



# Journal of the 1997-1998 Constitution Revision Commission

Number 22

Wednesday, February 11, 1998

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## CALL TO ORDER

The Commission was called to order by the Chairman at 9:15 a.m. A quorum was present—32:

Mr. Chairman	Butterworth	Henderson	Nabors
Alfonso	Connor	Jennings	Riley
Anthony	Crenshaw	Kogan	Rundle
Argiz	Evans	Langley	Scott
Barkdull	Evans-Jones	Lowndes	Smith
Barnett	Ford-Coates	Mathis	Sundberg
Barton	Freidin	Mills	Thompson
Brochin	Hawkes	Morsani	Zack

Excused: Commissioners Corr, Planas and West; Commissioner Marshall until 1:00 p.m.; Commissioner Alfonso at 4:30 p.m.

## PRAYER

The following prayer was offered by Commissioner Ford-Coates:

Let us pray. Gracious God we thank you for this day. We thank you for the blessing of family and friends. We thank you for those special friendships that we have formed in the time we have spent on this commission. Inspire us, we pray, this day with your gracious love that we may agree and disagree with respect and consideration. All this we pray in your holy name. Amen.

## PLEDGE

Commissioner Lowndes led the Commission in the pledge of allegiance to the flag of the United States of America.

## MOTIONS

On motion by Commissioner Barkdull, the rules were waived and **Committee Substitute for Proposal 109** was removed from the calendar; and **Proposal 58** was withdrawn from the Declaration of Rights Committee and placed on the calendar.

## SPECIAL ORDER

Consideration of **Proposal 91** and **Committee Substitute for Proposals 138 and 89** was deferred.

The Commission resumed consideration of—

**Proposal 130**—A proposal to revise ARTICLE XI, s. 3, Fla. Const.; requiring an initiative petition to be signed by a specified percentage of the electors from each congressional district.

—with pending **Amendment 1** by Commissioner Freidin, which was considered February 10.

Commissioner Rundle moved the following amendment to **Amendment 1** which failed:

**Amendment 1A**—On page 2, lines 16-18, delete those lines and insert: ~~or amendment~~, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in

The vote was:

Yeas—12

Alfonso	Henderson	Lowndes	Scott
Anthony	Jennings	Morsani	Smith
Barnett	Langley	Rundle	Zack

Nays—13

Barkdull	Crenshaw	Hawkes	Nabors
Barton	Ford-Coates	Kogan	Riley
Brochin	Freidin	Mills	Thompson
Butterworth			

The question recurred on **Amendment 1** which failed. The vote was:

Yeas—10

Barkdull	Brochin	Kogan	Sundberg
Barnett	Butterworth	Riley	Thompson
Barton	Freidin		

Nays—20

Alfonso	Evans-Jones	Langley	Nabors
Anthony	Ford-Coates	Lowndes	Rundle
Connor	Hawkes	Mathis	Scott
Crenshaw	Henderson	Mills	Smith
Evans	Jennings	Morsani	Zack

Commissioner Barkdull moved **Proposal 130** which failed. The vote was:

Yeas—8

Barkdull	Barton	Freidin	Riley
Barnett	Butterworth	Kogan	Thompson

Nays—20

Alfonso	Evans	Jennings	Morsani
Anthony	Evans-Jones	Langley	Nabors
Brochin	Ford-Coates	Lowndes	Scott
Connor	Hawkes	Mathis	Smith
Crenshaw	Henderson	Mills	Zack

## MOTION

On motion by Commissioner Langley, **Proposal 65** was withdrawn from further consideration.

On motion by Commissioner Riley, consideration of **Committee Substitute for Proposal 69** was deferred.

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#### MOTION

On motion by Commissioner Mills, **Proposal 72** was withdrawn from further consideration.

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#### MOTION

On motion by Commissioner Barkdull, **Proposal 132** was withdrawn from further consideration.

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On motion by Commissioner Scott, consideration of **Proposal 150** was deferred.

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#### MOTION

On motion by Commissioner Smith, **Proposal 160** was withdrawn from further consideration.

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#### MOTION

On motion by Commissioner Freidin, **Proposal 164** was withdrawn from further consideration.

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**Proposal 59**—A proposal to revise ARTICLE X, s. 13, Fla. Const.; providing limitations upon the amount of damages payable by the state when a court finds the state liable; providing for a bad-faith surcharge; placing a limit on attorney's fees.

—was read.

Commissioners Lowndes, Zack, Morsani and Hawkes offered the following amendment which was moved by Commissioner Zack:

**Amendment 1**—On page 1, lines 11-28, delete all of said lines and insert:

Section 1. Section 13 of Article X of the Florida Constitution is revised by amending that section to read:

#### ARTICLE X MISCELLANEOUS

SECTION 13. Suits against the state.—Provision may be made by general law for bringing suit against the state, *its political subdivisions, agencies, districts, and municipalities*, as to all liabilities now existing or hereafter originating; *provided in such a suit a person may recover economic damages up to a maximum amount of \$200,000, plus costs, other than attorneys' fees incurred in the suit, unless such amount is increased by general law. In any event, the maximum amount of damages shall be increased each year by the same percentage as the percentage increase in the Consumer Price Index, or a successor index, published by the Federal Government. In the event of a finding of bad faith on the part of the state in the settlement of such a suit, there shall be a waiver of sovereign immunity against the state to the extent bad faith, as determined by general law.*

On motion by Commissioner Zack, **Proposal 59** with pending **Amendment 1** was deferred.

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Consideration of **Proposal 46** and **Committee Substitute for Proposal 77** was deferred.

#### RECESS

The Chairman declared the Commission in informal recess at 10:49 a.m. to reconvene at 11:00 a.m.

#### CALL TO ORDER

The Commission was called to order by the Chairman at 11:10 a.m. A quorum was present.

#### SPECIAL ORDER, continued

The Commission resumed consideration of—

**Proposal 59**—A proposal to revise ARTICLE X, s. 13, Fla. Const.; providing limitations upon the amount of damages payable by the state when a court finds the state liable; providing for a bad-faith surcharge; placing a limit on attorney's fees.

—with pending **Amendment 1** by Commissioners Lowndes, Zack, Morsani and Hawkes, which was previously considered this day.

Commissioners Lowndes, Zack, Morsani and Hawkes offered the following substitute amendment which was moved by Commissioner Zack:

**Amendment 2**—On page 1, lines 11-28, delete all of said lines and insert:

Section 1. Section 13 of Article X of the Florida Constitution is revised by amending that section to read:

#### ARTICLE X MISCELLANEOUS

SECTION 13. Suits against the state.—Provision may be made by general law for bringing suit against the state, *its political subdivisions, agencies, districts, and municipalities*, as to all liabilities now existing or hereafter originating; *provided in such a suit a person may recover damages up to a maximum amount of \$200,000, plus costs, other than attorneys' fees incurred in the suit, unless such amount is increased by general law. In any event, the maximum amount of damages shall be increased each year by the same percentage as the percentage increase in the Consumer Price Index, or a successor index, published by the Federal Government. In the event of a finding of bad faith on the part of the state in the settlement of such a suit, there shall be a waiver of sovereign immunity against the state to the extent of bad faith, as determined by general law.*

Commissioners Lowndes and Morsani offered the following amendment to **Amendment 2** which was moved by Commissioner Lowndes:

**Amendment 2A**—On page 1, line 14, after the period, insert: *There shall be established a court of limited jurisdiction for all claims against governmental entities claiming immunity from tort liability under general law when such claims are verified by the petitioner and the petitioner's counsel, if any, that the claim exceeds the limit for which the governmental entity is immune. Such court shall be established by the chief judge of each judicial circuit as an assignment or a division to the circuit bench. This court of claims shall have no power to conduct a trial by jury, but shall have the jurisdiction to empanel arbitrators to consider claims within the court's jurisdiction. Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.*

Section 2. Section 22 of Article XII of the Florida Constitution is revised by creating that section to read:

#### ARTICLE XII SCHEDULE

SECTION 22. Court of claims.—*Rules governing the conduct of the court of claims established pursuant to the amendments to Article X, Section 13, shall be established by the Supreme Court. The rules shall encompass penalties to any party who abuses the jurisdiction of the court by failing to establish to the arbitration panel that the value of the claim established the jurisdiction of the court. The rules shall also provide for trial de novo in the circuit court for any party who does not agree with the arbitration award; however, if a jury awards an amount within 25 percent of the award by the arbitration panel, the party causing the trial de novo shall be subject to the costs of the trial.*

#### COMMISSIONER THOMPSON PRESIDING

On motion by Commissioner Lowndes, consideration of **Proposal 59** with pending **Amendment 2A** was deferred.

**COMMITTEE MEETING CHANGE**

Commissioner Barkdull announced that the Style and Drafting Committee would meet this day from 12:00 noon until 1:00 p.m.

Commissioner Connor announced that the Select Committee on Sovereign Immunity would meet during the noon recess.

**RECESS**

On motion by Commissioner Barkdull, the Commission recessed at 12:02 p.m. to reconvene at 1:15 p.m.

**AFTERNOON SESSION**

The Commission was called to order by the Chairman at 1:23 p.m. A quorum present—33:

Mr. Chairman	Connor	Kogan	Rundle
Alfonso	Crenshaw	Langley	Scott
Anthony	Evans	Lowndes	Smith
Argiz	Evans-Jones	Marshall	Sundberg
Barkdull	Ford-Coates	Mathis	Thompson
Barnett	Freidin	Mills	Zack
Barton	Hawkes	Morsani	
Brochin	Henderson	Nabors	
Butterworth	Jennings	Riley	

**SPECIAL ORDER, continued**

The Commission resumed consideration of—

**Proposal 59**—A proposal to revise ARTICLE X, s. 13, Fla. Const.; providing limitations upon the amount of damages payable by the state when a court finds the state liable; providing for a bad-faith surcharge; placing a limit on attorney’s fees.

—which was previously considered this day.

Pending **Amendment 2A** by Commissioners Lowndes and Morsani was withdrawn.

The question recurred on **Amendment 2**.

On motion by Commissioner Lowndes, consideration of **Proposal 59** with pending **Amendment 2** was deferred.

**Committee Substitute for Proposals 49, 103 and 185**—A proposal to revise ARTICLE VII, s. 3, Fla. Const.; revising the requirements for exempting municipally owned property; allowing the Legislature to exempt from taxation property owned by a governmental entity and used for airport, seaport, or public purposes, as defined by law, and uses that are incidental thereto.

—was read.

Commissioner Scott moved the following amendment which was adopted:

**Amendment 1**—On page 1, line 19, delete the phrase “, municipal, or public” and insert: *or municipal or public*

And on page 1, line 21, delete the phrase “*governmental entity*” and insert: *municipality not otherwise exempt from taxation or by a special district*

And the title is amended as follows:

On page 1, lines 5 and 6, delete the phrase “governmental entity” and insert: *municipality or special district*

Commissioner Brochin moved the following amendments which failed:

**Amendment 2**—On page 1, line 21, delete “airport, seaport, or”

The vote was:

Yeas—8

Barnett	Brochin	Evans-Jones	Langley
Barton	Connor	Hawkes	Marshall

Nays—22

Alfonso	Evans	Lowndes	Scott
Anthony	Ford-Coates	Mathis	Sundberg
Argiz	Freidin	Mills	Thompson
Barkdull	Henderson	Morsani	Zack
Butterworth	Jennings	Nabors	
Crenshaw	Kogan	Riley	

**Amendment 3**—On page 1, line 22 delete “and uses that are incidental thereto,”

The vote was:

Yeas—12

Mr. Chairman	Barton	Connor	Marshall
Alfonso	Brochin	Evans-Jones	Riley
Barkdull	Butterworth	Hawkes	Sundberg

Nays—21

Anthony	Freidin	Mathis	Smith
Argiz	Henderson	Mills	Thompson
Barnett	Jennings	Morsani	Zack
Crenshaw	Kogan	Nabors	
Evans	Langley	Rundle	
Ford-Coates	Lowndes	Scott	

Commissioner Lowndes moved the following amendment which was adopted:

**Amendment 4**—On page 1, line 22, delete “as defined by general law,” and insert on line 23 after “taxation” , as defined by general law

On motion by Commissioner Anthony, **Committee Substitute for Proposals 49, 103 and 185** as amended was adopted, ordered engrossed and then committed to the Style and Drafting Committee. The vote was:

Yeas—28

Alfonso	Connor	Langley	Riley
Anthony	Crenshaw	Lowndes	Rundle
Argiz	Evans	Marshall	Scott
Barkdull	Ford-Coates	Mathis	Smith
Barnett	Freidin	Mills	Sundberg
Brochin	Henderson	Morsani	Thompson
Butterworth	Jennings	Nabors	Zack

Nays—4

Barton	Evans-Jones	Hawkes	Kogan
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**Committee Substitute for Proposals 106 and 137**—A proposal to revise ARTICLE VII, s. 3(a), Fla. Const.; providing a tax exemption for certain property owned by any governmental entity; providing that certain property owned by a governmental entity may be taxable, as provided by general law; providing that no governmental entity shall have immunity from taxation under certain conditions.

—was read.

On motion by Commissioner Hawkes, consideration of **Committee Substitute for Proposals 106 and 137** was deferred.

**RECESS**

The Chairman declared the Commission in informal recess at 3:21 p.m. to reconvene upon call of the Chairman.

## CALL TO ORDER

The Commission was called to order by the Chairman at 3:31 p.m. A quorum was present.

## SPECIAL ORDER, continued

On motion by Commissioner Mathis, consideration of **Proposal 41** was deferred.

## MOTION TO RECONSIDER

Commissioner Connor moved that the Commission reconsider the vote by which **Committee Substitute for Proposals 49, 103 and 185** as amended was adopted this day. The motion was placed on the calendar.

The Commission resumed consideration of—

**Committee Substitute for Proposals 138 and 89**—A proposal to revise ARTICLE X, s. 15, Fla. Const.; limiting the use of state lottery net proceeds to financing certain educational facilities or funding early childhood care and education programs.

—with pending **Amendment 1** by Commissioners Riley, Sundberg and Nabors which was considered February 10.

Commissioners Riley, Sundberg and Nabors offered the following substitute amendment which was moved by Commissioner Nabors and adopted:

**Amendment 2**—Delete everything after the proposing clause and insert:

Section 1. Section 15 of Article X of the Florida Constitution is revised by amending that section to read:

### ARTICLE X MISCELLANEOUS

SECTION 15. State operated lotteries.—

- (a) Lotteries may be operated by the state.
- (b) If any subsection or subsections of the amendment to the Florida Constitution are held unconstitutional for containing more than one subject, this amendment shall be limited to subsection (a) above.
- (c) This amendment shall be implemented as follows:
  - (1) Schedule—On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.
  - (d) *The appropriation of net lottery proceeds to enhance education programs shall be guaranteed by a dedication of lottery proceeds solely for the following uses:*
    - (1) *To finance or refinance, as provided by general law, bonds or certificates of indebtedness heretofore issued by the state or school districts to construct, improve, or renovate public schools;*
    - (2) *Provision of pre-kindergarten programs;*
    - (3) *Appropriations for early childhood care and education programs established by general law which are not provided on the effective date of this amendment;*
    - (4) *Enhanced appropriations for existing programs of early childhood care and education at appropriation levels in excess of the state appropriation provided during state fiscal year 1998-1999 from state revenues;*
    - (5) *To school advisory councils established by general law for use to enhance educational programs;*

(6) *To fund scholarships established by general law for attendance at a Florida public or private post-secondary educational institution; or*

(7) *To enhance the funding of education programs not existing prior to the effective date of this amendment.*

(e) *SCHEDULE AND IMPLEMENTATION. After appropriating amounts for debt service on bonds pledging lottery proceeds issued prior to the effective date of this amendment to the constitution and scholarships awarded pursuant to appropriated amounts for state fiscal year 1999-2000 authorized in the Florida Bright Futures Scholarship Act, created in chapter 97-77, Laws of Florida, the appropriation of one-fifth of the net lottery proceeds in fiscal year 2000-2001, two-fifths of such proceeds in fiscal year 2001-2002, three-fifths of such proceeds in fiscal year 2002-2003, four-fifths of such proceeds in fiscal year 2003-2004, and all such proceeds thereafter shall be used exclusively for the purposes authorized in this constitutional amendment.*

The vote was:

Yeas—20

Alfonso	Barton	Freidin	Nabors
Anthony	Brochin	Henderson	Riley
Argiz	Butterworth	Jennings	Rundle
Barkdull	Evans-Jones	Lowndes	Sundberg
Barnett	Ford-Coates	Mills	Zack

Nays—12

Mr. Chairman	Evans	Langley	Morsani
Connor	Hawkes	Marshall	Scott
Crenshaw	Kogan	Mathis	Thompson

Commissioner Nabors moved **Committee Substitute for Proposals 138 and 89** as amended which failed. The vote was:

Yeas—15

Anthony	Evans-Jones	Lowndes	Rundle
Barnett	Ford-Coates	Mills	Sundberg
Barton	Freidin	Nabors	Zack
Brochin	Henderson	Riley	

Nays—17

Mr. Chairman	Connor	Kogan	Scott
Alfonso	Crenshaw	Langley	Thompson
Argiz	Evans	Marshall	
Barkdull	Hawkes	Mathis	
Butterworth	Jennings	Morsani	

The Commission resumed consideration of—

**Committee Substitute for Proposals 106 and 137**—A proposal to revise ARTICLE VII, s. 3(a), Fla. Const.; providing a tax exemption for certain property owned by any governmental entity; providing that certain property owned by a governmental entity may be taxable, as provided by general law; providing that no governmental entity shall have immunity from taxation under certain conditions.

—which was previously considered this day.

Commissioner Hawkes moved the following amendment which failed:

**Amendment 1**—On page 1, lines 19-27, delete those lines and insert:

(a) All property owned by the state or any other governmental entity ~~a municipality~~ and used exclusively by such governmental entity ~~it~~ for governmental or municipal ~~or public~~ purposes shall be exempt from taxation. All property owned by a governmental entity and used for airport, seaport, or other public purposes and uses that are incidental thereto may be exempted from taxation by general law. No immunity shall exist to the extent that it is inconsistent with this subsection. A

And the title is amended as follows:

On page 1, lines 4-8, delete those lines and insert: governmental entity.

The vote was:

Yeas—12

Barton	Evans	Hawkes	Marshall
Brochin	Evans-Jones	Kogan	Riley
Connor	Freidin	Langley	Sundberg

Nays—15

Anthony	Crenshaw	Mathis	Rundle
Barkdull	Ford-Coates	Mills	Scott
Barnett	Henderson	Morsani	Thompson
Butterworth	Lowndes	Nabors	

Commissioner Hawkes moved **Committee Substitute for Proposals 106 and 137** which failed. The vote was:

Yeas—7

Barton	Evans	Hawkes	Marshall
Connor	Evans-Jones	Langley	

Nays—20

Anthony	Crenshaw	Kogan	Nabors
Barkdull	Ford-Coates	Lowndes	Riley
Barnett	Freidin	Mathis	Rundle
Brochin	Henderson	Mills	Scott
Butterworth	Jennings	Morsani	Thompson

**MATTERS ON RECONSIDERATION**

On motion by Commissioner Barkdull, the rules were waived and the motions to reconsider **Proposal 2, Committee Substitute for Pro-**

**posal 6, Proposal 144 and Committee Substitute for Proposals 172 and 162** were placed on the calendar for consideration Thursday, February 12.

**MOTIONS TO RECONSIDER**

Commissioner Barkdull moved that the Commission reconsider the vote by which **Proposal 168** as amended was adopted February 10. The motion was placed on the calendar by unanimous consent.

Commissioner Riley moved that the Commission reconsider the vote by which **Committee Substitute for Proposal 13** as amended was adopted February 10. The motion was placed on the calendar.

**COMMITTEE MEETING CHANGE**

Commissioner Barkdull announced that the Rules and Administration Committee meeting scheduled for 5:00 p.m. this day was cancelled.

**CORRECTION AND APPROVAL OF JOURNAL**

The Journal of February 10 was corrected and approved.

**RECESS**

On motion by Commissioner Barkdull, the Commission recessed at 4:52 p.m. for the purpose of holding committee meetings and conducting other Commission business to reconvene at 9:00 a.m., Thursday, February 12, 1998.

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**CONSTITUTION REVISION COMMISSION  
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