 14, Article V of the State Constitution. They are as follows:

Senate Bill 192/ House Bill 111

A bill relating to various court procedures; redesignating 'magistrates' as 'trial court judges'; relating to various administrative and judicial proceedings; redesignating 'masters' and 'general or special masters' as 'general or special magistrates'; providing an effective date.

Senate Bill 2962

A bill relating to the judicial system; establishes fee to be paid by counsel appearing pro hac vice before Supreme Court; provides for compensation of court reporters; increases filing fee for Supreme Court cases docketed & specifies disposition & uses of fees collected; revises purposes for which Court Education Trust Fund moneys must be used; provides uniform standards for determining counsel's conflict of interest in certain cases, etc. Amends F.S. APPROPRIATION: $500,000. EFFECTIVE DATE: 07/01/2004.

23) Article VII, Section 3 and 4; Article XII, Section 22

XVIII. **Sponsor:** Florida Legislature

Summary of the Amendment

Article VII, Section 4, 7(d) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. General law must specify the requirements for eligible properties.

Analysis

The Florida Legislature proposed this amendment. The proposal eliminated the constitutional requirement that an owner of the historic property must be engaged in the rehabilitation and renovation of the property for a county or municipality to grant the owner a historic preservation ad valorem tax exemption. By eliminating this requirement, the amendment broadens the tax exemption of historic properties by allowing local government entities to assess historic property solely on the basis of the character or use. Local governments must authorize such exemptions by ordinance.

Approval

The voters approved the proposed amendment during the November 3, 1998, general election.

XIX. **Case Law**

Since the adoption of the amendment, no case law has been reported.

XX. Legislation

A. Implementing Legislation

During the 1997 Florida Legislative session, the Florida Legislature adopted the following statute in anticipation of the passage of this amendment:

F. S. § 193.503. Classification and assessment of historic property used for commercial or certain nonprofit purposes

(1) Pursuant to Section 4(d), Article VII of the State Constitution, the board of county commissioners of a county or the governing authority of a municipality may adopt an ordinance providing for assessment of historic property used for commercial or certain nonprofit purposes as described in this section solely on the basis of character or use as provided in this section. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The board of county commissioners or municipal governing authority shall notify the property appraiser of the adoption of such ordinance

no later than December 1 of the year prior to the year such assessment will take effect. If such assessment is granted only for a specified period or the ordinance is repealed, the board of county commissioners or municipal governing authority shall notify the property appraiser no later than December 1 of the year prior to the year the assessment expires.

(2) If an ordinance is adopted as described in subsection (1), the property appraiser shall, for assessment purposes, annually classify any eligible property as historic property used for commercial or certain nonprofit purposes, for purposes of the taxes levied by the governing body or authority adopting the ordinance. For all other purposes, the property shall be assessed pursuant to Section 193.011.

(3) No property shall be classified as historic property used for commercial or certain nonprofit purposes unless a return is filed on or before March 1 of each year. The property appraiser, before so classifying such property, may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish that such property was actually used as required by this section. Failure to make timely application by March 1 shall constitute a waiver for 1 year of the privilege herein granted for such assessment.

(4) Any property classified and assessed as historic property used for commercial or certain nonprofit purposes pursuant to this section must meet all of the following criteria:

(a) The property must be used for commercial purposes or used by a not-for- profit organization under Section 501(c)(3) or (6) of the Internal Revenue Code of 1986.
(b) The property must be listed in the National Register of Historic Places, as defined in Section 267.021; or must be a contributing property to a National Register Historic District; or must be designated as a historic property or as a contributing property to a historic district, under the terms of a local preservation ordinance.
(c) The property must be regularly open to the public; that is, it must be open for a minimum of 40 hours per week for 45 weeks per year or an equivalent of 1,800 hours per year.
(d) The property must be maintained in good repair and condition to the extent necessary to preserve the historic value and significance of the property.

(5) In years in which proper application for assessment has been made and granted pursuant to this section, the assessment of such historic property shall be based solely on its use for commercial or certain nonprofit purposes. The property appraiser shall consider the following use factors only:

(a) The quantity and size of the property.
(b) The condition of the property.
(c) The present market value of the property as historic property used for commercial or certain nonprofit purposes.
(d) The income produced by the property.

(6) In years in which proper application for assessment has not been made under this section, the property shall be assessed under the provisions of Section 193.011 for all purposes.

(7) Any property owner who is denied classification under this section may appeal to the value adjustment board. The property appraiser shall notify the property owner in writing of the denial of such classification on or before July 1 of the year for which the application was filed.

The notification shall advise the property owner of his or her right to appeal to the value adjustment board and of the filing deadline. The board may also review all property classified by the property appraiser upon its own motion. The property appraiser shall have available at his or her office a list by ownership of all applications received showing the full valuation under Section 193.011, the valuation of the property under the provisions of this section, and whether or not the classification requested was granted.

(8) For the purposes of assessment roll preparation and recordkeeping, the property appraiser shall report the assessed value of property qualified for the assessment pursuant to this section as its "classified use value" and shall annually determine and report as "just value" the fair market value of such property, irrespective of any negative impact that restrictions imposed or conveyances made pursuant to this section may have had on such value.

(9)(a) After qualifying for and being granted the classification and assessment pursuant to this section, the owner of the property shall not use the property in any manner not consistent with the qualifying criteria. If the historic designation status or the use of the property changes or if the property fails to meet the other qualifying criteria for the classification and assessment, the property owner shall be liable for the amount of taxes equal to the "deferred tax liability" for up to the past 10 years in which the property received the use classification and assessment pursuant to this section. The governmental taxing unit shall determine the time period for which the deferred tax liability is due. A written instrument from the governmental taxing unit shall be promptly recorded in the same manner as any other instrument affecting the title to real property. A release of the written instrument shall be made to the owner upon payment of the deferred tax liability.
(b) For purposes of this subsection, "deferred tax liability" means an amount equal to the difference between the total amount of taxes that would have been due in March if the property had been assessed under the provisions of Section 193.011 and the total amount of taxes actually paid in those years when the property was assessed under the provisions of this section, plus interest on that difference computed as provided in Section 212.12(3).

(c) Any payment of the deferred tax liability shall be payable to the county tax collector within 90 days after the date of the change in classification. The collector shall distribute the payment to each governmental unit where the classification and assessment was allowed in the proportion that its millage bears to the total millage levied on the parcel for the years in which such classification and assessment was in effect.

(d) The tax collector shall annually report to the department the amount of deferred tax liability collected pursuant to this section.

XXI. B. 2004 Proposed Legislation

Currently, no bills have been filed during the 2004 Florida Legislative Session referencing the 1998 amendment.

Article VII, Section 4

XXII. **Sponsor:** The Florida Legislature

24) Summary of the Amendment

The amendment allowed counties to exempt from taxation an increase in the assessed value of homesteaded property resulting from the construction of living quarters for a parent or grandparent, who is 62 years old or older, of the property owner or owner's spouse. Limited the amount of the exemption to the increase in assessed value resulting from such construction or 20 percent of the total assessed value of the property as improved, whichever was less.

25) Analysis

The amendment was proposed by the Legislature. The intent was to encourage sons, daughters, grandsons, and granddaughters to provide care for their elder immediate family members.

26) Approval

The voters did approve the proposed amendment during the November 5, 2002, general election.

27) Case Law

No case law has been reported since the enactment of the implementing legislation. However, Florida's Attorney General issued Advisory Opinion. It is as follows:

Advisory Opinion 2003-45.
This opinion states that a county cannot impose a $25,000 limit on the allowable amount of the reduction in the assessed value of homestead property for living quarters of parents or grandparents.

28) Legislation

XXIII. A. Implementing Legislation

The Florida Legislature enacted the following, as a result of this amendment's approval.

F.S. § 193.703 - This statute provides:

a. In accordance with section 4(e) of Article VII of the State Constitution, a county may provide for a reduction in the assessed value of homestead property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive parents or grandparents of the owner of the property or of the owner's spouse if at least one

of the parents or grandparents for whom the living quarters are provided is at least 62 years of age.

b. A reduction may be granted under subsection (1) only to the owner of homestead property where the construction or reconstruction is consistent with local land development regulations.
c. A reduction in assessment which is granted under this section applies only to construction or reconstruction that occurred after the effective date of this section to an existing homestead and applies only during taxable years during which at least one such parent or grandparent maintains his or her primary place of residence in such living quarters within the homestead property of the owner.
d. Such a reduction in assessment may be granted only upon an application filed annually with the county property appraiser. The application must be made before March 1 of the year for which the reduction is to be granted. If the property appraiser is satisfied that the property is entitled to a reduction in assessment under this section, the property appraiser shall approve the application, and the value of such residential improvements shall be excluded from the value of the property for purposes of ad valorem taxation. The value excluded may not exceed the lesser of the following:

    i. The increase in assessed value resulting from construction or reconstruction of the property; or
    ii. Twenty percent of the total assessed value of the property as improved.

e. If the owner of homestead property for which such a reduction in assessed value has been granted is found to have made any willfully false statement in the application for the reduction, the reduction shall be revoked, the owner is subject to a civil penalty of not more than $1,000, and the owner shall be disqualified from receiving any such reduction for a period of 5 years.
f. When the property owner no longer qualifies for the reduction in assessed value for living quarters of parents or grandparents, the previously excluded just value of such improvements as of the first January 1 after the improvements were substantially completed shall be added back to the assessed value of the property.

B. 2004 Proposed Legislation

During the 2004 Legislative Session, two bills referencing Section 4(e) of Article VII of the State Constitution have been filed.

Senate Bills 1220 and 1222.
These Bills provide that the social security number of the natural or adoptive parent or grandparent of the owner of the property or the owner's spouse is confidential and exempt from public records. These numbers must be excluded.

Article VII, Section 6

Sponsor: Florida Legislature, 1998 House Joint Resolution 3151

29) Summary of the Amendment

The 1998 amendment created subsection (f), which authorized the legislature to allow counties and municipalities to adopt ordinances that grant an additional homestead tax exemption not greater than $25,000 to persons 65 years or older whose annual household income is $20,000 or less. It reads:

(f) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding twenty-five thousand dollars to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

XXIV. Analysis

The amendment was proposed by the Legislature. It allows counties and municipalities to adopt ordinances that grant an additional homestead tax exemption not greater than $25,000 to persons 65 years or older whose annual household income is $20,000 or less. The proposal also directs that the general law must provide for a means of adjusting the income limitation to account for changes in the cost of living.

Approval

The voters approved the 1998 proposed amendment during the November 3, 1998 general election.

Case Law

Since the adoption of this amendment, there has not been any reported case law with respect to the amendment. However, Florida's Attorney General has issued several opinions. They are:

AGO 2001-36

The surviving spouse of a service-connected totally and permanently disabled veteran may receive the homestead exemption benefit offered in Section 196.081 Florida Statues, and also receive the benefit of an additional homestead exemption offered in Section 196.075, Florida Statutes. Furthermore, there is no provision prohibiting the application of both exemptions to the homestead property when the qualifications of both statutes have been fully met.

AGO 1999-72

Florida follows the general rule that taxes may be levied, assessed, and collected only in the manner prescribed by statute. Although a county is granted broad home rule powers by Article VIII, section 1(f), Florida Constitution, as implemented by Section 125.01, Florida Statutes, its taxing power is derived from Article VII of the Florida Constitution, not Article VIII, Florida Constitution. Thus, this office has stated that a county or municipality has no home rule powers with respect to the levy of taxes and exemptions there from but must be able to point to constitutional or statutory authority in exercising its taxing power.

Moreover, a legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way. The Legislature has specified in Section 196.075, Florida Statutes, the requirements for granting the additional homestead exemption. While the statute appears to permit the local governing body to determine the amount of the additional exemption up to $25,000 and to determine whether it applies to all tax levies of the county or municipality granting the exemption, including dependent special districts and municipal service taxing units, nothing in the statute authorizes a board of county commissioners or the governing body of a municipality to enact additional requirements for eligibility.

Furthermore, the following case challenges the requirements for Florida's Homestead Exemption as a whole.

Reinish v. Clark, App. 1 Dist, 765 So. 2d 197 (2000), review dismissed 773 So. 2d 54. reviewed denied 790 So. 2d 1107, certiorari denied, 122 S. Ct 458, 534 U.S. 993. Constitutional and statutory requirement of establishing a state "permanent residence" to be eligible for homestead tax exemption did not violate equal protection clause, as claimed by nonresident taxpayers who used their real property in state as a part-time residence, in light of historic, civic, and economic significance of need to foster and protect primary residence of state homeowners, without an attendant need to give the same high level of protection to other types of residential properties.

Legislation

A. Implementing Legislation

In accordance with the passage of the amendment, the Florida Legislature adopted the following statute during the 1999 legislative session:

F. S. § 196.075. Additional homestead exemption for persons 65 and older

(1) As used in this section, the term:
   (a) "Household" means a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling.
   (b) "Household income" means the adjusted gross income, as defined in Section 62 of the United States Internal Revenue Code, of all members of a household.

(2) In accordance with Section 6(f), Article VII of the State Constitution, the board of county commissioners of any county or the governing authority of any municipality may adopt an ordinance to allow an additional homestead exemption of up to $25,000 for any person who has the legal or equitable title to real estate and maintains thereon the

permanent residence of the owner, who has attained age 65, and whose household income does not exceed $20,000.

(3) Beginning January 1, 2001, the $20,000 income limitation shall be adjusted annually, on January 1, by the percentage change in the average cost-of-living index in the period January 1 through December 31 of the immediate prior year compared with the same period for the year prior to that. The index is the average of the monthly consumer-price-index figures for the stated 12-month period, relative to the United States as a whole, issued by the United States Department of Labor.

(4) An ordinance granting additional homestead exemption as authorized by this section must meet the following requirements:

(a) It must be adopted under the procedures for adoption of a nonemergency ordinance specified in chapter 125 by a board of county commissioners, or chapter 166 by a municipal governing authority.
(b) It must specify that the exemption applies only to taxes levied by the unit of government granting the exemption. Unless otherwise specified by the county or municipality, this exemption will apply to all tax levies of the county or municipality granting the exemption, including dependent special districts and municipal service taxing units.
(c) It must specify the amount of the exemption, which may not exceed $25,000. If the county or municipality specifies a different exemption amount for dependent special districts or municipal service taxing units, the exemption amount must be uniform in all dependent special districts or municipal service-taxing units within the county or municipality.
(d) It must require that a taxpayer claiming the exemption annually submit to the property appraiser, not later than March 1, a sworn statement of household income on a form prescribed by the Department of Revenue.

(5) The department must require by rule that the filing of the statement be supported by copies of any federal income tax returns for the prior year, any wage and earnings statements (W-2 forms), any request for an extension of time to file returns, and any other documents it finds necessary, for each member of the household, to be submitted for inspection by the property appraiser. The taxpayer's sworn statement shall attest to the accuracy of the documents and grant permission to allow review of the documents if requested by the property appraiser. Submission of supporting documentation is not required for the renewal of an exemption under this section unless the property appraiser requests such documentation. Once the documents have been inspected by the property appraiser, they shall be returned to the taxpayer or otherwise destroyed. The property appraiser is authorized to generate random audits of the taxpayers' sworn statements to ensure the accuracy of the household income reported. If so selected for audit, a taxpayer shall execute Internal Revenue Service Form 8821 or 4506, which authorizes the Internal Revenue Service to release tax information to the property appraiser's office. All reviews conducted in accordance with this section shall be completed on or before June 1. The property appraiser may not grant or renew the exemption if the required documentation requested is not provided.

(6) The board of county commissioners or municipal governing authority must deliver a copy of any ordinance adopted under this section to the property appraiser no later than December 1 of the year prior to the year the exemption will take effect. If the ordinance is repealed, the board of county commissioners or municipal governing authority shall notify the property appraiser no later than December 1 of the year prior to the year the exemption expires.

(7) Those persons entitled to the homestead exemption in Section 196.031 may apply for and receive an additional homestead exemption as provided in this section. Receipt of the additional homestead exemption provided for in this section shall be subject to the provisions of Sections 196.131 and 196.161, if applicable.

(8) If title is held jointly with right of survivorship, the person residing on the property and otherwise qualifying may receive the entire amount of the additional homestead exemption.

(9) If the property appraiser determines that for any year within the immediately previous 10 years a person who was not entitled to the additional homestead exemption under this section was granted such an exemption, the property appraiser shall serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and that property must be identified in the notice of tax lien. Any property that is owned by the taxpayer and is situated in this state is subject to the taxes exempted by the improper homestead exemption, plus a penalty of 50 percent of the unpaid taxes for each year and interest at a rate of 15 percent per annum. However, if such an exemption is improperly granted as a result of a clerical mistake or omission by the property appraiser, the person who improperly received the exemption may not be assessed a penalty and interest. Before any such lien may be filed, the owner must be given 30 days within which to pay the taxes, penalties, and interest. Such a lien is subject to the procedures and provisions set forth in Section 196.161(3).

B. 2004 Proposed Legislation

Furthermore, several bills have been proposes during the 2004 Florida Legislative Session. They are:

Senate Bill 2872

Proposed Constitutional Amendment amended Section 6, Article VII and adding subsection:

(g) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of the general law, to grant an additional homestead tax exemption not exceeding twenty-five thousand dollars to any person who has the legal and equitable title to real estate and maintains thereon the permanent residence of the owner and whose parents who are age sixty-five or older live in such residence with such person instead of being place in a nursing home, assisted living facility, or other facility for the elderly. The general law must allow counties and municipalities to specify the conditions by ordinance by which the additional homestead exemption would be granted and enforced.

House Bill 691

Proposed Constitutional Amendment amended Section 6, Article VII and adding subsection:

(g) …to grant an additional homestead tax exemption not exceeding twenty-five thousand dollars to any person who is a classroom teacher in grades kindergarten thru 12 in a public school.

Article VIII, Section 1

Sponsor: Florida Legislature

30) Summary of the Amendment

The 1998 amendment authorized the recording of instruments by filing at a branch office of the county seat.

XXV. Analysis

The amendment was proposed by the Legislature. It expressly allows for the official filing of documents at county branch offices designated for that purpose. Although, many counties had branch offices separate and apart from the county seat, a document was not considered to be officially filed until it actually was taken to and filed in the appropriate official's office at the county seat. Some branch offices are located in the metropolitan areas that are as much as fifty miles from the county seat. The objective was making the offices more accessible to the general public.

Approval

The voters approved the 1998 proposed amendment during the November 3, 1998 general election.

Case Law

Since the adoption of this amendment, there has not been any reported case law with respect to the amendment.

Legislation

A. Implementing Legislation

In accordance with the passage of the amendment, the Florida Legislature adopted the following statute during the 1999 legislative session:

F. S. § 28.07. Place of office

The clerk of the circuit court shall keep his or her office at the county seat. If the clerk finds a need for branch offices, they may be located in the county at places other than the county seat. Instruments presented for recording in the Official Records may be accepted and filed for that purpose at any branch office designated by the governing body of the county for the recording of instruments pursuant to section 1, Article VII of the State Constitution. One or more deputy clerks authorized to issue process may be employed for such branch offices. The Official Records of the county must be kept at the county seat. Other records and books must be kept within the county but need not be kept at the county seat.

2004 Proposed Legislation

Currently, no bills have been filed during the 2004 Florida Legislative Session referencing the 1998 amendment.

Article VIII, Section 5

XXVI. Sponsor: Constitution Revision Commission

XXVII. Summary of the Amendment

This amendment authorized each county the option of requiring a criminal history records check and waiting period of 3 to 5 days in connection with the "sale" of any firearm; defined "sale" as the transfer of money or other valuable consideration for a firearm where any part of the transaction occurs on property open to public access; This amendment does not apply to holders of a concealed weapons permit when purchasing a firearm.

31) Analysis

Revision 12 created section 5(b) allowing counties, by option, to require a criminal history records check and a three to five-day waiting period for all firearms sales occurring on property open to public access. Holders of concealed weapons permits were exempted from this revision when purchasing a firearm.

The constitutional regulation of guns in Florida began in 1990 when Floridians approved a constitutional amendment (Article I, section 8(b)) establishing a three-day waiting period between the retail purchase and delivery of any handgun. Florida's constitutional waiting period was limited, however, because
handguns sold at gun shows by collectors and other nonlicensed sellers were not considered retail sales and therefore were not subject to the constitutional waiting period. Likewise, the sales of all other guns not classified as handguns were also exempted from the constitutional waiting period.

Revision 12 tightened the regulation of all gun sales on property open to public access by authorizing counties, by option, to adopt local ordinances regulating such sales.

32) Approval

The voters approved the proposed amendment during the November 3, 1998, general election.

33) Case Law

No case law has been reported regarding this amendment. However, prior to the amendment, the following case was heard before the Florida Supreme Court:

Broward County vs. City of Fort Lauderdale, 480 So. 2d 631 (Fla. 1985). Broward County Commission sought to regulate certain aspects of the sale of handguns in the county preempting City ordinances. The City filed suit arguing that Article VIII, Section 4 prohibits

the transfer of functions unless approved by a majority of the electors within the County and the City. The Court held that Article VIII, Section 1(g) permits regulatory preemption by counties, while Section 4 required dual referenda to transfer functions or powers relating to services. A charter county may preempt a municipal regulatory power in such areas as handgun sales when countywide uniformity will best further the ends of government. Dual referenda are necessary when the preemption goes beyond regulation and intrudes upon a municipality's provision of services.

XXVIII. Legislation

A. Implementing Legislation

This amendment was self – executing. However, counties must enact local ordinances implementing such enforcement.

B. 2004 Proposed Legislation

Currently, there are no bills filed during the 2004 Florida Legislative Session referencing this amendment.

Article VIII, Section 6

XXIX. Sponsor: Florida Legislature

XXX. Summary of the Amendment

Proposed amendment authorized the citizens of Miami-Dade to amend and/or make revisions to their Home Rule Charter by special law approved by a vote of the electors of Miami-Dade County and to conform references to the county's current name.

XXXI. Analysis

The amendment was proposed by the Legislature. The proposal would have made it easier for citizens within Miami-Dade to revise their Home Rule Charter. Currently, the Florida Legislature is the only mechanism by which a revision can be made to the Charter.

XXXII. Approval

The voters did NOT approve the proposed amendment during the November 5, 2002, general election.

XXXIII. Case Law

Not applicable.

Article IX, Section 1

XXXIV. Sponsor: Constitution Revision Commission

XXXV. Summary of the Amendment

Added the following language to Section 1, Article IX of the State Constitution:

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.

34) Analysis

The additional language to Section 1 of Article IX, provided that 1) the education of the state's children is a fundamental value; 2) educating children in the state is a paramount duty of the state legislature; 3) requires the education of all the state's children; 4) the legislature must make adequate provisions for an efficient, safe, secure, and high quality public school system.

The "fundamental value" language, new to the constitution, was codified from the language taken from the Florida Supreme Court decision in Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 680 So. 2d 400 (Fla. 1996). Early proposals presented before the Constitution Revision Commission framed education in terms of being a "fundamental right." In response to concerns of commissioners that the state might become liable for every individual's dissatisfaction with the education system, the term "fundamental value" was substituted.

The "paramount duty" language represents a return to the 1868 Constitution, which provided that "[i]t is the paramount duty of the State to make ample provisions for the education of all children residing within its borders, without distinction or preference." In 1885, the "paramount duty" language was dropped from the constitution, and the governing provision merely stated that "the legislature shall provide for a uniform system of public free schools and shall provide for the liberal maintenance of the same."

The addition of "efficient, safe, secure, and high quality" represented an attempt by the 1997-98 Constitution Revision Commission to provide constitutional standards to measure the "adequacy" provision found in the second sentence of section 1. The action of the commission was in direct response to recent court actions seeking a declaration that Article IX, section 1 created a fundamental right to an adequate education, which the state had arguably violated by failing to provide sufficient resources to public education. In Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 680 So. 2d 400 (Fla. 1996), the court rejected the notion of a fundamental right to education and

found that the issue of "adequacy" was a nonjusticiable, political question. The court found that absent definable standards to provide guidance in determining "adequacy" the court would be usurping the legislature's powers.

Subsequently in Advisory Opinion to the Attorney General Re: Requirements for Adequate Public Education Funding, 703 So. 2d 446, 449 (Fla. 1997)., Justice Anstead, writing in a dissent, noted that the court would have benefited in the earlier Coalition for Adequacy case "if there had been an express statement in the constitution defining 'adequate provision' to guide us." In direct response to those rulings, the 1997-98 Constitution Revision Commission added "efficient, safe, secure, and high quality" as standards for determining the "adequacy" of public education. In other states, these same terms have been found to be measurable and meaningful. (See DeRolph v. State, 677 N.E. 2d 733 (Ohio 1997). (the court found meaningful standards within the "thorough and efficient standard" established by the Ohio Supreme Court).

35) Approval

The voters approved the proposed amendment during the November 3, 1998, general election.

36) Case Law

Since the adoption of the amendment, the following case was decided regarding the amendment to Section 1, Article IX of the State Constitution:

Bush v.Holmes, App 1 Dist. 767 So. 2d 668 (2000), review denied 790 So. 2d 1104 on remand 2002 WL 1809079.

Opportunity scholarship program (OSP) statute, insofar as it establishes program through which state pays tuition for certain students to attend private schools, is not unconstitutional on its face under constitutional section providing for public education; although constitution directs that public education be accomplished through system of free public schools, nothing clearly prohibits legislature from allowing well delineated use of public funds for private school education.

XXXVI. Legislation

A. Implementing Legislation

Since the adoption of the amendment in 1998, the Florida Legislature has enacted several educational bills referencing Section 1, Article IX of the State Constitution. They are:

F. S. § 1002.20. K-12 student and parent rights

Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(1) System of education.--In accordance with Section 1, IX of the State Constitution, all K-12 public school students are entitled to a uniform, safe, secure, efficient, and high

quality system of education, one that allows students the opportunity to obtain a high quality education. Parents are responsible to ready their children for school; however, the State of Florida cannot be the guarantor of each individual student's success.

Note: The rest of this statutes deals with parental rights and obligations regarding : attendance; health issues; discipline; safety; educational choice; discrimination; disabilities; foreign students; records; report cards; progress reports; school accountability; athletics; extracurricular activities; instructional materials; parental input; juvenile justice programs; transportation; and orderly classrooms.

F.S. § 1002.38. Opportunity Scholarship Program

(1) Findings and intent.--The purpose of this section is to provide enhanced opportunity for students in this state to gain the knowledge and skills necessary for postsecondary education, a technical education, or the world of work. The Legislature recognizes that the voters of the State of Florida, in the November 1998 general election, amended Section I1, Article IX of the Florida Constitution so as to make education a paramount duty of the state. The Legislature finds that the State Constitution requires the state to provide a uniform, safe, secure, efficient, and high-quality system, which allows the opportunity to obtain a high-quality education. The Legislature further finds that a student should not be compelled, against the wishes of the student's parent, to remain in a school found by the state to be failing for 2 years in a 4-year period. The Legislature shall make available opportunity scholarships in order to give parents the opportunity for their children to attend a public school that is performing satisfactorily or to attend an eligible private school when the parent chooses to apply the equivalent of the public education funds generated by his or her child to the cost of tuition in the eligible private school as provided in paragraph (6)(a). Eligibility of a private school shall include the control and accountability requirements that, coupled with the exercise of parental choice, are reasonably necessary to secure the educational public purpose, as delineated in subsection (4).

(2) Opportunity scholarship eligibility.--A public school student's parent may request and receive from the state an opportunity scholarship for the student to enroll in and attend a private school in accordance with the provisions of this section if:

(a) 1. By assigned school attendance area or by special assignment, the student has spent the prior school year in attendance at a public school that has been designated pursuant to Section 1008.34 as performance grade category "F," failing to make adequate progress, and that has had 2 school years in a 4-year period of such low performance, and the student's attendance occurred during a school year in which such designation was in effect;

2. The student has been in attendance elsewhere in the public school system and has been assigned to such school for the next school year; or

3. The student is entering kindergarten or first grade and has been notified that the student has been assigned to such school for the next school year.

(b) The parent has obtained acceptance for admission of the student to a private school eligible for the program pursuant to subsection (4), and has notified the Department of Education and the school district of the request for an opportunity scholarship no later than July 1 of the first year in which the student intends to use the scholarship…

The provisions of this section shall not apply to a student who is enrolled in a school operating for the purpose of providing educational services to youth in Department of Juvenile Justice commitment programs. For purposes of continuity of educational choice, the opportunity scholarship shall remain in force until the student returns to a public school or, if the student chooses to attend a private school the highest grade of which is grade 8, until the student matriculates to high school and the public high school to which the student is assigned is an accredited school with a performance grade category designation of "C" or better. However, at any time upon reasonable notice to the Department of Education and the school district, the student's parent may remove the student from the private school and place the student in a public school, as provided in subparagraph (3)(a)2.

F. S. § 1003.03. Maximum class size

(1) Constitutional class size maximums.--Pursuant to Section 1, Article IX of the State Constitution, beginning in the 2010-2011 school year:

(a) The maximum number of students assigned to each teacher who is teaching core-curricula courses in public school classrooms for prekindergarten through grade 3 may not exceed 18 students.
(b) The maximum number of students assigned to each teacher who is teaching core-curricula courses in public school classrooms for grades 4 through 8 may not exceed 22 students.
(c) The maximum number of students assigned to each teacher who is teaching core-curricula courses in public school classrooms for grades 9 through 12 may not exceed 25 students.

B. 2004 Proposed Legislation

During the 2004 Legislative Session, several proposed resolutions/bills have been filed relating to this amendment. These resolution/bills provide the following:

Senate Joint Resolution No. 242
A joint resolution proposing an amendment to Section 1 of Article IX of the State Constitution to require class size reduction only in prekindergarten through grade 3. This bill if passed would deleting the following sections from Section 1 of Article 10 of the State Constitution:

~~(2)The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 4 through 8 does not exceed 22 students; and~~

~~(3) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 9 through 12 does not exceed 25 students~~ .

Senate Bill No. 2908
Removes letter grades from the performance grade categories by which schools must be identified in the Commissioner of Education's annual report of the results of the statewide assessment program.

Article IX, Section 1

XXXVII. **Sponsor:** Pre- K Committee (Parents for Readiness Education for our Kids)

Summary of the Amendment

The amendment provided that every four-year-old child in Florida must be offered a high quality pre-kindergarten learning opportunity by the state no later than the 2005 school year. This voluntary early childhood development and education program must be established according to high quality standards and be free for all Florida's four-year-olds without taking away funds used for existing education, health and development programs.

Analysis

The amendment was proposed by initiative petition. The amendment would essentially add a new grade to the school system by 2005. While there are parents who presently pay for pre-k, this would shift the cost to the state and would allow low-income families the opportunity to capitalize on the educational program.

Approval

The voters did approve the proposed amendment during the November 5, 2002, general election.

Case Law

No case law has been reported since the enactment of the implementing legislation. However, this citizen initiative originated after the Florida Supreme Court heard the following case:

Coalition For Adequacy and Fairness in School Funding, Inc. vs. Chiles, 680 So. 2d 400, (Fla. 1996).

In this case, the coalition filed suit requesting the trial court to declare that an adequate education is a fundamental right under the Florida Constitution, and that the State had failed to provide its students that fundamental right by failing to allocate adequate resources for a uniform system of free public schools as provided for in the Florida Constitution. The trial court dismissed the complaint and the appeals court certified the case to be one of great public importance.

The Florida Supreme Court affirmed the order of dismissal. The Court held that 1) the claim presented was a non-justiciable political question; 2) Adequate provision as expressed under Article IX, Section 1 of the Florida Constitution cannot refer to "adequate funding"; the alleged facts did not show a substantial inequality of education funding among school districts; 3) the alleged facts did not show that the funding formula is not rationally related to

either to the charge of providing a uniform system of free public education or to the general health, safety, and welfare of Florida citizens; Florida's Constitution did not create a fundamental right to a particular level of funding; 4) and strict scrutiny by the Court was unwarranted.

Legislation

37) A. Implementing Legislation

In order to implement the adopted amendment, the Florida Legislature passed in 2003:

F.S. 411.012.

This statute provides:

a. The voluntary universal prekindergarten education program shall provide a high-quality prekindergarten learning opportunity in the form of early childhood development and education which is voluntary and free for every child in this state who is 4 years of age. The program must be organized, designed, and delivered in accordance with Section 1(b) and (c) of Article IX of the State Constitution. Except as otherwise expressly provided by law, ss 411.01 – 411.011 , do not apply to the voluntary universal prekindergarten education program.
b. The State Board of Education shall conduct a study on the curriculum, design, and standards for the voluntary universal prekindergarten education program. By October 1, 2003, the State Board of Education shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Agency for Workforce Innovation and the Florida Partnership for School Readiness shall provide any necessary information and coordinate with the state board. The report must include the recommendations or options of the state board on each of the following program elements:

    i. Curriculum and standards.--Developmentally appropriate curriculum and standards that provide children a high-quality prekindergarten learning opportunity. These curriculum and standards must be designed to:

        1. Address and enhance each child's ability to make age-appropriate progress;
        2. Provide early childhood development of language and cognitive capabilities;
        3. Provide education in basic skills and other appropriate skills; and
        4. Deliver early childhood development and education according to professionally accepted standards.

    ii. High-quality learning opportunity.--Quality standards that provide children a high-quality prekindergarten learning opportunity. These

quality standards must include specific recommendations or options for the expected outcomes of the voluntary universal prekindergarten education program.

iii. Quantity of instruction.--Standards for the quantity of instruction to be provided as voluntary and free for every child in the state who is 4 years of age. These standards must include specific recommendations or options for each of the following elements:
   1. Hours per day; and
   2. Days per year.

iv. Delivery system.--Standards for providers in order to deliver children a high-quality prekindergarten learning opportunity. These standards must include specific recommendations or options for each of the following elements:

   1. Appropriate range of settings, including both public and private providers, with consideration of the capacity in each available setting;
   2. Licensing or regulatory requirements for providers;
   3. Health and safety requirements for providers; and
   4. Parental choice.

v. Assessment and evaluation.--Methods for measuring the performance of the voluntary universal prekindergarten education program. These methods must include specific recommendations or options for each of the following elements:

   1. Assessment of age-appropriate progress for each child;
   2. Evaluation of outcome measures for each provider in each setting; and
   3. Evaluation of school readiness coalitions.

vi. Funding.--Estimated cost per full-time-equivalent child of the recommended curriculum, design, and standards. This cost estimate must consider funding for each of the state board's recommendations or options for each of the program elements described in this subsection.

(3) The report must also include the state board's recommendations or options for best practices to improve the outcomes of school readiness coalitions and providers.

B. 2004 Proposed Legislation

During the 2004 Legislative Session, several proposed bills have been filed relating to this amendment. These bills provides:

Senate Joint Resolution No. 242

A joint resolution proposing an amendment to Section 1 of Article IX of the State Constitution to require class size reduction only in prekindergarten through grade 3. This bill if passed would deleting the following sections from Section 1 of Article 10 of the State Constitution:

~~(2) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 4 through 8 does not exceed 22 students; and~~

~~(3) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 9 through 12 does not exceed 25 students~~ .

Article IX, Section 1

XXXVIII. **Sponsor:** Coalition to Reduce Class Size

38) Summary of the Amendment

The amendment provided that the Legislature provide funding for sufficient classrooms so that there will be a maximum number of students in public school classes for various grade levels; required compliance by the beginning of the 2010 school year; requires the Legislature, and not local school districts, to pay for the costs associated with the reduction of class size; prescribes a schedule for phased – funding to achieve the required maximum class size.

39) Analysis

The amendment was proposed by initiative petition. The amendment requires the legislature to take adequate measures to assure that public school children will receive a high quality education. Limited the classroom size is required. Classrooms containing children from kindergarten to third grade are limited to a maximum of 18 students. Classrooms containing children from the fourth until the eighth grade are limited to a maximum of 22 students. Classrooms containing children from the ninth until the twelfth grade are limited to 25 students.

40) Approval

The voters did approve the proposed amendment during the November 5, 2002, general election.

41) Case Law

No case law has been reported since the enactment of the implementing legislation. However, this citizen initiative originated after the Florida Supreme Court heard the following case:

Coalition For Adequacy and Fairness in School Funding, Inc. vs. Chiles, 680 So. 2d 400, (Fla. 1996).

In this case, the coalition filed suit requesting the trial court to declare that an adequate education is a fundamental right under the Florida Constitution, and that the State had failed to provide its students that fundamental right by failing to allocate adequate resources for a uniform system of free public schools as provided for in the Florida Constitution. The trial court dismissed the complaint and the appeals court certified the case to be one of great public importance.

The Florida Supreme Court affirmed the order of dismissal. The Court held that 1) the claim presented was a non-justiciable political question; 2) Adequate provision as expressed under

Article IX, Section 1 of the Florida Constitution cannot refer to "adequate funding"; the alleged facts did not show a substantial inequality of education funding among school districts; 3) the alleged facts did not show that the funding formula is not rationally related to either to the charge of providing a uniform system of free public education or to the general health, safety, and welfare of Florida citizens; Florida's Constitution did not create a fundamental right to a particular level of funding; 4) and strict scrutiny by the Court was unwarranted.

XXXIX. Legislation

A. Implementing Legislation

During the 2003 Legislative Session, the Florida Legislature adopted F.S. § 1003.03; Maximum class size.

a. Constitutional class size maximums.--Pursuant to Section 1, Article IX of the State Constitution, beginning in the 2010-2011 school year:

   i. The maximum number of students assigned to each teacher who is teaching core-curricula courses in public school classrooms for prekindergarten through grade 3 may not exceed 18 students.
   ii. The maximum number of students assigned to each teacher who is teaching core-curricula courses in public school classrooms for grades 4 through 8 may not exceed 22 students.
   iii. The maximum number of students assigned to each teacher who is teaching core-curricula courses in public school classrooms for grades 9 through 12 may not exceed 25 students.

b. Implementation.—

   i. Beginning with the 2003-2004 fiscal year, each school district that is not in compliance with the maximums in subsection (1) shall reduce the average number of students per classroom in each of the following grade groupings: prekindergarten through grade 3, grade 4 through grade 8, and grade 9 through grade 12, by at least two students each year.
   ii. Determination of the number of students per classroom in paragraph (a) shall be calculated as follows:

      1. For fiscal years 2003-2004 through 2005-2006, the calculation for compliance for each of the 3 grade groupings shall be the average at the district level.
      2. For fiscal years 2006-2007 through 2007-2008, the calculation for compliance for each of the 3 grade groupings shall be the average at the school level.

3. For fiscal years 2008-2009, 2009-2010, and thereafter, the calculation for compliance shall be at the individual classroom level.

iii. The Department of Education shall annually calculate each of the three average class size measures defined in paragraphs (a) and (b) based upon the October student membership survey. For purposes of determining the baseline from which each district's average class size must be reduced for the 2003-2004 school year, the department shall use data from the February 2003 student membership survey updated to include classroom identification numbers as required by the department.

iv. Prior to the adoption of the district school budget for 2004-2005, each district school board shall hold public hearings to review school attendance zones in order to ensure maximum use of facilities while minimizing the additional use of transportation in order to comply with the two-student-per- year reduction required in paragraph (a). School districts that meet the constitutional class size maximums described in subsection (1) are exempt from this requirement.

c. Implementation options.--District school boards must consider, but are not limited to, implementing the following items in order to meet the constitutional class size maximums described in subsection (1) and the two- student-per-year reduction required in subsection (2):

a. Adopt policies to encourage qualified students to take dual enrollment courses.

b. Adopt policies to encourage students to take courses from the Florida Virtual School.

c. 1. Repeal district school board policies that require students to have more than 24 credits to graduate from high school.
2. Adopt policies to allow students to graduate from high school as soon as they pass the grade 10 FCAT and complete the courses required for high school graduation.

d. Use methods to maximize use of instructional staff, such as changing required teaching loads and scheduling of planning periods, deploying district employees that have professional certification to the classroom, using adjunct educators, or any other method not prohibited by law.

e. Use innovative methods to reduce the cost of school construction by using prototype school designs, using SMART Schools designs, participating in the School Infrastructure Thrift Program, or any other method not prohibited by law.

f. Use joint-use facilities through partnerships with community colleges, state universities, and private colleges and universities. Joint-use facilities available for use as K-12 classrooms that do not meet the K-12 State Regulations

for Educational Facilities in the Florida Building Code may be used at the discretion of the district school board provided that such facilities meet all other health, life, safety, and fire codes.

g. Adopt alternative methods of class scheduling, such as block scheduling.
h. Redraw school attendance zones to maximize use of facilities while minimizing the additional use of transportation.
i. Operate schools beyond the normal operating hours to provide classes in the evening or operate more than one session of school during the day.
j. Use year-round schools and other nontraditional calendars that do not adversely impact annual assessment of student achievement.
k. Review and consider amending any collective bargaining contracts that hinder the implementation of class size reduction.
l. (l) Use any other approach not prohibited by law.

d. Accountability.—
    i. Beginning in the 2003-2004 fiscal year, if the department determines for any year that a school district has not reduced average class size as required in subsection (2) at the time of the third FEFP calculation, the department shall calculate an amount from the class size reduction operating categorical which is proportionate to the amount of class size reduction not accomplished. Upon verification of the department's calculation by the Florida Education Finance Program Appropriation Allocation Conference, the Executive Office of the Governor shall transfer undistributed funds equivalent to the calculated amount from the district's class size reduction operating categorical to an approved fixed capital outlay appropriation for class size reduction in the affected district pursuant to F. S. 216.292(13). The amount of funds transferred shall be the lesser of the amount verified by the Florida Education Finance Program Appropriation Allocation Conference or the undistributed balance of the district's class size reduction operating categorical. However, based upon a recommendation by the Commissioner of Education that the State Board of Education has reviewed evidence indicating that a district has been unable to meet class size reduction requirements despite appropriate effort to do so, the Legislative Budget Commission may approve an alternative amount of funds to be transferred from the district's class size reduction operating categorical to its approved fixed capital outlay account for class size reduction.

ii. Beginning in the 2005-2006 school year, the department shall determine by January 15 of each year which districts have not met the two-student-per-year reduction required in subsection (2) based upon a comparison of the district's October student membership survey for the current school year and the February 2003 baseline student membership survey. The department shall report such districts to the Legislature. Each district that has not met the two-student- per-year reduction shall be required to implement one of the following policies in the subsequent school year unless the department finds that the district comes into compliance based upon the February student membership survey:

1. Year-round schools;
2. Double sessions;
3. Rezoning; or
4. Maximizing use of instructional staff by changing required teacher loads and scheduling of planning periods, deploying school district employees who have professional certification to the classroom, using adjunct educators, operating schools beyond the normal operating hours to provide classes in the evening, or operating more than one session during the day.

A school district that is required to implement one of the policies outlined in subparagraphs 1. through 4. shall correct in the year of implementation any past deficiencies and bring the district into compliance with the two-student- per-year reduction goals established for the district by the department pursuant to subsection (2). A school district may choose to implement more than one of these policies. The district school superintendent shall report to the Commissioner of Education the extent to which the district implemented any of the policies outlined in subparagraphs 1. through 4. in a format to be specified by the Commissioner of Education. The Department of Education shall use the enforcement authority provided in Section 1008.32 to ensure that districts comply with the provisions of this paragraph.

(c) Beginning in the 2006-2007 school year, the department shall annually determine which districts do not meet the requirements described in subsection (2). In addition to enforcement authority provided in Section 1008.32, the Department of Education shall develop a constitutional compliance plan for each such district which includes, but is not limited to, redrawing school attendance zones to maximize use of facilities while minimizing the additional use of transportation unless the department finds that the district comes into compliance based upon the February student membership survey and the other accountability policies listed in paragraph (b). Each district school board shall implement the constitutional compliance plan developed by the state board until the district complies with the constitutional class size maximums.

Furthermore, during the 2003 Legislative Session, the Florida Legislature adopted F. S. § 1011.685, entitled Class size reduction; operating categorical fund, in order to provide a funding source to implement the class size reduction initiative. This statute provides:

(1) There is created an operating categorical fund for implementing the class size reduction provisions of Section 1, Article IX of the State Constitution. These funds shall be allocated to each school district in the amount prescribed by the Legislature in the General Appropriations Act.
(2) Class size reduction operating categorical funds shall be used by school districts for the following:

    (a) To reduce class size in any lawful manner, if the district has not met the constitutional maximums identified in section 1003.03(1) or the reduction of two students per year required by section 1003.03(2).
    (b) For any lawful operating expenditure, if the district has met the constitutional maximums identified in section 1003.03(1) or the reduction of two students per year required by section 100303(2); however, priority shall be given to increase salaries of classroom teachers as defined in section 1012.01(2)(a) and to implement the salary career ladder defined in section 1012.231.

B. 2004 Proposed Legislation

During the 2004 Legislative Session, several proposed bills have been filed relating to this amendment. These bills provides:

Senate Joint Resolution No. 242
A joint resolution proposing an amendment to Section 1 of Article IX of the State Constitution to require class size reduction only in prekindergarten through grade 3. This bill if passed would deleting the following sections from Section 1 of Article 10 of the State Constitution:

~~(2) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 4 through 8 does not exceed 22 students; and~~

~~(3) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 9 through 12 does not exceed 25 students~~ .

42) Article IX, Section 7

XL. **Sponsor:** Education Excellence for Florida

XLI. Summary of the Amendment

The amendment created a local board of trustees to administer each state university. Each board has thirteen members. A statewide board of seventeen members is responsible for the coordinated and accountable operation of the State University System, similar to the former Board of Regents.

XLII. Analysis

The amendment was proposed by initiative petition. The intent of the amendment was to re-establish two educational governing entities. The Board of Governors would focus solely on the state university system. The Florida Board of Education would focus solely on programs relating to elementary and high school education.

Each university is provided a separate board to administer itself. The Board of Governors is authorized to make centralized decisions for the entire state university system.

The Florida Board of Education serves four-year terms. The Board of Governors serves seven-year terms.

XLIII. Approval

The voters did approve the proposed amendment during the November 5, 2002, general election.

XLIV. Case Law

Since the adoption of this amendment the following decisions have been reported:

Florida Public Employees Council 79, AFSCME, AFL-CIO, v. PERC, 2004 WL 546854(Fla. App.1 Dist.) -
Pursuant to Article IX, Section 7(c), the Board of Governors may constitutionally grant the authority to act as the public employers of the state universities to the respective Boards of Trustees. Because the Board of Governors, pursuant to the powers bestowed upon it by the voters of Florida, designated the Boards of Trustees as the public employers of their respective universities

Florida Attorney General Opinion 2003-31 –
Section 339.175(2)(b), of Florida Statutes governing Metropolitan Transportation Planning Organizations, does not provide authorization for the Board of Trustees of the University of Florida to appoint a voting member to the Metropolitan Transportation Planning Organization for the Gainesville Urbanized Area. However, Section 339.175(2), provides for

the participation of representatives of local bodies that may have transportation-related duties, responsibilities, and concerns in the activities of the MPO without acting as voting members. Section 339.175(3)(a), specifically recognizes that "nonvoting advisers may be appointed by the M.P.O. as deemed necessary."

XLV. Legislation

A. Implementing Legislation

During the 2003 Legislative Session, the Florida Legislature enacted:

F. S. § 1001.70. Board of Governors
Pursuant to Section 7(d), Article IX of the State Constitution, the Board of Governors is established as a body corporate comprised of 17 members as follows: 14 citizen members appointed by the Governor subject to confirmation by the Senate; the Commissioner of Education; the chair of the advisory council of faculty senates or the equivalent; and the president of the Florida student association or the equivalent. The appointed members shall serve staggered 7-year terms. In order to achieve staggered terms, beginning July 1, 2003, of the initial appointments, 4 members shall serve 2-year terms, 5 members shall serve 3-year terms, and 5 members shall serve 7-year terms.

F. S. § 1001.71. University boards of trustees; membership

(1) Pursuant to Section 7 (c), Article IX of the State Constitution, each local constituent university shall be administered by a university board of trustees comprised of 13 members as follows: 6 citizen members appointed by the Governor subject to confirmation by the Senate; 5 citizen members appointed by the Board of Governors subject to confirmation by the Senate; the chair of the faculty senate or the equivalent; and the president of the student body of the university. The appointed members shall serve staggered 5-year terms. In order to achieve staggered terms, beginning July 1, 2003, of the initial appointments by the Governor, 2 members shall serve 2-year terms, 3 members shall serve 3-year terms, and 1 member shall serve a 5-year term and of the initial appointments by the Board of Governors, 2 members shall serve 2-year terms, 2 members shall serve 3-year terms, and 1 member shall serve a 5-year term. There shall be no state residency requirement for university board members, but the Governor and the Board of Governors shall consider diversity and regional representation.
(2) Members of the boards of trustees shall receive no compensation but may be reimbursed for travel and per diem expenses as provided in section 112.061.
(3) Each board of trustees shall select its chair and vice chair from the appointed members at its first regular meeting after July 1. The chair shall serve for 2 years and may be reselected for one additional consecutive term. The duties of the chair shall include presiding at all meetings of the board of trustees, calling special meetings of the board of trustees, and attesting to actions of the board of trustees. The duty of the vice chair is to act as chair during the absence or disability of the chair.
(4) The university president shall serve as executive officer and corporate secretary of the board of trustees and shall be responsible to the board of trustees for all operations of the

university and for setting the agenda for meetings of the board of trustees in consultation with the chair.

B. 2004 Proposed Legislation

Currently, there are no bills filed during the 2004 Florida Legislative Session referencing this amendment.

Article X, Section 20

XLVI. **Sponsor:** Smoke-Free for Health, Inc.

43) Summary of the Amendment

Workplaces Without Tobacco Smoke

(a) Prohibition. As a Florida health initiative to protect people from the health hazards of second-hand tobacco smoke, tobacco smoking is prohibited in enclosed indoor workplaces.

(b) Exceptions. As further explained in the definitions below, tobacco smoking may be permitted in private residences whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof; and further may be permitted in retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments; and stand-alone bars. However, nothing in this section or in its implementing legislation or regulations shall prohibit the owner, lessee, or other person in control of the use of an enclosed indoor workplace from further prohibiting or limiting smoking therein.

(c) Definitions. For purposes of this section, the following words and terms shall have the stated meanings:

"Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

"Second-hand smoke," also known as environmental tobacco smoke (ETS), means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted at the mouthpiece during puff drawing; and smoke exhaled by the smoker.

"Work" means any person's providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not. "Work" includes, without limitation, any such service
performed by an employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant, volunteer, and the like.

"Enclosed indoor workplace" means any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include uncovered openings, screened or otherwise partially covered openings; or open or closed windows, jalousies, doors, or the like. This section applies to all such enclosed indoor workplaces without regard to whether work is occurring at any given time.

"Commercial" use of a private residence means any time during which the owner, lessee, or other person occupying or controlling the use of the private residence is furnishing in the private residence, or causing or allowing to be furnished in the private residence, child care, adult care, or health care, or any combination thereof, and receiving or expecting to receive compensation therefor.

"Retail tobacco shop" means any enclosed indoor workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, in which the sale of other products or services is merely incidental.

"Designated smoking guest rooms at public lodging establishments" means the sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented to guests for their exclusive transient occupancy in public lodging establishments including hotels, motels, resort condominiums, transient apartments, transient lodging establishments, rooming houses, boarding houses, resort dwellings, bed and breakfast inns, and the like; and designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking may be permitted.

"Stand-alone bar" means any place of business devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, if any, is merely incidental to the consumption of any such beverage; and that is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue.

(d) Legislation. In the next regular legislative session occurring after voter approval of this amendment, the Florida Legislature shall adopt legislation to implement this amendment in a manner consistent with its broad purpose and stated terms, and having an effective date no later than July 1 of the year following voter approval. Such legislation shall include, without limitation, civil penalties for violations of this section; provisions for administrative enforcement; and the requirement and authorization of agency rules for implementation and enforcement. Nothing herein shall preclude the Legislature from enacting any law constituting or allowing a more restrictive regulation of tobacco smoking than is provided in this section.

44) Analysis

The amendment was proposed by voter initiative. The proposed amendment was to protect people from second-hand smoke. The amendment prohibited tobacco smoking in enclosed indoor workplaces and restaurants that served food. Allowed exceptions for private residences except when they are being used to provide commercial childcare, adult care or

health care. Allowed exceptions for hotels. Stand alone bars and certain smoking retail shops. The amendment expanded current law that prohibited smoking in public places.

45) Approval

The voters did approve the proposed amendment during the November 5, 2002, general election.

46) Case Law

No case law has been reported since the enactment of the implementing legislation.

47) Legislation

XLVII. A. Implementing Legislation

In response to the approval of the amendment, the Florida Legislature amended the Florida Clean Indoor Air Act, (FCIAA), under Chapter 386 of the Florida Statutes.

F. S. 386.207
The purpose of the statute was to protect people from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in Section 20 of Article X of the State Constitution. The intent of the Legislature was not to inhibit, or otherwise obstruct, medical or scientific research or smoking cessation programs approved by the Department of Health.

F. S. 386.207 authorizes the Department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to enforce the FCIAA based upon each department's specific areas of regulatory authority and to adopt rules specifying procedures to be followed by enforcement personnel in investigating complaints and notifying alleged violators and rules specifying procedures by which appeals may be taken by aggrieved parties.

The Department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, upon notification of observed violations of the statute will issue the proprietor or other person in charge of an enclosed indoor workplace a notice to comply.

If the person fails to comply within 30 days after receipt of the notice, the department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation will assess a civil penalty against the person of not less than $250 and not to exceed $750 for the first violation and not less than $500 and not to exceed $2,000 for each subsequent violation. The imposition of the fine must be in accordance with chapter 120.

If a person refuses to comply, after having been assessed such penalty, the department or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation may file a complaint in the circuit court of the county in which the enclosed indoor workplace is located to require compliance.

All fine moneys collected pursuant to this section shall be used by the Department for children's medical services programs pursuant to the provisions of part I of chapter 391.

F. S. 386.208 provides that any person who violates the FICAA commits a noncriminal violation punishable by a fine of not more than $100 for the first violation and not more than $500 for each subsequent violation. Jurisdiction shall be with the appropriate county court.

2004 Proposed Legislation

Currently, there are no bills filed during the 2004 Florida Legislative Session referencing this amendment.

The Court System

Article V, Sections 10, 11(a)(b), 12(a),(f), 14

The voters approved the proposed amendment during the November 3, 1998, general election

Analysis

Selection of Trial Judges

Provided for future local elections to decide whether to continue electing circuit and county judges or to adopt system of appointment of those judges by the governor, with subsequent elections to retain or not retain those judges

County Court Judges' Terms

Provided election procedures for subsequent elections to selection of judges; increases county judges' terms from four to six years

Analysis

Judicial Qualifications Commission

Corrected judicial qualifications commission term of office

Article V, section 14.

Allocated state courts system funding among state, counties, and users of courts

Case Law

A. Election/ Selection of Judges

In re Advisory Opinion to Governor re: Appointment or Election, 824 So .2d 132 (Fla.,2002).

The Supreme Court advised that upon the qualification of a candidate or candidates for a circuit or county judgeship during the statutory qualification period, the election method of selection takes precedence over and forecloses the Governor's constitutional authority and obligation to fill a vacancy that occurs during the balance of the incumbent judge's term of office.

Case Law

A. Election/ Selection of Judges

In re Advisory Opinion to the Governor Terms of County Court Judges, 750 So. 2d 610 (Fla. 1999).

The Supreme Court were of the opinion that: (1) candidate's right to a specified term of office accrued on date of assuming office; (2) amendment applied to judges who

assumed office on date amendment became effective; and (3) amendment did not apply to judges who began terms before effective date of amendment.

Case Law

B. Funding of the Court System

In re Certification of Need for Additional Judges, 806 So. 2d 466 (Fla., 2002).

Any diminution in supplemental resources from existing levels as a result of budget reductions or the implementation of the 1998 revision to Article V, section 14 of the Florida Constitution will increase the need for additional judges.

Case Law

B. Funding of the Court System.

Shepard & White, P.A. v. City of Jacksonville, 827 So. 2d 925 at 932 (Fla., 2002).

Florida Supreme Court expressed serious concerns as to how the system for compensating conflict counsel may develop in the very near future. The Court noted that Florida is coming to a crossroad regarding its system for the representation of indigents in capital cases. By constitutional amendment, the State will probably soon assume the full responsibility of funding for conflict counsel no later than 2004.

Case Law

B. Funding of the Court System

In re Certification of Need for additional Judges, 780 So. 2d 906 (Fla., 2001).

Florida's Supreme Court expressed confidence in the Delphi methodology. The primary benefit of case weighting is that it measures the differential requirements of judicial workload in different types of cases. As a result, the Court found that the current certification methodology using the case weighting system offers a more accurate and fair means of determining the courts' judicial requirements.

Case Law

B. Funding of the Court System

In re Certification of Need for additional Judges, 780 So. 2d 906 (Fla., 2001).

Further, the Court noted that it was important to note that these case weights include the existing mix of supplemental resources in the trial courts, including senior judges, general masters and hearing officers, trial court staff attorneys, alternative dispute resolution, and case management support. These resources are vital to the continued operating effectiveness of Florida's trial courts. Failure to maintain supplemental resources at existing levels or to transfer appropriate resources to state funding from the counties under Article V, Section 14, as revised in 1998 (revision 7), mandates will result in an increased need for additional judges.

Legislation

A. Judges

F. S. § 101.161. Referenda; ballots

The ballot for the general election in the year 2000 must contain a statement allowing voters to determine whether circuit or county court judges will be selected by merit selection and retention as provided in section 10, Article V of the State

Constitution. The ballot in each circuit must contain the statement in paragraph (c). The ballot in each county must contain the statement in paragraph (e).

Legislation

B. Funding

F. S. § 11.75. Joint Legislative Committee on Article V.

F. S. § 29.001 – 011. Intent; state courts system essential elements and definitions; funding through filing fees, service charges, and costs; county responsibilities.

Legislation

B. Funding

The Joint Legislative Committee shall coordinate and oversee the implementation of Revision 7 to Article V of the State Constitution. The joint committee shall make recommendations to the Legislature, including proposed legislation, in an annual report to be submitted by October 15 of each year.

Legislation

B. Funding

The Legislature's appropriation of funding in the General Appropriations Act for appropriate salaries, costs, and expenses pursuant to Section 14, Article V of the State Constitution shall be based upon reliable and auditable data substantiating the revenues and expenditures associated with each essential element.

Legislation

B. Funding

The state courts system be defined to include the essential elements of the Supreme Court, district courts of appeal, circuit courts, county courts, and essential supports thereto. Similarly, the offices of public defenders and state attorneys shall include those essential elements as determined by general law. Court- appointed counsel are defined as counsel appointed to ensure due process in criminal and civil proceedings in accordance with state and federal constitutional guarantees.

Legislation

B. Funding

Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the circuit courts and county courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts, as defined by general law.

2004 Proposed Legislation

Senate Bill 192/ House Bill 111

A bill relating to various court procedures; redesignating 'magistrates' as 'trial court judges'; relating to various administrative and judicial proceedings;

redesignating 'masters' and 'general or special masters' as 'general or special magistrates'; providing an effective date.

2004 Proposed Legislation

Senate Bill 2962

A bill relating to the judicial system; establishes fee to be paid by counsel appearing pro hac vice before Supreme Court; provides for compensation of court reporters; increases filing fee for Supreme Court cases docketed & specifies disposition & uses of fees collected; revises purposes for which Court Education Trust Fund moneys must be used; provides uniform standards for determining counsel's conflict of interest in certain cases, etc.

Presentation

The Education System

Article IX, Section 1

The voters approved the proposed amendment during the November 3, 1998, general election.

Summary

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.

Analysis

Coalition For Adequacy and Fairness in School Funding, Inc. vs. Chiles, 680 So. 2d 400, (Fla. 1996).

In this case, the coalition filed suit requesting the trial court to declare that an adequate education is a fundamental right under the Florida Constitution, and that the State had failed to provide its students that fundamental right by failing to allocate adequate resources for a uniform system of free public schools as provided for in the Florida Constitution. The trial court dismissed the complaint and the appeals court certified the case to be one of great public importance.

Analysis

Article IX, Section 1

The Florida Supreme Court affirmed the order of dismissal. The Court held that 1) the claim presented was a non-justiciable political question; 2) Adequate provision as expressed under Article IX, Section 1 of the Florida Constitution cannot refer to "adequate funding"; the alleged facts did not show a substantial inequality of education funding among school districts; 3) the alleged facts did not show that the funding formula is not rationally related to either to the charge of providing a uniform system of free public education or to the general health, safety, and welfare of Florida citizens; Florida's Constitution did not create a fundamental right to a particular level of funding; 4) and strict scrutiny by the Court was unwarranted.

Analysis

Article IX, Section 1

The additional language to Section 1 of Article IX, provided that 1) the education of the state's children is a fundamental value; 2) educating children in the state is a

paramount duty of the state legislature; 3) requires the education of all the state's children; 4) the legislature must make adequate provisions for an efficient, safe, secure, and high quality public school system.

Analysis

Article IX, Section 1

The "fundamental value" language, new to the constitution, was codified from the language taken from the Florida Supreme Court decision in Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 680 So. 2d 400 (Fla. 1996). Early proposals presented before the Constitution Revision Commission framed education in terms of being a "fundamental right." In response to concerns of commissioners that the state might become liable for every individual's dissatisfaction with the education system, the term "fundamental value" was substituted.

Analysis

Article IX, Section 1

The "paramount duty" language represents a return to the 1868 Constitution, which provided that "[i]t is the paramount duty of the State to make ample provisions for the education of all children residing within its borders, without distinction or preference." In 1885, the "paramount duty" language was dropped from the constitution, and the governing provision merely stated that "the legislature shall provide for a uniform system of public free schools and shall provide for the liberal maintenance of the same."

Analysis

Article IX, Section 1

The addition of "efficient, safe, secure, and high quality" represented an attempt by the 1997-98 Constitution Revision Commission to provide constitutional standards to measure the "adequacy" provision found in the second sentence of section 1.

Analysis

Article IX, Section 1

The action of the commission was in direct response to recent court actions seeking a declaration that Article IX, section 1 created a fundamental right to an adequate education, which the state had arguably violated by failing to provide sufficient resources to public education. In Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 680 So. 2d 400 (Fla. 1996), the court rejected the notion of a fundamental right to education and found that the issue of "adequacy" was a nonjusticiable, political question. The court found that absent definable standards to provide guidance in determining "adequacy" the court would be usurping the legislature's powers.

Analysis

Article IX, Section 1

Subsequently in Advisory Opinion to the Attorney General Re: Requirements for Adequate Public Education Funding, 703 So. 2d 446, 449 (Fla. 1997)., Justice Anstead,

writing in a dissent, noted that the court would have benefited in the earlier Coalition for Adequacy case "if there had been an express statement in the constitution defining 'adequate provision' to guide us." In direct response to those rulings, the 1997-98 Constitution Revision Commission added "efficient, safe, secure, and high quality" as standards for determining the "adequacy" of public education

Analysis

Article IX, Section 1

In other states, these same terms have been found to be measurable and meaningful. (See DeRolph v. State, 677 N.E. 2d 733 (Ohio 1997). (the court found meaningful standards within the "thorough and efficient standard" established by the Ohio Supreme Court).

Analysis

Article IX, Section 1

In Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, Justice Overton concurred with an opinion. Justice Overton stated that the Court could recognize the basic need for a right to an adequate provision of educational opportunities without engaging in micro-management and without offending the separation of powers doctrine

Analysis

Article IX, Section 1

Justice Overton believed the intent of the provision was to require the establishment of an educational system that fulfills the basic educational needs of the citizens of this state to provide for a literate, knowledgeable population□cWhile □gadequate□h may be difficult to quantify, a minimum threshold exists below which the funding provided by the Legislature would be considered □ginadequate□h.

For an example, were a complaint to assert that a county in this state has a thirty percent illiteracy rate, □csuch a complaint has stated a cause of action under the education provision.

Case Law

Bush v.Holmes, App 1 Dist. 767 So. 2d 668 (2000), review denied 790 So. 2d 1104 on remand 2002 WL 1809079.

Opportunity scholarship program (OSP) statute, insofar as it establishes program through which state pays tuition for certain students to attend private schools, is not unconstitutional on its face under constitutional section providing for public education; although constitution directs that public education be accomplished through system of free public schools, nothing clearly prohibits legislature from allowing well delineated use of public funds for private school education.

Legislation

F. S. § 1002.20. K-12 student and parent rights

Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help

their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights

Legislation

F.S. § 1002.38. Opportunity Scholarship Program

The Legislature further finds that a student should not be compelled, against the wishes of the student's parent, to remain in a school found by the state to be failing for 2 years in a 4-year period. The Legislature shall make available opportunity scholarships in order to give parents the opportunity for their children to attend a public school that is performing satisfactorily or to attend an eligible private school when the parent chooses to apply the equivalent of the public education funds generated by his or her child to the cost of tuition in the eligible private school as provided in paragraph (6)(a).

Legislation

2004 Proposed Legislation

Senate Bill No. 2908

Removes letter grades from the performance grade categories by which schools must be identified in the Commissioner of Education's annual report of the results of the statewide assessment program.

Article IX, Section 1

The voters did approve the proposed amendment during the November 5, 2002, general election.

Summary

Article IX, Section 1

The amendment provided that the Legislature provide funding for sufficient classrooms so that there will be a maximum number of students in public school classes for various grade levels; required compliance by the beginning of the 2010 school year; requires the Legislature, and not local school districts, to pay for the costs associated with the reduction of class size; prescribes a schedule for phased – funding to achieve the required maximum class size.

Analysis

Article IX, Section 1

The amendment was proposed by The Coalition to Reduce Class Size. The amendment requires the legislature to take adequate measures to assure that public school children will receive a high quality education. Limited the classroom size is required. Classrooms containing children from kindergarten to third grade are limited to a maximum of 18 students. Classrooms containing children from the fourth until the eighth grade are limited to a maximum of 22 students. Classrooms containing children from the ninth until the twelfth grade are limited to 25 students

Cases

Article IX, Section 1

No case law has been reported since the enactment of the implementing legislation.

Legislation

F.S. § 1003.03; Maximum class size
Beginning in the 2010-2011 school year:

The maximum number of students in public school classrooms for prekindergarten through grade 3 may not exceed 18 students.

The maximum number of students in public school classrooms for grades 4 through 8 may not exceed 22 students.

The maximum number of students public school classrooms for grades 9 through 12 may not exceed 25 students

Legislation

F.S. § 1003.03; Implementation

Beginning with the 2003-2004 fiscal year, each school district that is not in compliance with the maximums in subsection (1) shall reduce the average number of students per classroom in each of the following grade groupings: prekindergarten through grade 3, grade 4 through grade 8, and grade 9 through grade 12, by at least two students each year.

Legislation

Dual enrollment courses
Florida Virtual School
Graduating early
Maximize instructional staff
Reduce the cost of school construction
Joint-use facilities
Alternative methods of class

Redraw school attendance zones
Operate schools beyond the normal operating hours
Year-round schools
Review and amend collective bargaining contracts
Other approaches not prohibited by law

Legislation

F. S. § 1011.685

Operating categorical fund, in order to provide a funding source to implement the class size reduction initiative.

2004 Proposed Legislation

Senate Joint Resolution No. 242

A joint resolution proposing an amendment to Section 1 of Article IX of the State Constitution to require class size reduction only in prekindergarten through grade 3. This bill if passed would deleting the following sections from Section 1 of Article 10 of the State Constitution:

(2) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 4 through 8 does not exceed 22 students; and

(3) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 9 through 12 does not exceed 25 students .

Article IX, Section 1

The voters did approve the proposed amendment during the November 5, 2002, general election.

Summary

Article IX, Section 1

The amendment provided that every four-year-old child in Florida must be offered a high quality pre-kindergarten learning opportunity by the state no later than the 2005 school year. This voluntary early childhood development and education program must be established according to high quality standards and be free for all Florida's four-year-olds without taking away funds used for existing education, health and development programs.

Analysis

Article IX, Section 1

The amendment was proposed by The Parents for Readiness Education for our Kids. The amendment would essentially add a new grade to the school system by 2005. While there are parents who presently pay for pre-k, this would shift the cost to the state and would allow low-income families the opportunity to capitalize on the educational program.

Cases

Article IX, Section 1

No case law has been reported since the enactment of the implementing legislation.

Legislation

F.S. 411.012

The voluntary universal prekindergarten education program shall provide a high-quality prekindergarten learning opportunity in the form of early childhood development and education which is voluntary and free for every child in this state who is 4 years of age. The program must be organized, designed, and delivered in accordance with Section 1(b) and (c) of Article IX of the State Constitution

2004 Proposed Legislation

There is no proposed Legislation regarding this amendment

Article XI, Section 5

The voters did approve the proposed amendment during the November 5, 2002, general election.

Summary

Article XI, Section 5

(b) The Legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to Section 3.

Analysis

Article XI, Section 5

Citizen's initiatives require that the Florida Legislature publicize a statement regarding the costs of such a proposal to Florida voters. A fiscal assessment is not required if the constitution is amended in any other manner constitutionally permissible.

Analysis

Article XI, Section 5

Prior the proposed amendment, the Florida Legislature passed Chapter 2002-390. This statute which required the Department of State to include for all proposed revisions or amendments to the state constitution by initiative "an analysis and fiscal impact statement" prepared by the Revenue Estimating Conference, estimating the "increase or decrease in any revenues or costs to state or local governments resulting from [the adoption of] the proposed initiative.

Cases

Article XI, Section 5

There has been no reported case law referencing the amendment.

Analysis

Article XI, Section 5

Smith v. Coalition to Reduce Class Size, 827 So. 2d 959, (Fla. 2002). The Florida Supreme Court held that this Statute was unconstitutional. The Court concluded that Article XI as presently written did not contain any language, either explicit or implicit, regarding the fiscal impact of initiatives. Furthermore, the Court concluded that adding such language on the ballot would unduly restrict Florida citizen's right to exercise their respective right to the initiative process. The Court held that the proper way to impose a fiscal impact requirement would be to amend article XI.

Legislation

Article XI, Section 5

While the amendment was self-executing, several bills have been filed during the 2004 Florida Legislative Session.

Legislation

Senate Joint Resolution No. 2392

A joint resolution proposing an amendment to Section 5 of Article XI and creating Section 26 of Article XII of the State Constitution; requiring that a proposed amendment to or revision of the State Constitution be approved by at least a three-fifths vote of the electors of the state voting on the measure; providing for the requirement to apply only to amendments or revisions filed with the Secretary of State after a specified date.

Legislation

Senate Joint Resolution No. 2898

A joint resolution proposing amendments to Sections 3 and 5 and creating Section 8 of Article XI of the State Constitution, relating to proposed amendments to the State Constitution which impose a significant cost on state government. An Amendment that imposes costs in excess of one million dollars per fiscal year shall impose new state taxes or fees sufficient to fund the implementation of the amendment. Each such amendment shall be adopted only if it is approved by not less than two-thirds of the voters voting in the election.

Legislation

Senate Joint Resolution No. 2394

A joint resolution proposing amendments to Section 10 of Article IV and Section 5 of Article XI of the State Constitution; revising the deadline for filing a constitutional amendment proposed by initiative with the Secretary of State for purposes of placing the proposed amendment on the general election ballot; revising the timeframe for the Supreme Court to render an advisory opinion on the validity of an initiative petition. A proposed amendment or revision of the constitution by initiative shall be submitted to

the electors at the general election provided the initiative petition is filed with the custodian of state records no later than February 1 of the year the general election is held.

Legislation

Senate Joint Resolution No. 1718

In the event that a court declares the text or ballot summary of an amendment or revision to this constitution proposed by joint resolution of the legislature to be unconstitutional, the Supreme Court shall immediately review such decision. In the event the Supreme Court declares the text or ballot summary of an amendment or revision to this constitution proposed by joint resolution of the legislature to be unconstitutional, the Supreme Court shall remand the joint resolution to the legislature for the appropriate change or changes to be made consistent with the opinion of the court.

That's All Folks