



Journal of the 1997-1998 Constitution Revision Commission

Number 6

Tuesday, October 21, 1997

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CALL TO ORDER

The Commission was called to order by the Chairman at 8:57 a.m. A quorum was present—32:

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

Alternates:

Barton

Excused: Commissioners Connor, Kogan, Planas and Morsani

PRAYER

The following prayer was offered by Commissioner Thompson:

Our Father, as we approach this beautiful and gorgeous day that you've given us, we ask that you slow us down a little bit, that you help us think about the things that are important in our lives and in our country; the things that are important to our fellow man. We ask that you slow us down a little bit and we listen a little more, we learn a little bit more and we learn a little bit more compassion. We thank you for this great honor you've bestowed upon us. We ask that you help us treat this position that you've put us in with the kind of honor that is expected of us. In all that we do we seek your guidance and your love. Amen.

PLEDGE

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

INTRODUCTION OF PROPOSALS

By Commissioner Sundberg—

Proposal 1—A proposal to revise ARTICLE I, s. 9, Fla. Const.; providing that private property may not be forfeited unless the owner is convicted of a felony and has exhausted all appeals.

—was referred to the Declaration of Rights Committee.

By Commissioner Riley—

Proposal 3—A proposal to revise ARTICLE I, s. 19, Fla. Const.; providing that a person found not guilty of a crime may not be assessed fees or costs to recover property seized as evidence or impounded.

—was referred to the Declaration of Rights Committee.

By Commissioner Langley—

Proposal 4—A proposal to revise ARTICLE I, s. 18, Fla. Const.; clarifying the authority of the Department of Military Affairs, through courts-martial, to impose sentences of imprisonment and other penalties.

—was referred to the Judicial Committee.

By Commissioner Planas—

Proposal 5—A proposal to revise ARTICLE I, s. 2, Fla. Const.; prohibiting discrimination based on national origin.

—was referred to the Declaration of Rights Committee.

By Commissioner Nabors—

Proposal 6—A proposal to create ARTICLE VII, s. 17, Fla. Const.; providing limits on the adoption of exemptions and exclusions from the general state sales tax.

—was referred to the Finance and Taxation Committee.

By Commissioner Rundle—

Proposal 21—A proposal to revise ARTICLE I, s. 22, Fla. Const.; providing that a putative father in a paternity suit does not have a right to a trial by jury.

—was referred to the Declaration of Rights Committee.

By Commissioner Langley—

Proposal 25—A proposal to revise ARTICLE V, s. 1, Fla. Const.; providing for military courts martial to be conducted by military judges of the Florida National Guard with direct appeal to the District Court of Appeal, First District.

—was referred to the Judicial Committee.

By Commissioner Langley—

Proposal 26—A proposal to revise ARTICLE IV, s. 6, and ARTICLE VII, s. 9, Fla. Const.; creating five executive departments of water management and eliminating ad valorem taxing authority for water management purposes.

—was referred to the Finance and Taxation Committee.

By Commissioner Henderson—

Proposal 36—A proposal to revise ARTICLE II, s. 7, Fla. Const.; providing a right to clean and healthful air and water and to protection of other natural resources.

—was referred to the General Provisions Committee.

By Commissioner Freidin—

Proposal 37—A proposal to revise the Florida Constitution by adopting language that is not gender-specific.

—was referred to the General Provisions Committee.

By Commissioner Mathis—

Proposal 42—A proposal to revise ARTICLE II, s. 5, Fla. Const.; providing for recall of elected public officials including members of the judicial branch of government.

—was referred to the Ethics and Elections Committee.

By Commissioner Riley—

Proposal 43—A proposal to revise ARTICLE III, s. 15, Fla. Const.; providing additional qualifications on candidates for, and members of, the state Legislature.

—was rereferred to the Ethics and Elections Committee.

By Commissioner Anthony—

Proposal 48—A proposal to revise ARTICLE VII, s. 18, Fla. Const.; providing that local governments are not bound by certain state legislative mandates.

—was referred to the Local Government Committee.

By Commissioner Zack—

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 referred to the Judicial Committee.

By Commissioner Langley—

Proposal 60—A proposal to revise ARTICLE V, s. 2, Fla. Const.; providing for the cross-assignment of judges.

—was referred to the Judicial Committee.

By Commissioner Wetherington—

Proposal 61—A proposal to revise Article V, ss. 10 and 11, Fla. Const.; providing for circuit and county judges to be subject to a vote of retention rather than running for reelection.

—was referred to the Judicial Committee.

By Commissioner Wetherington—

Proposal 62—A proposal to revise ARTICLE V, s. 8, Fla. Const.; raising the mandatory retirement age for justices and judges; eliminating the provision that a justice or judge reaching mandatory retirement age may serve out a term already half served.

—was referred to the Judicial Committee.

By Commissioner Rundle—

Proposal 63—A proposal to revise ARTICLE II, s. 8, Fla. Const.; strengthening the powers of the Florida Commission on Ethics.

—was referred to the Ethics and Elections Committee.

By Commissioner Nabors—

Proposal 64—A proposal to revise ARTICLE VII, s. 11, Fla. Const.; providing for the payment of revenue bonds from dedicated fees or tax revenues; creating ARTICLE VII, s. 19, Fla. Const.; abolishing tax exemptions not prescribed or authorized in the constitution.

—was referred to the Bonding and Investments Committee.

By Commissioner Langley—

Proposal 65—A proposal to create ARTICLE III, s. 26, Fla. Const.; providing for the revision or amendment of statutory law through the initiative process.

—was referred to the General Provisions Committee.

By Commissioner Wetherington—

Proposal 66—A proposal to revise ARTICLE V, ss. 10 and 11, Fla. Const.; providing for circuit and county judges to be subject to a vote of retention rather than running for reelection, if such method of election is approved by the electors within the judicial circuit; providing requirements for placing such a local option before the electors.

—was referred to the Judicial Committee.

By Commissioner Wetherington—

Proposal 67—A proposal to revise ARTICLE V, s. 8, Fla. Const., and to create ARTICLE XII, s. 21, Fla. Const.; providing for an increase in the length of membership in the Florida bar which is required of a candidate for the office of circuit judge or county judge; providing that a circuit judge or county judge who is in office when this amendment takes effect retains eligibility to serve in that office.

—was referred to the Judicial Committee.

By Commissioner Freidin—

Proposal 68—A proposal to revise ARTICLE I, s. 21, Fla. Const.; providing standards for access to courts.

—was referred to the Judicial Committee.

REPORTS OF COMMITTEES

REPORT OF THE RULES AND ADMINISTRATION COMMITTEE

October 20, 1997

The Rules and Administration Committee met to consider four items. The following is a summary of the committee's discussion for consideration by the Commission:

I. Consideration of a Conflict of Interest Rule. Commissioner Hawkes explained that his proposal on the issue of a Conflict of Interest Rule was the same as was recommended by the Constitution Revision Commission Steering Committee, and that he understood it was the same as the House rule and the rule that applies to other state officials.

After an explanation of the Hawkes amendment, an amendment drafted by the Attorney General's Office, and the House and Senate Rules, and after discussion, the committee directed staff to draft a proposal that would require a commissioner to vote unless the commissioner had a conflict of interest, in which case the commissioner should not vote, and should at that time, file a statement disclosing the nature of the conflict. It was determined that there would be instances in which a commissioner would not have knowledge of a conflict, which might be later pointed out to the commissioner, in which case, the commissioner should disclose that conflict within 15 days after the action. The committee directed that a vote tally should not be changed in the event a conflict is later disclosed, referring to the procedure for changing a vote in Rule 5.2. The committee asked that the same rule be drafted for committees and for floor action, and that the procedure be the same whether the conflict was a direct conflict to the commissioner, or a conflict regarding a principal, business associate, or a relative.

Since the proposed rule required drafting, the committee delayed consideration of the language. It was requested that a draft be prepared by staff this afternoon and distributed to the committee members. A meeting was called for 8:30 a.m., on Tuesday, October 21 in Room 309, Capitol, for the purpose of considering a proposed rule on Conflict of Interest.

II. Discussion as to the Calendar. Chairman Barkdull noted that the Commission will meet for only three days in November, and has reserved a week in December, and two weeks in each of January and February. It was suggested, and the members recognized, that it will be difficult to fully consider all the Commission has proposed and will propose in the future. The committee agreed to assist in ensuring that the commissioners understand that they will face a substantial time crunch. Commissioner Langley suggested that the Commission schedule fuller days when it is meeting in Tallahassee, as once commissioners leave their home bases, they might as well be working on Commission business.

Commissioner Thompson suggested that it be recommended to committees to roll things on out of the committee, and to refine their agendas down to spend the time on the few things that they wish to earnestly pursue. Commissioner Thompson did recognize concerns about isolating issues that interrelate.

III. Discussion of a Method of Scheduling Matters on the Special Order Calendar. Chairman Barkdull suggested that the committee explore a method of scheduling matters on the special order calendar so that it is not required that the committee meet in the interim to set the calendar. One suggestion was to place matters on the calendar in the order they appear in the Constitution. Commissioner Thompson recommended an alternative of placing the order as the proposals are reported out of committee. Secretary Blanton explained that it would be possible to notify the committee members of the proposals that were available for scheduling, and establish a consensus through fax communication "subject to confirmation at a Rules and Administration Committee meeting" which could be scheduled just prior to commencement of the session. In this way, the public could be notified as to the likely calendar.

IV. Discussion on late-filed public proposals. Chairman Barkdull informed the committee that the Commission had received a number of, and continues to receive, public proposals since the October 13 deadline. The Chairman suggested that staff make a listing of these proposals that could be considered in session at the time Communications are considered. If any member wished to file a proposal as a member proposal, the member could. This would not be considered a public proposal and would not require 10 votes of support.

Whereupon, Chairman Barkdull adjourned the meeting until 8:30 a.m., Tuesday, October 21, 1997.

Respectfully submitted,
Thomas H. Barkdull, Jr.
Chairman

The Ethics and Elections Committee makes no recommendation for Proposal 43

The proposal was rereferred to the Ethics and Elections Committee.

The Ethics and Elections Committee recommends the following not pass:
Proposal 7, Proposal 63

The Ethics and Elections Committee recommends the following pass: Proposal 32, Proposal 34, Proposal 35

The Executive Committee recommends the following pass:
Proposal 8

The Judicial Committee recommends the following not pass:
Proposal 9

The proposals contained in the foregoing reports were placed on the calendar.

CONSIDERATION OF THE REPORT OF THE RULES AND ADMINISTRATION COMMITTEE

October 21, 1997

The Rules and Administration Committee respectfully recommends the following revision to the Rules of the Constitution Revision Commission:

1.17 and 2.11—providing for the disclosure of a conflict of interest.

These changes are attached hereto and by reference made a part of this report.

Respectfully submitted,
Thomas H. Barkdull, Jr.
Chairman

MOTIONS

Commissioner Barkdull moved the following amendment which was adopted by two-thirds vote:

1.17 Attendance and voting.—

Unless a Commission member has submitted the written notice provided in Rule 1.18, every Commission member shall be within the Commission's chamber during its sessions and shall vote on each question *except as follows*. *If the vote is on a question which would inure to a Commissioner's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the Commissioner is retained or to the parent organization or subsidiary of a corporate principal by which the Commissioner is retained; or which the Commissioner knows would inure to the special gain or loss of a relative or business association of the Commissioner, the Commissioner must file with the Secretary, prior to or at the time of the vote, a statement disclosing a conflict of interest which discloses the nature of his or her interest, and refrain from voting. If a Commissioner later discovers that a conflict existed, within 15 days, the Commissioner shall file with the Secretary, a statement disclosing the conflict and the nature of his or her interest. For purposes of the vote result, the subsequent filing of a disclosure of a conflict of interest will be treated in the same manner as a change of vote in Rule 5.2.*

Commissioner Barkdull moved the following amendment which was adopted by two-thirds vote:

2.11 Committees; proxy voting.—

Each committee member shall attend all meetings *and shall vote on each question except as follows*. *If the vote is on a question which would inure to a Commissioner's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the commissioner is retained or to the parent organization or*

subsidiary of a corporate principal by which the Commissioner is retained; or which the Commissioner knows would inure to the special gain or loss of a relative or business association of the Commissioner, the Commissioner must file with the Secretary, prior to or at the time of the vote, a statement disclosing a conflict of interest which discloses the nature of his or her interest, and refrain from voting. If a Commissioner later discovers that a conflict existed, within 15 days, the Commissioner shall file with the Secretary, a statement disclosing the conflict and the nature of his or her interest. For purposes of the vote result, the subsequent filing of a disclosure of a conflict of interest will be treated in the same manner as a change of vote in Rule 5.2. No member of a committee shall vote by proxy.

ANNOUNCEMENTS

Commissioner Barkdull announced that all committee chairmen would meet at 1:00 p.m. in the Commission's conference room in the Historic Capitol.

CORRECTION AND APPROVAL OF JOURNAL

The Journal of October 20 was corrected and approved as follows:

Page 60, column 2, line 19 delete "General Provisions Committee" and insert: Declaration of Rights Committee

Page 60 column 2, line 33 delete "Local Government Committee" and insert: Finance and Taxation Committee

Page 60 column 2, line 46 delete "Local Government Committee" and insert: Finance and Taxation Committee

RECESS

On motion by Commissioner Barkdull, the Commission recessed at 9:25 a.m. for the purpose of holding committee meetings and conducting other Commission business to reconvene at 9:00 a.m., Wednesday, November 12, 1997.

CONSTITUTION REVISION COMMISSION

**Daily Indices for
October 21, 1997**

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CO — Co-Sponsor
CR — Committee Report
IN — Introduction

IR — Introduction and Reference
MO — Motion
RE — Reference

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Proposal 7	(CR) 90	Proposal 60	(IR) 89
Proposal 8	(CR) 90	Proposal 61	(IR) 89
Proposal 9	(CR) 90	Proposal 62	(IR) 89
Proposal 21	(IR) 88	Proposal 63	(IR) 89, (CR) 90
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**CONSTITUTION REVISION COMMISSION
B-11 HISTORIC CAPITOL
TALLAHASSEE, FLORIDA 32399-1300**