



Journal of the 1997-1998 Constitution Revision Commission

Number 24

Monday, February 23, 1998

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CALL TO ORDER

The Commission was called to order by the Chairman at 1:07 p.m. A quorum was present—30:

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

Excused: Commissioners Alfonso, Anthony, Marshall and West; Commissioner Barnett until 4:09 p.m.

PRAYER

The following prayer was offered by Fred Harris, Tallahassee:

Let us pray. Dear God, we stand on the threshold of a grand and glorious future. We have the opportunity to participate in a spiritual awakening for which this world has long awaited. A time when we will recognize that we are all children of one God and therefore brothers and sisters. A time when we will embrace selfless service toward those in need. A time when a predominant attitude will be one of hope and expectation for better times to come. A time when families will flourish and all endeavor to take the highest path in their every decision. This future will be when time and truth, beauty and goodness will be manifest in all of our lives. But this effort will not appear magically by divine fiat. It requires our daily participation and contribution to make it a reality. It requires a society which is built on a foundation of equality, justice and opportunity for all. That foundation of love begins with our Constitution which recognizes the fundamental rights and obligations shared by all.

God, please bless the people who comprise this Constitution Revision Commission and grant them the wisdom, strength and vision necessary to discern the divine pattern and incorporate it into the amendments that they propose. Help them fashion a constitution which will secure our freedom, protect our rights and promote the highest good for the people of Florida, and in so doing, set an example for the world. We ask, dear Lord, that you daily grant us tolerance to honor each person's path to you. That you encourage us to count our blessings and remind us not to neglect our time with you for it is in our personal relationship with you that we are able to become centered in your love. Having become so centered, help us become a conduit for your love, spreading it to all those we encounter. Amen.

PLEDGE

Commissioner Henderson and his son, Craig, led the Commission in the pledge of allegiance to the flag of the United States of America.

SPECIAL GUESTS

Commissioner Mills introduced his wife, Beth; his daughter, Marguerite; and his mother, Marguerite Mills, who were present in the gallery.

Commissioner Henderson introduced his wife, Judge Mary Jane Henderson and his daughter, Ardis, who were present in the gallery.

Commissioner Lowndes introduced his wife, Rita, who was present in the gallery.

Commissioner Ford-Coates introduced her husband, Brian, who was present in the gallery.

REPORTS OF COMMITTEES

The Select Committee on Sovereign Immunity recommends the following pass: Proposal 59

The proposal was placed on the calendar.

The Select Committee on Sovereign Immunity recommends the following not pass: Proposal 46 and Committee Substitute for Proposal 77

The proposals were placed on the calendar.

MATTERS ON RECONSIDERATION

The motion by Commissioner Riley to reconsider the vote by which—

Committee Substitute for Proposal 13—A proposal to revise ARTICLE I, s. 22, Fla. Const.; providing that a defendant charged with a capital offense may not be sentenced to death unless such sentence is recommended by 9 members of a jury of 12 persons.

—as amended was adopted February 10 was taken up and adopted.

On motion by Commissioner Brochin, consideration of **Committee Substitute for Proposal 13** as amended was deferred.

RECESS

The Chairman declared the Commission in informal recess at 1:51 p.m. to reconvene upon call of the Chairman.

CALL TO ORDER

The Commission was called to order by the Chairman at 2:00 p.m. A quorum was present.

MATTERS ON RECONSIDERATION, continued

The Commission resumed consideration of—

Committee Substitute for Proposal 13—A proposal to revise ARTICLE I, s. 22, Fla. Const.; providing that a defendant charged with a capital offense may not be sentenced to death unless such sentence is recommended by 9 members of a jury of 12 persons.

—as amended which was previously reconsidered this day.

Commissioner Brochin moved the following amendment to the proposal as engrossed which failed:

Amendment 1—On page 1, lines 20-31, delete all of said lines and insert:

(b) No person shall be sentenced to death unless unanimously recommended by a twelve person jury. This subsection shall not retroactively affect any death sentence imposed before its effective date.

The vote was:

Yeas—12

Brochin	Freidin	Lowndes	Smith
Evans-Jones	Henderson	Nabors	Sundberg
Ford-Coates	Kogan	Riley	Wetherington

Nays—16

Barkdull	Crenshaw	Langley	Rundle
Barton	Evans	Mathis	Scott
Butterworth	Hawkes	Morsani	Thompson
Connor	Jennings	Planas	Zack

Commissioner Brochin moved **Committee Substitute for Proposal 13** as amended which failed. The vote was:

Yeas—None

Nays—29

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

The motion by Commissioner Zack to reconsider the vote by which—

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.

—failed February 11 was taken up and the motion failed.

The motion by Commissioner Marshall to reconsider the vote by which—

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.

—as amended failed February 11 was taken up and the motion failed. The vote was:

Yeas—13

Barton	Freidin	Mills	Rundle
Brochin	Lowndes	Nabors	Smith
Evans-Jones	Mathis	Riley	Sundberg
Ford-Coates			

Nays—15

Barkdull	Evans	Kogan	Thompson
Butterworth	Hawkes	Langley	Wetherington
Connor	Henderson	Morsani	Zack
Crenshaw	Jennings	Scott	

Consideration of **Proposal 144** was deferred.

The motion by Commissioner Barkdull to reconsider the vote by which—

Proposal 168—A proposal to revise ARTICLE IV, s. 6, Fla. Const.; providing that an entity purportedly within an executive department which is not subject to the direct supervision of the agency head is a department; providing that the amendment does not affect the status of such entities to issue revenue bonds before a specified date; creating ARTICLE IV, s. 14, Fla. Const.; creating a State Board of Agriculture; providing for the board to appoint the Commissioner of Agriculture; creating ARTICLE XII, s. 23, Fla. Const.; providing that the amendment does not affect the status of such entities in existence on the effective date of the adoption of the amendment.

—as amended was adopted February 10 was taken up and adopted.

Commissioner Barkdull moved the following amendment to the proposal as engrossed which was adopted:

Amendment 1—On page 2, between lines 29 and 30, insert:

Section 3. Section 15 of Article IV of the Florida Constitution is created to read:

ARTICLE IV
EXECUTIVE

SECTION 15. Custodian of state records.—An office of custodian of state records and the duties of that office shall be established by law.

[Renumber subsequent section(s).]

And the title is amended as follows:

On page 1, line 11, following the semicolon insert: creating ARTICLE IV, s. 15, Fla. Const.; providing for establishment of the office of custodian of state records; providing for duties of the office;

Commissioner Zack moved the following amendment to the proposal as engrossed which was adopted:

Amendment 2—On page 2, lines 19-22, delete all of said lines and insert:

ARTICLE IV
EXECUTIVE

SECTION 12. Department of ~~Elder~~ Elderly Affairs.—The legislature may create a Department of ~~Elder~~ Elderly Affairs and prescribe its duties. The provisions governing the administration of the department must comply with Section 6 of Article IV of the State Constitution.

On motion by Commissioner Barkdull, **Proposal 168** as amended was adopted, ordered engrossed and then committed to the Style and Drafting Committee. The vote was:

Yeas—28

Mr. Chairman	Evans	Kogan	Riley
Barkdull	Evans-Jones	Langley	Rundle
Barton	Ford-Coates	Lowndes	Smith
Brochin	Freidin	Mathis	Sundberg
Butterworth	Hawkes	Mills	Thompson
Connor	Henderson	Morsani	Wetherington
Crenshaw	Jennings	Planas	Zack

Nays—None

The motion by Commissioner Evans-Jones to reconsider the vote by which—

Committee Substitute for Proposals 172 and 162—A proposal to repeal ARTICLE III, s. 16, Fla. Const., relating to legislative apportionment and create ARTICLE II, s. 10, Fla. Const.; providing for a commission to establish legislative and congressional districts; providing for the appointment of members to the commission; requiring that the chief justice of the supreme court fill certain vacancies on the commission;

requiring meetings and records of the commission to be open to the public; providing certain exceptions; requiring that the commission file its final report with the secretary of state within a specified period; requiring that the supreme court determine the validity of the plans; providing for the supreme court to establish the districts under specified circumstances; providing for the assignment of senatorial terms that are shortened as a result of apportionment; deleting requirements that the Legislature apportion the state into legislative districts.

—as amended was adopted February 9 was taken up and adopted.

On motion by Commissioner Evans-Jones, consideration of **Committee Substitute for Proposals 172 and 162** as amended was deferred.

RECESS

The Chairman declared the Commission in informal recess at 2:50 p.m. to reconvene upon call of the Chairman.

CALL TO ORDER

The Commission was called to order by the Chairman at 2:56 p.m. A quorum was present.

MATTERS ON RECONSIDERATION, continued

The Commission resumed consideration of—

Committee Substitute for Proposals 172 and 162—A proposal to repeal ARTICLE III, s. 16, Fla. Const., relating to legislative apportionment and create ARTICLE II, s. 10, Fla. Const.; providing for a commission to establish legislative and congressional districts; providing for the appointment of members to the commission; requiring that the chief justice of the supreme court fill certain vacancies on the commission; requiring meetings and records of the commission to be open to the public; providing certain exceptions; requiring that the commission file its final report with the secretary of state within a specified period; requiring that the supreme court determine the validity of the plans; providing for the supreme court to establish the districts under specified circumstances; providing for the assignment of senatorial terms that are shortened as a result of apportionment; deleting requirements that the Legislature apportion the state into legislative districts.

—as amended which was previously reconsidered this day.

Commissioners Barton and Evans-Jones offered the following amendment to the proposal as engrossed which was moved by Commissioner Evans-Jones:

Amendment 1—On page 2, line 10, through page 3, line 17, delete those lines and insert: *to this state. The commission shall consist of 17 electors, none of whom may be an elected state official, member of congress, party officer, registered lobbyist, legislative or congressional employee, or relative of an elected state official or member of congress as provided by law. Each district shall be composed of contiguous territory and may not include territory of any other district of the same house. Districts shall be established in accordance with the constitution of the state and of the United States, shall be as nearly equal in population as practical, and may not be drawn in a manner that dilutes the voting strength of any racial or language minority group. Except to meet the foregoing requirements, the commission shall consider creating districts that consist of compact territory and division of counties should be avoided whenever possible. When counties are divided, the number of municipalities and towns contained in more than one district of the same house shall be as small as possible.*

(1) *On or before June 1 in the year following each decennial census, or within 15 days after legislative apportionment or congressional redistricting is required by law or by court order, 16 commissioners shall be certified by the respective appointing authorities to the secretary of state. The president of the senate and the speaker of the house of representatives each shall appoint four commissioners. Members of the senate who are not members of the same party as the president shall designate one from their number who shall appoint four commissioners. Members of the house of representatives who are not members of the same party as that of the speaker shall designate one from their number who shall appoint four commissioners. The appointing authorities shall consider the state's ethnic, racial, and gender diversity. Failure to achieve such diversity shall not be grounds for challenging the authority of the commission.*

(2) *Within 45 days after the 16 commissioners are certified to the secretary of state, one additional commissioner, who shall be designated chair of the commission, shall be appointed by a vote of at least nine commissioners and certified to the secretary of state.*

Commissioner Henderson moved the following amendment to **Amendment 1** which was adopted:

Amendment 1A—On page 1, line 26, delete “Except to meet the foregoing requirements,”

Amendment 1 as amended was adopted.

COMMISSIONER THOMPSON PRESIDING

Commissioner Zack moved the following amendment to the proposal as engrossed:

Amendment 2—On page 2, line 10, through page 3, line 17, delete those lines and insert: *to this state. The commission shall consist of 17 electors, none of whom may be an elected state official, member of congress, party officer, registered lobbyist, legislative or congressional employee, or relative of an elected state official or member of congress as provided by law. Each district shall be composed of contiguous territory and may not include territory of any other district of the same house. Districts shall be established in accordance with the constitution of the state and of the United States, shall be as nearly equal in population as practical, and may not be drawn in a manner that dilutes the voting strength of any racial or language minority group.*

(1) *On or before June 1 in the year following each decennial census, or within 15 days after legislative apportionment or congressional redistricting is required by law or by court order, 16 commissioners shall be certified by the respective appointing authorities to the secretary of state. The president of the senate and the speaker of the house of representatives each shall appoint four commissioners. Members of the senate who are not members of the same party as the president shall designate one from their number who shall appoint four commissioners. Members of the house of representatives who are not members of the same party as that of the speaker shall designate one from their number who shall appoint four commissioners. The appointing authorities shall consider the state's ethnic, racial, and gender diversity. Failure to achieve such diversity shall not be grounds for challenging the authority of the commission.*

(2) *Within 45 days after the 16 commissioners are certified to the secretary of state, one additional commissioner, who shall be designated chair of the commission, shall be appointed by a vote of at least nine commissioners and certified to the secretary of state.*

Consideration of **Committee Substitute for Proposals 172 and 162** with pending **Amendment 2** was deferred.

SPECIAL ORDER

Consideration of **Proposal 91** and **Proposal 46** was deferred.

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 February 12.

Pending **Amendment 2B**, substitute **Amendment 2** and **Amendment 1** were withdrawn.

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

Amendment 3—On page 1, lines 15-28, delete those lines and insert:

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 that in such a suit a person may*

recover damages up to a maximum amount of \$200,000, plus costs, other than attorney's fees incurred in the suit. Such amount may be increased by general law, and 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 governmental entity in the settlement of such a suit, there shall be a waiver of sovereign immunity against the governmental entity to the extent of such bad faith, as determined by general law. There shall be no waiver of sovereign immunity for planning functions. Punitive damages shall not be recoverable against a governmental entity.

And the title is amended as follows:

On page 1, lines 5 and 6, delete those lines and insert: liable; providing for an increase in such amount; providing for a waiver of sovereign immunity upon a finding of bad faith; providing certain exceptions.

Commissioners Lowndes and Morsani offered the following amendment to **Amendment 3** which was moved by Commissioner Lowndes and failed:

Amendment 3A—On page 2, line 2, after the period, insert: *When any such suit is filed against the state or any political subdivision, agency, district, or municipality for an amount which exceeds the maximum amount allowed by general law, the claim shall be submitted by the court in which it is filed, in lieu of a trial, to a three-person arbitration panel that shall, by majority vote, render a decision on the claim which may exceed the maximum amount. The rules that govern the proceedings of the arbitration panel, and any appeal taken therefrom, shall be determined by the supreme court. This waiver shall not apply to planning functions.*

And the title is amended as follows:

On page 2, line 13, delete the period and insert: ; providing for certain claims to be submitted to an arbitration panel.

The vote was:

Yeas—13

Barnett	Hawkes	Lowndes	Rundle
Connor	Jennings	Morsani	Smith
Evans	Langley	Riley	Zack
Freidin			

Nays—13

Mr. Chairman	Ford-Coates	Mathis	Planas
Barkdull	Henderson	Mills	Scott
Barton	Kogan	Nabors	Wetherington
Brochin			

Commissioner Zack moved the following amendment to **Amendment 3** which failed:

Amendment 3B—On page 1, lines 15 and 16, delete those lines and insert:

SECTION 13. Suits against the state.—*Suits may be brought Provision may be made by general law for bringing suit against the state, its*

MOTION TO RECONSIDER AMENDMENT

Commissioner Douglass moved that the Commission reconsider the vote by which **Amendment 3A** failed. The motion was placed on the calendar.

Further consideration of **Proposal 59** with pending **Amendment 3** was deferred.

CHAIRMAN DOUGLASS PRESIDING

MOTION

On motion by Commissioner Wetherington, **Proposal 62** was withdrawn from Style and Drafting Committee and further consideration.

MATTERS ON RECONSIDERATION

On motion by Commissioner Barkdull, the rules were waived and the motion to reconsider **Proposal 144** was placed on the calendar for consideration February 24.

COMMITTEE MEETING CHANGE

Commissioner Barkdull announced that the Rules and Administration Committee would meet upon adjournment Tuesday, February 24.

CORRECTION AND APPROVAL OF JOURNAL

The Journal of February 12 was corrected and approved as follows:

Page 178, column 1, line 19 after "Alfonzo", insert: Argiz

RECESS

On motion by Commissioner Barkdull, the Commission recessed at 5:00 p.m. for the purpose of holding committee meetings and conducting other Commission business to reconvene at 9:00 a.m., Tuesday, February 24, 1998.

**CONSTITUTION REVISION COMMISSION
B-11 HISTORIC CAPITOL
400 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32399-1300**