

The Constitution Revision Commission
COMMITTEE MEETING EXPANDED AGENDA

DECLARATION OF RIGHTS
Commissioner Carlton, Chair
Commissioner Stemberger, Vice Chair

MEETING DATE: Wednesday, January 31, 2018

TIME: 10:00 a.m.—5:00 p.m.

PLACE: 116 Knott Building, Capitol Complex, Tallahassee, Florida

MEMBERS: Commissioner Carlton, Chair; Commissioner Stemberger, Vice Chair; Commissioners Donalds, Gainey, Johnson, Joyner, and Lester

TAB	PROPOSAL NO. and INTRODUCER	PROPOSAL DESCRIPTION and COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/P 91 General Provisions / Thurlow-Lippisch	GENERAL PROVISIONS, Natural resources and scenic beauty; Section 7 of Article X of the State Constitution to prohibit the drilling for exploration and extraction of oil and natural gas in specified coastal waters. GP 12/14/2017 Fav/CS DR 01/31/2018 Favorable	Favorable Yeas 5 Nays 1
2	P 81 Heuchan	DECLARATION OF RIGHTS, Access to public records and meetings; LEGISLATURE, Quorum and procedure; Section 24 of Article I and Section 4 of Article III of the State Constitution to require that all meetings of the Legislature, the judicial branch, and any commission or task force at which official acts are to be taken or at which public business of such body is to be transacted or discussed be open and noticed to the public. DR 01/31/2018 Unfavorable	Unfavorable Yeas 0 Nays 7
3	P-53 Kruppenbacher	DECLARATION OF RIGHTS, creates new section; a new section in Article I of the State Constitution to establish that every person is guaranteed certain rights and responsibilities as a patient in a health care facility in this state and to require the Legislature to enact a Patients' Bill of Rights by general law. DR 01/31/2018 Withdrawn	Withdrawn
4	CS/P 99 General Provisions / Cerio	MISCELLANEOUS, Patients' right to know about adverse medical incidents; Section 25 of Article X of the State Constitution to specify that the patients' right to know about adverse medical incidents does not abrogate attorney-client privilege or work product doctrine available under law and provide that healthcare facilities and providers that violate this section may be subject to administrative discipline as provided by law. GP 01/12/2018 Fav/CS DR 01/31/2018 Unfavorable	Unfavorable Yeas 3 Nays 4

COMMITTEE MEETING EXPANDED AGENDA

Declaration of Rights

Wednesday, January 31, 2018, 10:00 a.m.—5:00 p.m.

TAB	PROPOSAL NO. and INTRODUCER	PROPOSAL DESCRIPTION and COMMITTEE ACTIONS	COMMITTEE ACTION
5	Presentations on Restoration of Civil Rights		
6	P 21 Rouson	SUFFRAGE AND ELECTIONS, Disqualifications; Section 4 of Article VI of the State Constitution to specify which convicted felons are subject to the automatic suspension of civil rights and to provide that any convicted felon may not vote or hold office until certain conditions are met. EE 01/18/2018 Favorable DR 01/31/2018 Temporarily Postponed	Temporarily Postponed
7	P 34 Carlton	DECLARATION OF RIGHTS, Right to bear arms; Pretrial release and detention; Prosecution for crime; offenses committed by children; Taxpayers' Bill of Rights; Claimant's right to fair compensation; Sections 8, 14, 15, 25, and 26 of Article I of the State Constitution to make technical and nonsubstantive revisions to improve the clarity and organization of the State Constitution and to delete provisions that have become obsolete or have had their effect. DR 12/12/2017 Temporarily Postponed DR 01/31/2018 Favorable	Favorable Yeas 6 Nays 0

NOTE: Public Comment will be taken on all noticed agenda items.

**Constitution Revision Commission
Declaration Of Rights Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: CS/P 91

Relating to: GENERAL PROVISIONS, Natural resources and scenic beauty

Introducer(s): General Provisions Committee and Commissioners Thurlow-Lippisch and Martinez

Article/Section affected: Article II, Section 7.

Date: January 29, 2018

	REFERENCE	ACTION
1.	<u>GP</u>	<u>Fav/CS</u>
2.	<u>DR</u>	<u>Pre-meeting</u>

I. SUMMARY:

Article II, Section 7 of the Florida Constitution establishes the policy of the state to conserve and protect its natural resources and scenic beauty. Consistent with this overall policy, the Florida Department of Environmental Protection regulates oil and gas drilling in Florida territorial waters through the Oil and Gas Program. Primary responsibilities of the Oil and Gas Program also include conservation of oil and gas resources, correlative rights protection, maintenance of health and human safety, and environmental protection.

Currently, the permitting or construction of structures intended for the drilling or production of oil and gas is prohibited in the following locations:

- Florida's east or west coast within Florida's territorial sea;
- Any submerged land within any bay or estuary;
- Within 1 mile seaward of the coastline of the state;
- Within 1 mile of the seaward boundary of any state, local, or federal park or aquatic or wildlife preserve or on the surface of a freshwater lake, river, or stream; or
- Within 1 mile inland from the shoreline of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary or within 1 mile of any freshwater lake, river, or stream (unless there is adequate protection in the event of accident or blowout.)

The proposal prohibits oil and gas drilling for exploration or extraction in and beneath all state waters which have not been alienated and that lie between the mean high water line and the outermost boundaries of the state's territorial seas. This prohibition does not apply to the transportation of oil and gas products produced outside those waters. The proposal is self-executing.

If approved by the Constitution Revision Commission, the proposal will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposal will take effect on January 8, 2019.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida Coastal Boundaries

A state's "territorial waters" generally refers to the waters under its jurisdiction, including both the inland waters and any surrounding sea. The Florida Constitution provides the first significant source of authority for defining Florida's territorial waters. In addition to Florida's constitutional provisions, there are various federal and state statutes that speak to territorial waters and the state's power within them.

Florida Constitution – Article II, Section 1

Article II, Section 1 of the Florida Constitution describes the state coastal boundaries. It provides that the southern and western boundaries extend three leagues (nine nautical miles¹) and to the edge of the Gulf Stream or three geographic miles, whichever is greater, for the eastern coastal boundary. Article II, Section 1 also authorizes the Legislature to extend the coastal boundaries to the limits permitted by the United States or international law. These boundary provisions are a combination of Florida's fourth, fifth, and sixth constitutions.

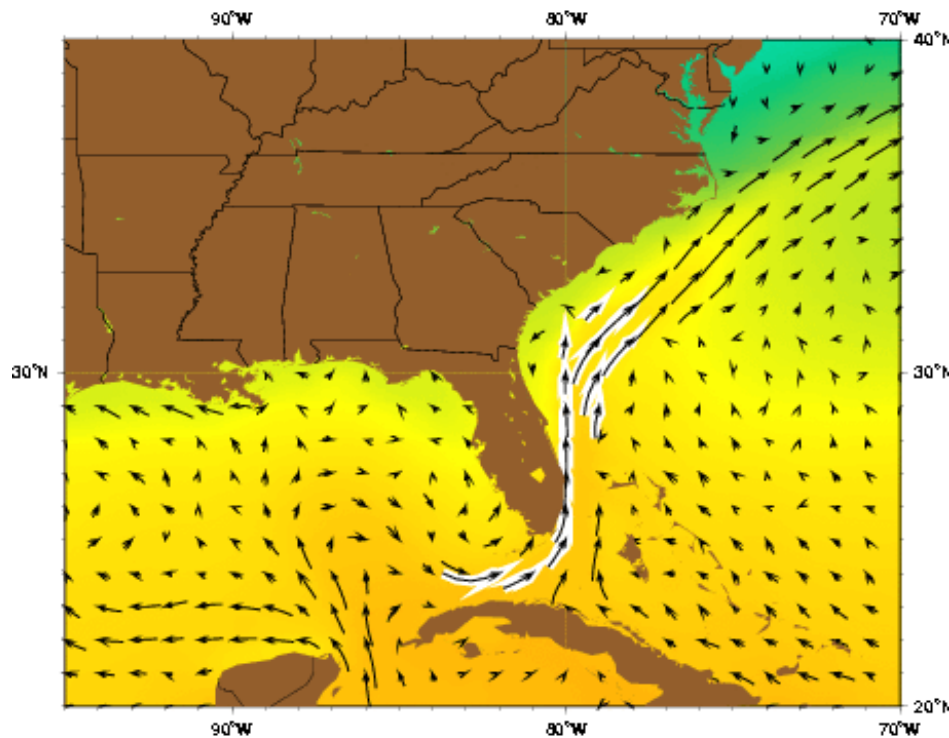
Gulf Stream

The Gulf Stream is a powerful, western boundary current in the Atlantic Ocean. It starts in the Gulf of Mexico and flows into the Atlantic at the tip of Florida, accelerating along the eastern coastlines of the United States and Newfoundland. It is part of the North Atlantic Subtropical Gyre, one of the five major oceanic gyres, which are large systems of circular currents and powerful winds. The National Oceanographic Data Center (NODC) reports that the exact position of the Gulf Stream is *variable*. The current meanders, loops, and bends, flowing from Florida to North Carolina and veering east into the North Atlantic near Cape Hatteras, North Carolina. The position of the Gulf Stream as it leaves the coast changes throughout the year. In the fall, it shifts north, while in the winter and early spring it shifts south.² The Florida current is a well-defined component of the Gulf Stream system. On the average, the inner edge is within 10 miles of Miami and Ft. Lauderdale, FL, and at times there is a 2 m/s flow within a few miles of the coast.³

¹ A nautical mile is approximately 1.15 geographic miles.

² Joanna Gyory, Arthur J. Mariano, and Edward H. Ryan, *The Gulf Stream*, University of Miami Rosentiel School of Marine & Atmospheric Science, <http://oceancurrents.rsmas.miami.edu/atlantic/gulf-stream.html> (last visited Jan. 29, 2018).

³ Joanna Gyory, Elizabeth Rowe, Arthur J. Mariano, Edward H. Ryan, *The Florida Current*, University of Miami Rosentiel School of Marine & Atmospheric Science, <http://oceancurrents.rsmas.miami.edu/atlantic/florida.html> (last visited Jan. 29, 2018).

Fig 1. The Florida Gulfstream Current

Thus, Florida's eastern coastal boundary, measured to the edge of the Gulf Stream, may shift from time to time.

Florida Constitution – Article X, Section 16

Article X, Section 16 of the Florida Constitution also establishes definitions of Florida's coastal boundaries for purposes of prohibiting gill nets or other entangling nets. Article X, Section 16 defines:

- "A. 'Coastline' is the low water line that meets the shore along the coast of Florida which is in direct contact with the open sea. A coastline can never begin in open water; a coastline, in plain terms, is where the water meets the land.
- B. 'Florida waters' are those waters in the Atlantic Ocean out to three (3) geographic miles from the coastline and in the Gulf of Mexico out to three (3) marine leagues, or 9 geographic miles, or approximately 10.376 statute miles, from the coastline.
- C. 'Nearshore and inshore waters' are those State waters within one (1) geographic mile of the coastline in the Atlantic Ocean and three (3) geographic miles of the coastline in the Gulf of Mexico."

Federal Law – Submerged Lands Act

Prior to the 1930s, there was little need to establish states' boundaries in the open sea. It was taken as a routine matter that a state owned title to the submerged lands beneath the open sea and waters of the Great Lakes to the boundary of the state, and held these lands in trust for the people of the state with the authority to regulate such matters as fishing .⁴

The discovery of oil beneath submerged lands intensified interest in establishing states' boundaries and in determining ownership of submerged lands, and, thus, the oil within those boundaries. The question was a significant one because the United States claimed all the minerals beneath the submerged lands.⁵ In 1947 the United States Supreme Court ruled that, as against California, the United States possessed paramount rights in the submerged lands of the Pacific Ocean seaward of the low-water mark on the coast of California.⁶ Subsequent to this decision, the Court found similarly against Louisiana and Texas.⁷

Congress reacted to these decisions by enacting the Submerged Lands Act of 1953.⁸ Congress defined "coast line" to mean "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters[.]"⁹ Congress then definitively confirmed title to the submerged lands and the natural resources beneath such submerged lands to the states¹⁰ and relinquished all right, title and interest the United States had in these submerged lands.¹¹ Finally, Congress defined the seaward boundary of the coastal states as "a line three geographic miles¹² distant from its coast line"¹³ Congress allowed any state to extend its seaward boundary beyond the three geographic miles if it had proof of such a boundary.

The Submerged Lands Act as interpreted by the U.S. Supreme Court gives Florida three leagues (approximately nine miles) off its western coastal boundary¹⁴ and three geographic miles off its eastern coastal boundary.¹⁵

⁴ *Illinois Central Railroad Company v. State of Illinois*, 146 U.S. 387 (1892).

⁵ *United States v. State of California*, 332 U.S. 19, 22-25 (1947).

⁶ *Id.*

⁷ *United States v. State of Louisiana*, 339 U.S. 699 (1950); *United States v. State of Texas*, 339 U.S. 707 (1950).

⁸ 43 U.S.C. s. 1301, *et seq*

⁹ *Id.* s. 1301 (c)

¹⁰ *Id.* s. 1301 (a)

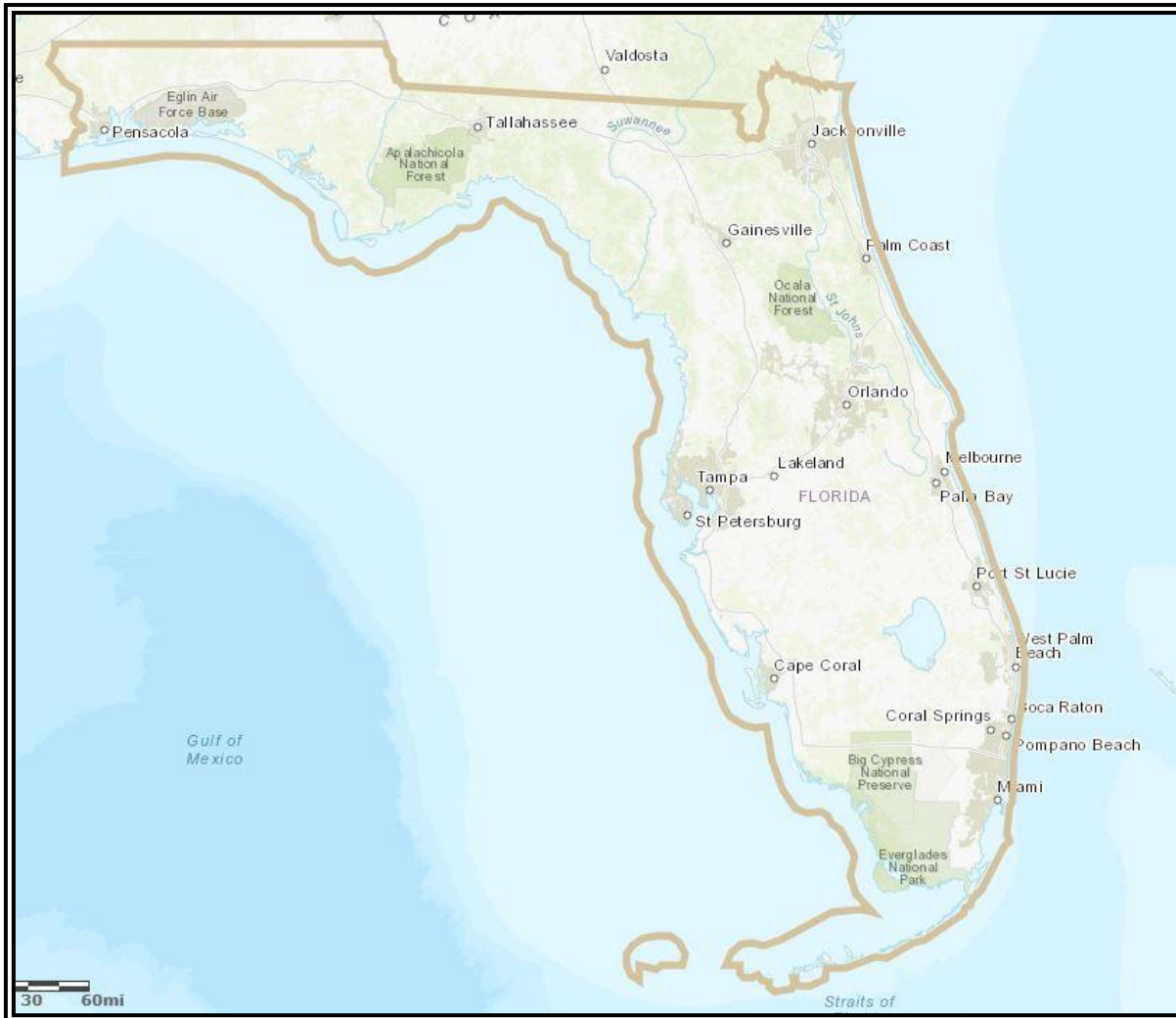
¹¹ *Id.* s. 1301 (b)

¹² The term "geographic" mile is often used interchangeably with "nautical" mile. However, a "geographic" mile is slightly longer. A "geographic" mile is the length of one minute of the arc of the equator, or 6,087.08 feet. *American Practical Navigator*, Nathaniel Broditch LL.D. (1981), p. 812. A "nautical" mile is 6,076.11549 feet. *Id.* at 116. A "statute" or "English" mile (used on land) is 5,280 feet. Thus, a "geographic" or "nautical" mile is 1.15 "statute" or "English" miles.

¹³ Three geographic miles had long been the recognized seaward boundary of the United States. *See, e.g., Cunard Steamship Company v. Mellon*, 262 U.S. 100, 122-123 (1923). Codification of 43 U.S.C. s. 1312 was the first congressional recognition of this accepted legal fact.

¹⁴ *United States v. States of Louisiana, Texas, Mississippi, Alabama and Florida*, 363 U.S. 1 (1960).

¹⁵ *United States v. Florida*, 425 U.S. 791 (1976).

Fig 2: Florida State Waters and Land BoundarySource: Official State of Florida Geographic Data Portal¹⁶

Oil and Gas Drilling

Florida Regulation of Oil and Gas Drilling

Article II, Section 7 of the Florida Constitution establishes the policy of the state to conserve and protect its natural resources and scenic beauty. The provision also requires that adequate provision must be made by law for the abatement of air and water pollution and of excessive and unnecessary noise, and the conservation and protection of natural resources.¹⁷

Consistent with this overall policy, the Florida Department of Environmental Protection (DEP) regulates oil and gas drilling in Florida territorial waters through the Oil and Gas Program. Primary responsibilities of the Oil and Gas Program also include conservation of oil and gas resources,

¹⁶ <http://geodata.myflorida.com/datasets?page=5&t=boundaries>

¹⁷ Art. II, § 7(a), Fla. Const.

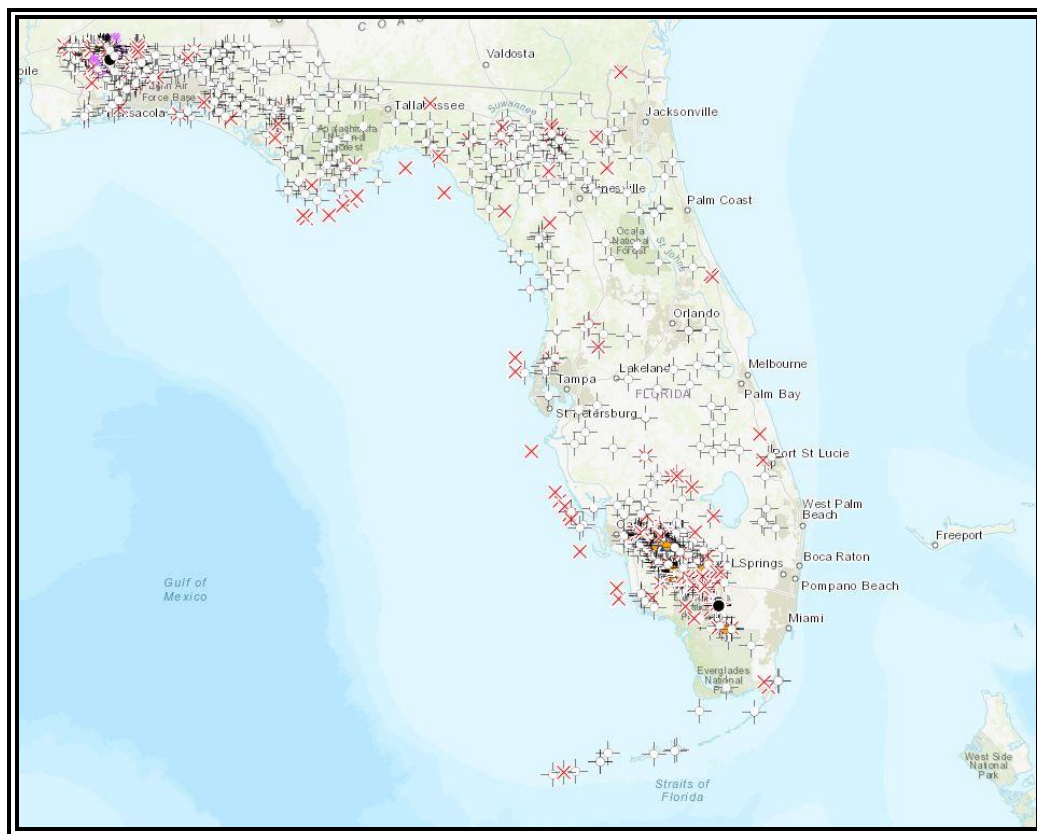
correlative rights protection, maintenance of health and human safety, and environmental protection.

Section 377.242, F.S., authorizes DEP, through the Oil and Gas Program, to issue permits for the drilling for, or production of oil, gas, or other petroleum products which are to be extracted from below the surface of the land, including submerged land. However, s. 377.242, F.S., provides that no structure intended for the drilling for, or production of oil, gas, or other petroleum products may be permitted or constructed in the following locations:

- Florida's east or west coast within Florida's territorial sea (uses boundaries from Submerged Land Act);
- Any submerged land within any bay or estuary;
- Within 1 mile seaward of the coastline of the state;
- Within 1 mile of the seaward boundary of any state, local, or federal park or aquatic or wildlife preserve or on the surface of a freshwater lake, river, or stream; or
- Within 1 mile inland from the shoreline of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary or within 1 mile of any freshwater lake, river, or stream (unless there is adequate protection in the event of accident or blowout.)

Fig 3: Current Florida Permitted Oil and Gas Wells

Source: DEP, Oil and Gas Program¹⁸



¹⁸ <https://ca.dep.state.fl.us/mapdirect/?focus=oilandgas>

Federal Regulation of Oil and Gas Drilling

The Outer Continental Shelf Lands Act governs federal jurisdiction over the submerged lands on the Outer Continental Shelf seaward of the state boundaries. The U.S. Secretary of Interior has authority to lease this land to the oil and gas industry for exploration, development, and production of oil and gas. In 2006, Congress approved a federal moratorium that bans drilling along almost all of the eastern Gulf of Mexico, an area which extends 125 miles off Florida's west coast.¹⁹ This moratorium also contains a well-control rule that was adopted in the aftermath of the Deepwater Horizon disaster.²⁰

An executive order signed by the President of the United States in April calls for these regulations to be reconsidered.²¹ Proponents of the moratorium cite concerns ranging from national security to environmental problems to economic development,²² noting that the Eastern Gulf is the largest training ground for the United States military in the world.²³

B. EFFECT OF PROPOSED CHANGES:

The proposal prohibits oil and gas drilling for exploration or extraction in and beneath all state waters which have not been alienated and that lie between the mean high water line and the outermost boundaries of the state's territorial seas. This prohibition does not apply to the transportation of oil and gas products produced outside those waters.

If approved by the voters, the proposal will take effect on January 8, 2019.²⁴

C. FISCAL IMPACT:

Per the Department of Environmental Protection, no impact anticipated.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

¹⁹ <http://www.heraldtribune.com/opinion/20170815/editorial-oppose-oil-drilling-off-florida-coast>

²⁰ *Id.*

²¹ <https://www.whitehouse.gov/the-press-office/2017/04/28/presidential-executive-order-implementing-america-first-offshore-energy>

²² <http://www.pnj.com/story/news/2017/12/01/offshore-drilling-not-fit-florida-guestview/905826001/>

²³ *Id.*

²⁴ See Article XI, Sec. 5(e) of the Florida Constitution ("Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.")

C. Technical Deficiencies:

None.

D. Related Issues:

None.

By the Committee on General Provisions; and Commissioner
Thurlow-Lippisch

335-00148-17

201791c1

A proposal to amend

Section 7 of Article X of the State Constitution to
prohibit the drilling for exploration and extraction
of oil and natural gas in specified coastal waters.

Be It Proposed by the Constitution Revision Commission of
Florida:

Section 7 of Article II of the State Constitution is
amended to read:

ARTICLE II

GENERAL PROVISIONS

SECTION 7. Natural resources and scenic beauty.—

(a) It shall be the policy of the state to conserve and
protect its natural resources and scenic beauty. Adequate
provision shall be made by law for the abatement of air and
water pollution and of excessive and unnecessary noise and for
the conservation and protection of natural resources.

(b) Those in the Everglades Agricultural Area who cause
water pollution within the Everglades Protection Area or the
Everglades Agricultural Area shall be primarily responsible for
paying the costs of the abatement of that pollution. For the
purposes of this subsection, the terms "Everglades Protection
Area" and "Everglades Agricultural Area" shall have the meanings
as defined in statutes in effect on January 1, 1996.

(c) To protect the people of Florida and their environment,
drilling for exploration or extraction of oil or natural gas is
prohibited on lands beneath all state waters which have not been
alienated and that lie between the mean high water line and the
outermost boundaries of the state's territorial seas. This
prohibition does not apply to the transportation of oil and gas

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

335-00148-17

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products produced outside of such waters. This subsection is
self-executing.

Page 2 of 2

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/31/18
Meeting Date

91
Proposal Number (if applicable)

*Topic Exploration & Production

Amendment Barcode (if applicable)

*Name DAVID MICA

Address 215 S. MONROE Ste 800

Phone 561 6300

Street

TALLAHASSEE

FL

3201

City

State

Zip

Email MICAD@API.ORG

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? FLORIDA PETROLEUM COUNCIL

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/31/18

Meeting Date

p 91

Proposal Number (if applicable)

*Topic off shore drilling Ban

Amendment Barcode (if applicable)

*Name Laura Reynolds

Address 360 Hunter Street

Phone 786-543-1926

Street

City West Palm Beach FL

State

Zip

Email lreynolds@conservationconceptsllc.com

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Friends of the Everglades / Palm Beach Co.

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

Florida Native Plant Society

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-31-2018

Meeting Date

91

Proposal Number (if applicable)

*Topic

Drilling Ban

Amendment Barcode (if applicable)

*Name

Susan Olickman

Address

PO Box 310

Phone

727-7429003

Street

Indian Rocks Bch FL 33785

Email

susan@cleanenergy.org

City

State

Zip

*Speaking:

☒

For

☐

Against

☐

Information Only

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

Southern Alliance for Clean Energy

Are you a registered lobbyist?

☒

Yes

☐

No

Are you an elected official or judge?

☐

Yes

☒

No

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*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/31/18
Meeting Date

91
Proposal Number (if applicable)

*Topic Natural Resources

Amendment Barcode (if applicable)

*Name Brewster Bevis

Address 516 W Adams St
Street

Phone 224-7173

ILH IL 32301
City State Zip

Email bbevis@aircon

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Associated Industries of Florida

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

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***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

01/31/2018

Meeting Date

P91

Proposal Number (if applicable)

*Topic ~~General~~ General Provisions - Natl. Resources

Amendment Barcode (if applicable)

*Name Holly Parker Curry

Address 1229 Mitchell Ave.

Phone 850-567-3393

Street

Tallahassee FL 32303

City

State

Zip

Email hparker@sunfrider.org

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Sunfrider Foundation

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

JAN. 31, 2017

Meeting Date

91

Proposal Number (if applicable)

*Topic

A ^{proposed} amendment opposing oil drilling in state waters

Amendment Barcode (if applicable)

*Name

Manley Fuller

Address

PO Box 6870
Street
Tallahassee, Fla 32314
City State Zip

Phone

850-~~656~~656-7113

Email

wildfed@gmail.com

*Speaking:

☒

For

☐

Against

☐

Information Only

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

Florida Wildlife Federation

Are you a registered lobbyist?

☒

Yes

☐

No

Are you an elected official or judge?

☐

Yes

☐

No

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*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/31/18

Meeting Date

91

Proposal Number (if applicable)

*Topic

Proposae 91

Amendment Barcode (if applicable)

*Name

David Guest

Address

317 E. Park Ave.

Phone (850) 228-3337

Street

Tallahassee

FL

32301

Email

david@davidguestlaw.net

City

State

Zip

*Speaking:



For



Against



Information Only

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?



Yes



No

If yes, who?

Environmental Confederation of Southwest Florida, Sierra Club

Are you a registered lobbyist?



Yes



No

Are you an elected official or judge?



Yes



No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/31/18
Meeting Date

P. 91
Proposal Number (if applicable)

*Topic Proposal 91

Amendment Barcode (if applicable)

*Name Alisa Coe

Address 111 S Martin Luther King Jr. Blvd
Street
Tallahassee FL 32301
City State Zip

Phone 850-681-0031

Email aloe@earthjustice.org

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Earthjustice

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

COMMITTEE: Declaration of Rights
ITEM: CS/P 91
FINAL ACTION: Favorable
MEETING DATE: Wednesday, January 31, 2018
TIME: 10:00 a.m.—5:00 p.m.
PLACE: 116 Knott Building, Capitol Complex, Tallahassee, Florida

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

**Constitution Revision Commission
Declaration Of Rights Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 81

Relating to: DECLARATION OF RIGHTS, Access to public records and meetings;
LEGISLATURE, Quorum and procedure

Introducer(s): Commissioner Heuchan

Article/Section affected: Article I, Section 24; Article III, Section 4

Date: January 29, 2018

	REFERENCE	ACTION
1.	<u>DR</u>	<u>Pre-meeting</u>

I. SUMMARY:

Article I, Section 24 of the Florida Constitution requires that all meetings of any collegial body of the executive branch of state government or of a county, municipality, school district, or special district (local governments) be open and noticed to the public if official acts will be taken or public business of such body will be transacted or discussed. The “open meetings” requirement of Article I, Section 24 does not apply to the Judiciary and applies to the Legislature in only the circumstances specified in Article III, Section 4 of the Florida Constitution (sessions of each house, committee meetings, and certain prearranged meetings between members or members and the governor, the president of the senate, or the speaker of the house of representatives).

The proposal amends Article I, Section 24 and Article III, Section 4 of the Florida Constitution to require that the Legislature, the Judiciary (including meetings between judges and justices), and any Commission or Task Force be subject to the same “open meetings” requirements as the executive branch and local government.

If passed by the Constitution Revision Commission, the proposal will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposal will take effect on January 8, 2019.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Government in the Sunshine

Section 24 of Article I of the Florida Constitution

A constitutional right of access to “all meetings of any collegial public body of the executive branch or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed. . .” is recognized in Art. I, s. 24, Fla. Const.¹ All collegial public bodies of the executive branch and local government are covered by the open meetings mandate of this constitutional provision. The state legislature has its own constitutional provision requiring access in Art. III, s. 4(e), Fla. Const. The judiciary is not included in this provision.

This section of the constitution was added in 1992² in response to the Florida Supreme Court decision in *Locke v. Hawkes*,³ which provided that open records laws did not apply to the legislature or other constitutional officers.⁴

Section 286.011, F.S.

Florida’s Government in the Sunshine Law, s. 286.011, F.S., commonly referred to as the Sunshine Law, provides a right of access to:

“All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision. . .”

The law is equally applicable to elected and appointed boards, and applies to any gathering of two or more members of the same board to discuss some matter that will foreseeably come before that board for action.⁵ Members-elect to such boards or commissions are also subject to the Sunshine Law, even though they have not yet taken office.

There are three basic requirements of s. 286.011, F.S. First, meetings of public boards or commissions must be open to the public. Second, reasonable notice of such meetings must be given. Finally, minutes of the meetings must be taken and promptly recorded.

¹ See *Frankenmuth Mutual Insurance Company v. Magaha*, 769 So.2d 1012, 1021 (Fla. 2000), noting that the Sunshine Law “is of both constitutional and statutory dimension.”

² See Amendment 2 for 1992 General Election, which was placed on the ballot by joint resolution of the Florida Legislature: <http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=8> (last visited 1/29/18).

³ *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). See also *Westlaw Commentary on Art. I, s. 24 of the Fla. Const.* by William A. Buzzett and Deborah K. Kearney.

⁴ See D’Alemberte, Talbot, *The Florida State Constitution*, 2nd edition (2017), pg 71-72.

⁵ Section 286.011, F.S., does not apply to the legislature, the judiciary, the powers of the Governor and Cabinet which derive from the Constitution, and other boards and commissions created by the Constitution, which prescribes the manner of the exercise of their constitutional powers. See *Government-In-The-Sunshine Manual*, Volume 39, Prepared by the Office of the Attorney General, Published by First Amendment Foundation (2017), pgs. 5-9.

Judiciary

The open meetings provision found in Art. I, s. 24, Fla. Const., does not include meetings of the judiciary. The Florida Attorney General has opined that separation of powers principles make it unlikely that the Sunshine Law, a legislative enactment, could apply to the courts established pursuant to Art. V, Fla. Const.⁶ Questions of access to judicial proceedings usually arise under other constitutional guarantees relating to open and public judicial proceedings, such as the Sixth Amendment of the U.S. Constitution⁷, and freedom of the press provision of the First Amendment to the U.S. Constitution.⁸

Criminal Proceedings

A court possesses the inherent power to control the conduct of proceedings before it.⁹ A three-pronged test for criminal proceedings has been developed to provide “the best balance between the need for open government and public access, through the media, to the judicial process, and the paramount right of a defendant in a criminal proceeding to a fair trial before an impartial jury.”¹⁰

Closure in criminal proceedings is acceptable only when:

- 1) It is necessary to prevent a serious and imminent threat to the administration of justice;
- 2) No alternatives are available, other than change of venue, which would protect the defendant’s right to a fair trial; and
- 3) Closure would be effective in protecting the defendant’s rights without being broader than necessary to accomplish that purpose.

Article I, s. 16(b), Fla. Const., provides that victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.¹¹

⁶ AGO 83-97.

⁷ “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”

⁸ “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

⁹ *Miami Herald Publishing Company v. Lewis*, 426 So. 2d 1 (Fla. 1982); and *State ex rel. Miami Herald Publishing Company v. McIntosh*, 340 So. 2d 904 (Fla. 1976).

¹⁰ *Lewis*, *supra* at 7. And see *Morris Publishing Group, LLC v. State*, 136 So. 3d 770, 779 (Fla. 1st DCA 2014).

¹¹ See *Sireci v. State*, 587 So. 2d 450 (Fla. 1991), *cert. denied*, 112 S.Ct. 1500 (1992) (court did not err by allowing the wife and son of the victim to remain in the courtroom after their testimony). See also s. 960.001(1)(e), F.S., restricting exclusion of victims, their lawful representatives, or their next of kin.

Civil Proceedings

In *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113 (Fla. 1988), the Supreme Court set forth the following factors that must be considered by a court in determining a request for closure of civil proceedings:

- 1) A strong presumption of openness exists for all court proceedings;
- 2) Both the public and news media have standing to challenge any closure order with the burden of proof being on the party seeking closure;
- 3) Closure should occur only when necessary:
 - a) to comply with established public policy as set forth in the Constitution, statutes, rules or case law;
 - b) to protect trade secrets;
 - c) to protect a compelling governmental interest;
 - d) to obtain evidence to properly determine legal issues in a case;
 - e) to avoid substantial injury to innocent third parties; or
 - f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.
- 4) Whether a reasonable alternative is available to accomplish the desired result and if none exists, the least restrictive closure necessary to accomplish its purpose is used;
- 5) The presumption of openness continues through the appellate review process and the party seeking closure continues to have the burden to justify closure.¹²

Court Proceedings Closed by Statute

Certain court proceedings may be closed in accordance with Florida Statutes as follows:

(1) Adoption: Hearings held under the Florida Adoption Act are closed. Section 63.162(1), F.S. See *In re Adoption of H.Y.T.*, 458 So. 2d 1127 (Fla. 1984) (statute providing that all adoption hearings shall be held in closed court is not unconstitutional).

¹² And see *Amendments to the Florida Family Law Rules of Procedure*, 723 So. 2d 208, 209 (Fla. 1998), reiterating support for the *Barron* standards and stating that “public access to court proceedings and records [is] important to assure testimonial trustworthiness; in providing a wholesome effect on all officers of the court for purposes of moving those officers to a strict conscientiousness in the performance of duty; in allowing nonparties the opportunity of learning whether they are affected; and in instilling a strong confidence in judicial remedies, which would be absent under a system of secrecy;” and *Lake v. State*, 193 So. 3d 932, 934 (Fla. 4th DCA 2016) (trial court did not depart from essential requirements of law by refusing to close Jimmy Ryce Act civil commitment review proceeding; statutory provision requiring that certain treatment records introduced into evidence be maintained under seal unless opened by the judge “does not require that the press and public be barred from any discussion of treatment or treatment records during a review hearing”).

(2) Dependency: Except as provided in s. 39.507, F.S., dependency adjudicatory hearings are open to the public unless, by special order, the court determines that the public interest or welfare of the child is best served by closing the hearing. Section 39.507(2), F.S.¹³

(3) Guardian advocate appointments: Hearings for appointment of guardian advocates are confidential.¹⁴

(4) HIV test results: Court proceedings in cases where a person is seeking access to human immunodeficiency virus (HIV) test results are to be conducted in camera unless the person tested agrees to a hearing in open court or the court determines that a public hearing is necessary to the public interest and proper administration of justice.¹⁵

(5) Pregnancy termination notice waiver: Hearings conducted in accordance with a petition for a waiver of the notice requirements pertaining to a minor seeking to terminate her pregnancy shall remain confidential and closed to the public, as provided by court rule.¹⁶

(6) Termination of parental rights: Hearings involving termination of parental rights are confidential and closed to the public.¹⁷

(7) Victim and witness testimony in certain circumstances: Except as provided in s. 918.16(2), F.S., if any person under 16 years of age or any person with an intellectual disability is testifying in any civil or criminal trial concerning any sex offense, the judge shall clear the courtroom, except for listed individuals. Section 918.16(1), F.S. If the victim of a sex offense is testifying concerning that offense, the court shall clear the courtroom, except for listed individuals, upon request of the victim, regardless of the victim's age or mental capacity. Section 918.16(2), F.S.¹⁸

Legislature

The Legislature is constitutionally required¹⁹ to be open and noticed as provided in Art. III, s. 4(e), Fla. Const., except with respect to those meetings exempted by the Legislature pursuant to Art. I,

¹³ *And see Mayer v. State*, 523 So. 2d 1171 (Fla. 2d DCA), *review dismissed*, 529 So. 2d 694 (Fla. 1988) (former version of statute requiring hearings to be closed did not violate First Amendment).

¹⁴ Section 39.827(4), F.S.

¹⁵ Section 381.004(2)(e)9., F.S.

¹⁶ Section 390.01114(4)(f), F.S.

¹⁷ Section 39.809(4), F.S. *See Natural Parents of J.B. v. Florida Department of Children and Family Services*, 780 So. 2d 6 (Fla. 2001), upholding the constitutionality of the statute. *And see J.I. v. Department of Children and Families*, 922 So. 2d 405 (Fla. 4th DCA 2006) (Sunshine Law does not apply to Department of Children and Families permanency staffing meetings conducted to determine whether to file petition to terminate parental rights). *Cf. Stanfield v. Florida Department of Children and Families*, 698 So. 2d 321 (Fla. 3d DCA 1997) (trial court may not issue "gag" order preventing a woman from discussing a termination of parental rights case because "[t]he court cannot prohibit citizens from exercising their First Amendment right to publicly discuss knowledge that they have obtained independent of court documents even though the information may mirror the information contained in court documents").

¹⁸ *Cf. Pritchett v. State*, 566 So. 2d 6 (Fla. 2d DCA), *review denied*, 570 So. 2d 1306 (Fla. 1990) (where a trial court failed to make any findings to justify closure, application of s. 918.16, F.S., to the trial of a defendant charged with capital sexual battery violates the defendant's constitutional right to a public trial). *Accord Kovaleski v. State*, 854 So. 2d 282 (Fla. 4th DCA 2003), *cause dismissed*, 860 So. 2d 978 (Fla. 2003).

¹⁹ Article I, s. 24, Fla. Const.

s. 24, Fla. Const., or specifically closed by the Constitution.²⁰ Pursuant to Art. III, s. 4(e), Fla. Const., the rules of procedure of each house of the Legislature must provide that all legislative committee and subcommittee meetings of each house and joint conference committee meetings be open and noticed. Such rules must also provide:

[A]ll prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public. All open meetings shall be subject to order and decorum. This section shall be implemented and defined by the rules of each house, and such rules shall control admission to the floor of each legislative chamber and may, where reasonably necessary for security purposes or to protect a witness appearing before a committee, provide for the closure of committee meetings. Each house shall be the sole judge for the interpretation, implementation, and enforcement of this section.

In accordance with Article III, s. 4(e), Fla. Const., both the Senate and the House of Representatives have adopted rules implementing this section.²¹

B. EFFECT OF PROPOSED CHANGES:

The proposal requires the legislature, the judicial branch and any commission or task force to adhere to the same open meetings standard as any collegial public body of the executive branch or collegial public body of a county, municipality, school district or special district.

If approved by the voters, the proposal will take effect on January 8, 2019.²²

FISCAL IMPACT:

Unknown.

²⁰ And see Art. III, s. 4(c), Fla. Const. (votes of members during final passage of legislation pending before a committee and, upon request of two members of a committee or subcommittee, on any other question, must be recorded).

²¹ Senate Rules may be found online at www.flsenate.gov. Rules of the House of Representatives may be found at www.myfloridahouse.gov.

²² See Article XI, Sec. 5(e) of the Florida Constitution (“Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”)

III. Additional Information:**A. Statement of Changes:**

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

According to an analysis provided by the Appellate Section and Trial Section of the Florida Bar:

While the Legislature already has several procedural rules regarding open meetings, this proposal would dramatically affect the judiciary. The doctrine of judicial privilege dates back to the Constitutional Convention of 1787, where the delegates believed that the judiciary should be independent of the co-equal branches of government. Judicial independence has historically included private judicial deliberations.²³ No states have adopted an “open meeting” requirement for state courts to subject the deliberations to notice and publicly meet.²⁴

Opponents argue that an open meetings requirement of the judiciary would slow down the deliberative process in Florida’s District Courts of Appeal.²⁵ Cases often require more than one meeting to discuss and deliberate, and the notice requirement would likely slow the process. Opponents argue that these logistical challenges would create extraordinary delays and extensive costs.²⁶ There is also a concern about the judges’ ability to fairly and impartially adjudicate complex issues without confidentiality of judicial communications.²⁷ Confidentiality in judicial deliberations allows for candid exchange of ideas which may or may not be unpopular, which is arguably important to the decision-making process.²⁸

²³ *The Doctrine of Judicial Privilege: The Historical and Constitutional Basis Supporting A Privilege for the Federal Judiciary*, 44 Wash. & Lee L.Rev. 213 (1987).

²⁴ *See Justice on Display: Should Justices Deliberate in Public?* Time, Sept. 12, 2011.

²⁵ Florida Bar Trial Lawyers Section White Paper, on file with CRC staff.

²⁶ Id.

²⁷ *The Doctrine of Judicial Privilege: The Historical and Constitutional Basis Supporting A Privilege for the Federal Judiciary*, 44 Wash. & Lee L.Rev. 213 (1987).

²⁸ *Trying California’s Judges on Television: Open Government or Judicial Intimidation?* 65 A.B.A. J. 1175, 1178 (1979).

By Commissioner Heuchan

heuchanb-00081A-17

201781__

A proposal to amend

Section 24 of Article I and Section 4 of Article III of the State Constitution to require that all meetings of the Legislature, the judicial branch, and any commission or task force at which official acts are to be taken or at which public business of such body is to be transacted or discussed be open and noticed to the public.

Be It Proposed by the Constitution Revision Commission of Florida:

Section 24 of Article I of the State Constitution is amended to read:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 24. Access to public records and meetings.—

(a) Every person has the right to inspect or copy any public record 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, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(b) All meetings of the legislature; the judicial branch, including meetings between judges and justices; any collegial public body of the executive branch of state government; ~~or of~~ any collegial public body of a county, municipality, school

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

heuchanb-00081A-17

201781__

district, or special district; or any commission or task force, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public ~~and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e),~~ except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, ~~except that each house of the legislature may adopt rules governing the enforcement of this section in relation to records of the legislative branch.~~ Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.

(d) All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

heuchanb-00081A-17

201781__

to records shall remain in effect until they are repealed.

Section 4 of Article III of the State Constitution is amended to read:

ARTICLE III

LEGISLATURE

SECTION 4. Quorum and procedure.—

(a) A majority of the membership of each house shall constitute a quorum, but a smaller number may adjourn from day to day and compel the presence of absent members in such manner and under such penalties as it may prescribe. Each house shall determine its rules of procedure.

(b) Sessions of each house shall be public; except sessions of the senate when considering appointment to or removal from public office may be closed.

(c) Each house shall keep and publish a journal of its proceedings; and upon the request of five members present, the vote of each member voting on any question shall be entered on the journal. In any legislative committee or subcommittee, the vote of each member voting on the final passage of any legislation pending before the committee, and upon the request of any two members of the committee or subcommittee, the vote of each member on any other question, shall be recorded.

(d) Each house may punish a member for contempt or disorderly conduct and, by a two-thirds vote of its membership, may expel a member.

(e) The rules of procedure of each house shall provide that all legislative committee and subcommittee meetings of each house, and joint conference committee meetings, ~~shall~~ be open

Page 3 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

heuchanb-00081A-17

201781__

and noticed to the public in accordance with Article I, section 24. ~~The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.~~ All open meetings shall be subject to order and decorum. This section shall be implemented ~~and defined~~ by the rules of each house, and such rules shall control admission to the floor of each legislative chamber and may, where reasonably necessary for security purposes or to protect a witness appearing before a committee, provide for the closure of committee meetings. ~~Each house shall be the sole judge for the interpretation, implementation, and enforcement of this section.~~

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/31/18

Meeting Date

81

Proposal Number (if applicable)

*Topic

Public meeting

Amendment Barcode (if applicable)

*Name

Bob Harris

Address

2618 Centennial Place

Phone

222-0720

Street

Tallahassee

FL

32308

Email

bharris@lawfla.com

City

State

Zip

*Speaking:

☐

For

☒

Against

☐

Information Only

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

Trial Lawyers Section of the Florida Bar

Are you a registered lobbyist?

☒

Yes

☐

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-31-18

Meeting Date

81

Proposal Number (if applicable)

*Topic Access to Public Records and Meeting

Amendment Barcode (if applicable)

*Name Shawn Frost

Address P.O. Box 780837

Phone 772-584-1454

Sebastian FL 32978

Street

City

State

Zip

Email frost@shawnfrost.com

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☒ Yes ☐ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-31-2018

Meeting Date

P 81

Proposal Number (if applicable)

*Topic

Open Deliberations - Judicial

Amendment Barcode (if applicable)

*Name

Steve Metz

Address

7625 Skipper Lane

Phone

850-544

Street

City

Tallahassee Fla 32317

State

Zip

Email

admira@metz.org

*Speaking:

☐

For

☐

Against

☐

Information Only

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

Fla. Bar

Are you a registered lobbyist?

☒

Yes

☐

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-31-2018

Meeting Date

P 81

Proposal Number (if applicable)

*Topic Open Judicial Deliberations

Amendment Barcode (if applicable)

*Name Major Harding

Address 123 S Calhoun St

Phone 850-933-4823

Street

Tallahassee

State

FL 32301

Zip

Email mharding@ausley.com

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☐ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-31-2018

Meeting Date

P 81

Proposal Number (if applicable)

*Topic Open Judicial Deliberations

Amendment Barcode (if applicable)

*Name Chris W. Altenbernd

Address 61 Ladoga Ave.

Phone 813-294-8436

Tampa FL 33601
City State Zip

Email caltenbernd@
baake-legal.com

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

COMMITTEE: Declaration of Rights
ITEM: P 81
FINAL ACTION: Unfavorable
MEETING DATE: Wednesday, January 31, 2018
TIME: 10:00 a.m.—5:00 p.m.
PLACE: 116 Knott Building, Capitol Complex, Tallahassee, Florida

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

By Commissioner Kruppenbacher

kruppenbf-00076-17

201753__

1 A proposal to create
2 a new section in Article I of the State Constitution
3 to establish that every person is guaranteed certain
4 rights and responsibilities as a patient in a health
5 care facility in this state and to require the
6 Legislature to enact a Patients' Bill of Rights by
7 general law.

8
9 Be It Proposed by the Constitution Revision Commission of
10 Florida:

11
12 A new section is added to Article I of the State
13 Constitution to read:

14 ARTICLE I
15 DECLARATION OF RIGHTS

16 Patients' Bill of Rights.-

17 (a) Every person is guaranteed certain rights and
18 responsibilities as a patient in a health care facility in this
19 state. A patient is guaranteed transparency in healthcare
20 including, but not limited to, medical service, medical costs,
21 and all medical information necessary in order for the patient,
22 guardian, or designated representative of the patient to make
23 informed decisions regarding the course of treatment.

24 (b) By general law, the legislature shall prescribe and
25 adopt a Patients' Bill of Rights that, in clear and concise
26 language, sets forth a patient's rights and responsibilities and
27 a health care provider's responsibilities to provide
28 transparency in healthcare.

**Constitution Revision Commission
Declaration Of Rights Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: CS/P 99

Relating to: MISCELLANEOUS, Patients' right to know about adverse medical incidents

Introducer(s): General Provisions Committee and Commissioner Cerio

Article/Section affected: Article X, Section 25

Date: January 28, 2018

	REFERENCE	ACTION
1.	<u>GP</u>	<u>Fav/CS</u>
2.	<u>DR</u>	<u>Pre-meeting</u>

I. SUMMARY:

Article X, Section 25 of the Florida Constitution, commonly known as “Amendment 7,” allows patients to access any records of a health care facility or health provider relating to adverse medical incidents. An “adverse medical incident” means medical negligence, intentional misconduct, or any other act, neglect, or default that caused or could have caused injury to or death of a patient. The Florida Supreme Court has interpreted this provision broadly in favor of disclosure of such records. Specifically, the Court has held that federal law designating certain information about adverse medical incidents as confidential “patient safety work product” does not preempt a patient’s right to access such information under Article X, Section 25. Further, the Court has found that reports commissioned by a health care facility or provider’s attorney relating to an adverse medical incident are not protected from disclosure under the work-product doctrine or attorney-client privilege.

The proposal amends Article X, Section 25 to specify that a patients’ right to know about adverse medical incidents does not abrogate attorney-client privilege or work-product doctrine available under law. The proposal also provides that a health care facility or health care provider that violates the requirements of Article X, Section 25 may be subject to administrative discipline as provided by law.

If passed by the Constitution Revision Commission, the proposal will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposal will take effect on January 8, 2019.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Article X, Section 25: Patient's Right to Know about Adverse Medical Incidents

Article X, Section 25 of the Florida Constitution, which is generally referred to by its ballot designation, “Amendment 7,” was proposed by citizen initiative and adopted in 2004.¹ Amendment 7 provides patients² “a right to have access to any records³ made or received in the course of business by a health care facility⁴ or provider⁵ relating to any adverse medical incident.”⁶ “Adverse medical incident” is defined broadly to include “medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider that caused or could have caused injury to or death of a patient”⁷ Amendment 7 also provides patients, including those who become medical malpractice plaintiffs, access to any adverse medical incident record, including incidents involving other patients, sometimes called occurrence reports, created by health care providers.

The Florida Supreme Court has explained that the adoption of Amendment 7 by the voters in 2004, signaled a shift in Florida public policy with regard to health care:

Amendment 7 heralds a change in the public policy of this state to lift the shroud of privilege and confidentiality in order to foster disclosure of information that will allow patients to better determine from whom they should seek health care, evaluate the quality and fitness of health care providers currently rendering service to them, and allow them access to information gathered through the self-policing processes during the discovery period of litigation filed by injured patients or the estates of deceased patients against their health care providers. We have come to this conclusion because we are obliged to interpret and apply Amendment 7 in accord with the intention of the people of this state who enacted it. . . .⁸

¹ Amendment 7 passed in the 2004 general election. See Florida Department of State website for details <http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=35169&seqnum=3> (last visited 01/04/18).

² “Patient” means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

³ The phrase “have access to any records” means, in addition to any other procedure for producing such records provided by general law, making the records available for inspection and copying upon formal or informal request by the patient or a representative of the patient, provided that current records which have been made publicly available by publication or on the internet may be “provided” by reference to the location at which the records are publicly available.

⁴ Refers to any facility licensed under ch. 395, F.S.

⁵ “Health care provider” means a physician licensed under chapter 458, chapter 459, or chapter 461

⁶ Section 25(a) of Art. X, Fla. Const.

⁷ Section 25(c)(3) of Art. X, Fla. Const.

⁸ Edwards v. Thomas, 229 So.3d 277 (Fla. 2017)

Thus the Court has stated that the purpose of Amendment 7⁹ “was to do away with the legislative restrictions on a Florida patient’s access to a medical provider’s ‘history of acts, neglects, or defaults’ because such history ‘may be important to a patient.’ ”¹⁰

In 2005, the Legislature enacted s. 381.028, F.S., to implement the provisions of Article X, Section 25 of the Florida Constitution. Section 381.028, F.S., specifies the privacy standards health care facilities and providers must observe in producing records relating to adverse medical incidents, how such records may be used in administrative and civil proceedings, and the process for producing such records (fees, etc.). There are currently no administrative penalties provided by general law for a health care facility or provider’s violation of the requirement to disclose records relating to adverse medical incidents under Article X, Section 25 of the Florida Constitution or s. 381.028, F.S.

Interpretation of Article X, Section 25

The scope and applicability of Amendment 7 has been the source of litigation since its adoption, and the Florida Supreme Court has historically broadly interpreted the amendment in favor of disclosure.

One of the first and most important Florida Supreme Court cases to interpret Amendment 7 was *Florida Hospital Waterman, Inc. v. Buster*.¹¹ In *Buster*, the Court addressed three questions:

1. Whether the amendment was self-executing, or required enabling legislation;
2. Whether the amendment preempted well established statutory immunities, or was it merely supplementary; and
3. Whether the amendment applied retroactively or prospectively.¹²

The plaintiff in *Buster* filed a medical malpractice claim against a hospital and sought documents relating to “any medical incidents of negligence, neglect, or default of any health care provider” that occurred prior to the effective date of Amendment 7.¹³ The hospital objected and filed for a protective order, but the trial court ordered the hospital to produce all the records requested by the plaintiff. The hospital filed for a writ of certiorari to the Fifth District Court of Appeal (Fifth DCA).¹⁴ On appeal, the Fifth DCA held that Amendment 7 1) preempted statutory privileges afforded to health care providers’ self-policing procedures “to the extent that information obtained in accordance with those procedures is discoverable during the course of litigation;¹⁵ 2) did not apply retroactively; and 3) was self-executing. The Fifth District Court of Appeal anticipated

⁹ *Florida Hospital Waterman, Inc. v. Buster*, 984 So. 2d 478 (Fla. 2008).

¹⁰ *Id.* at 488 (quoting *Advisory Op. to the Att’y Gen. re Patients’ Right to Know About Adverse Med. Incidents*, 880 So. 2d 617, 618 (Fla. 2004)).

¹¹ *Florida Hospital Waterman, Inc. v. Buster*, 984 So. 2d 478 (Fla. 2008).

¹² *Id.*

¹³ *Id.*

¹⁴ *See Florida Hospital Waterman, Inc. v. Buster*, 932 So. 2d 344 (Fla. 5th DCA 2006). *Buster* at 349. Since the standard of review for an interlocutory petition for writ of certiorari is whether the trial court departed from the essential requirements of the law irreparably such that they cannot be remedied on appeal, the *Buster* court simply rules on both parties’ briefs without oral argument.

¹⁵ *Id.* at 349.

conflicts with other districts and certified these holdings in the form of questions to the Florida Supreme Court for review.¹⁶

On review of the *Buster* case, the Florida Supreme Court took a very expansive reading of the provisions of Amendment 7.¹⁷ The court held that: 1) Amendment 7 was self-executing, and did not require a statute to implement its terms¹⁸; 2) Amendment 7 could be applied retroactively to records created before the passage of the amendment; and 3) portions of s. 381.028, F.S., to the extent they conflicted with Amendment 7, were unconstitutional and therefore severed from the valid provisions.

Work Product Doctrine and Attorney-Client Privilege

The balance between Amendment 7 and the attorney-client privilege and work-product doctrine has also been the subject of litigation.

Edwards v. Thomas

The Florida Supreme Court, in *Edwards v. Thomas*,¹⁹ addressed this balance. In the *Edwards* case, the trial court ordered production of external peer review reports concerning care and treatment rendered by a specific doctor under Amendment 7. The hospital petitioned for certiorari. The Second District Court of Appeal granted the petition and quashed the order in part. The patient appealed to the Florida Supreme Court, which held that 1) the constitutional right to any adverse medical incident reports in medical malpractice actions removed all limitations on discovery of adverse medical incidents; 2) external peer review reports were adverse medical incident reports; 3) on an issue of apparent first impression, external peer review reports were made or received in the course of business; 4) discovery of reports was not precluded by work product privilege, and 5) discovery of reports was not protected by attorney client privilege.²⁰

Federal Preemption

Whether or not federal law has preempted parts of Amendment 7 has also been the source of litigation between health care providers and those requesting patients' records. Recent litigation has centered around the Federal Patient Safety and Quality Improvement Act.²¹

The Federal Patient Safety and Quality Improvement Act

The Federal Patient Safety and Quality Improvement Act envisions a system in which each participating health care provider or member establishes a patient safety evaluation system, in which relevant information would be collected, managed, and analyzed.²² After the information is collected in the patient safety evaluation system, the provider forwards the information to its patient safety organization, which then collects and analyzes the data and provides feedback and

¹⁶ *Id.* at 356.

¹⁷ *Florida Hospital Waterman, Inc. v. Buster*, 984 So. 2d 478 (Fla. 2008).

¹⁸ The court relied on *Gray v. Bryant*, 125 So.2d 846 (Fla 1960), because it established a clearly defined rule through which its rights and purpose were conveyed, which gave rise to a presumption in favor of self-execution.

¹⁹ *Edwards v. Thomas*, 229 So.3d 277 (Fla. 2017).

²⁰ *Id.*

²¹ The Federal Health Care Quality Act was also the source of litigation. The Florida Supreme Court in *West Florida Regional Medical Center, Inc. v. See*, 79 30 20. 3d 1 (Fla. 2012), found that the federal law in question does not preempt Amendment 7.

²² 42 U.S.C. § 299b-21(6).

recommendations to providers on ways to improve patient safety and quality of care.²³ Information reported to patient safety organizations is also shared with a central clearinghouse, the Network of Patient Safety Databases, which aggregates the data and makes it available to providers as an “evidence-based management resource.”²⁴

In order to encourage participation, Congress created a protected legal environment within the federal law in which providers would be comfortable sharing data “both within and across state lines, without the threat that the information will be used against [them].”²⁵ Privilege and confidentiality protections attach to the shared information, termed “patient safety work product,” “to encourage providers to share this information without fear of liability.”²⁶ These protections are “the foundation to furthering the overall goal of the statute to develop a national system for analyzing and learning from patient safety events.”²⁷

The Florida Supreme Court in *Charles v. Southern Baptist Hospital of Florida, Inc.*, addressed federal preemption and the Federal Patient Safety and Quality Improvement Act.²⁸ In *Charles*, the trial court granted the plaintiff’s motion to compel documents the hospital refused to produce based on a claim of privilege under the Federal Patient Safety and Quality Improvement Act. On appeal, the First District Court of Appeal (First DCA) ruled that the documents were entitled to federal protection and that the provision of the Florida Constitution (Amendment 7) granting patients access to records relating to “adverse medical incidents” was preempted by federal law.²⁹ On review, the Florida Supreme Court reversed the First DCA, holding that:

1. Adverse medical incident reports could not be classified as “patient safety work product” under federal law;
2. Federal law did not preempt the “patients’ right to know” provision of the Florida constitution;
3. Federal law did not impliedly preempt the right-to-know provision; and
4. The documents at issue were discoverable.³⁰

Also notable in the *Charles* case was the dissent, in which Justice Canady argues that the majority opinion was merely advisory since a stipulation for dismissal filed under Florida Rule of Appellate Procedure 9.350(a) before a decision on the merits is not subject to disapproval.³¹ Justice Polston concurred in this dissent.

B. EFFECT OF PROPOSED CHANGES:

The proposal amends Article X, Section 25 to specify that a patients’ right to know about adverse medical incidents does not abrogate attorney-client privilege or work-product doctrine available

²³ See *Id.* § 299b–24; 73 Fed. Reg. at 70,733.

²⁴ See 42 U.S.C. § 299b–23.

²⁵ 73 Fed. Reg. at 70,732.

²⁶ *Id.*; see 42 U.S.C. § 299b–22(a)–(b).

²⁷ 73 Fed. Reg. at 70,741.

²⁸ *Charles v. Southern Baptist Hospital of Florida, Inc.*, 209 So.3d 1199 (Fla. 2017).

²⁹ *Southern Baptist Hospital of Florida, Inc., v. Charles*, 178 So.3d 102 (Fla. 1st DCA 2015).

³⁰ See *Charles v. Southern Baptist Hospital of Florida, Inc.*, 209 So.3d 1199 (Fla. 2017)

³¹ *Id.* at 1217.

under law. The effect of the amendment appears to abrogate the decisions of the Florida Supreme Court in *Edwards v. Thomas*.

The proposal also provides that a health care facility or health care provider that violates the requirements of Article X, Section 25 may be subject to administrative discipline as provided by law.

If approved by the voters, the proposal will take effect on January 8, 2019.³²

C. FISCAL IMPACT:

None.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

The proposal was amended on 1/12/18 by the General Provisions Committee. The amendment struck language that abrogated the decision in *Charles v. Southern Baptist Hospital of Florida, Inc.*, and added language that provides that a healthcare provider may subject to administrative discipline as provided by law if the provider violates the requirements of Article X, Section 25 of the Florida Constitution.

B. Amendments:

The proposal was amended by the General Provisions Committee on 1/12/18.³³

C. Technical Deficiencies:

None.

D. Related Issues:

None.

³² See FLA. CONST. ART XI, S. 5(E) (1968) (“Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”)

³³ See Amendment Barcode 588206 filed by Commissioner Gainey and approved by the General Provisions Committee: <http://www.flcra.gov/Proposals/Commissioner/2017/0099/Amendment/588206/PDF> (last visited 1/29/18).

By the Committee on General Provisions; and Commissioner Cerio

335-00197-17

201799c1

A proposal to amend

Section 25 of Article X of the State Constitution to specify that the patients' right to know about adverse medical incidents does not abrogate attorney-client privilege or work product doctrine available under law and provide that healthcare facilities and providers that violate this section may be subject to administrative discipline as provided by law.

Be It Proposed by the Constitution Revision Commission of Florida:

Section 25 of Article X of the State Constitution is amended to read:

ARTICLE X
MISCELLANEOUS

SECTION 25. Patients' right to know about adverse medical incidents.-

(a) In addition to any other similar rights provided herein or by general law, patients have a right to have access to any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident.

(b) In providing such access, the identity of patients involved in the incidents shall not be disclosed, and any privacy restrictions imposed by federal law shall be maintained.

(c) For purposes of this section, the following terms have the following meanings:

(1) The phrases "health care facility" and "health care provider" have the meaning given in general law related to a patient's rights and responsibilities.

(2) The term "patient" means an individual who has sought,

335-00197-17

201799c1

is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

(3) The phrase "adverse medical incident" means medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider that caused or could have caused injury to or death of a patient, including, but not limited to, those incidents that are required by state or federal law to be reported to any governmental agency or body, and incidents that are reported to or reviewed by any health care facility peer review, risk management, quality assurance, credentials, or similar committee, or any representative of any such committees.

(4) The phrase "have access to any records" means, in addition to any other procedure for producing such records provided by general law, making the records available for inspection and copying upon formal or informal request by the patient or a representative of the patient, provided that current records which have been made publicly available by publication or on the Internet may be "provided" by reference to the location at which the records are publicly available.

(d) This section does not abrogate the attorney-client privilege or work-product doctrine available under law.

(e) A health care facility or health care provider that violates the requirements of this section may be subject to administrative discipline as provided by law.

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

01/31/18

Meeting Date

99

Proposal Number (if applicable)

*Topic Patients' Right to Know

Amendment Barcode (if applicable)

*Name Elizabeth Finizio

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Street

Phone 954-767-6000

Fort Lauderdale, FL 33316

City

State

Zip

Email elizabeth@finiziolaw.com

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/31/18

Meeting Date

99

Proposal Number (if applicable)

*Topic Patients Right to know

Amendment Barcode (if applicable)

*Name Brewster Bevis

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Phone 224-7173

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TLH

City

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32301

Zip

Email bbevis@patient

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Associated Industries of Florida

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

01/31/18

Meeting Date

99

Proposal Number (if applicable)

*Topic Patients' Right to Know

Amendment Barcode (if applicable)

*Name

Kerri Smith

Address

34 Spanish River Dr.

Phone 561 762 8110

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Ocean Ridge FL 33431

Email Ksmith@kerri-smith.com

City

State

Zip

*Speaking:

☐

For

☒

Against

☐

Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who?

myself

Are you a registered lobbyist?

☐

Yes

☒

No

Are you an elected official or judge?

☐

Yes

☒

No

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01/31/18

Meeting Date

99

Proposal Number (if applicable)

Amendment Barcode (if applicable)

*Topic Patients' Right to Know

*Name

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*Speaking:

☐

For

☒

Against

☐

Information Only

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☐

Yes

☒

No

If yes, who?

Are you a registered lobbyist?

☐

Yes

☒

No

Are you an elected official or judge?

☐

Yes

☒

No

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01/31/18

Meeting Date

99

Proposal Number (if applicable)

Amendment Barcode (if applicable)

*Topic Patients' Right to Know

*Name

Address

Street

City

State

Zip

Phone

Email

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who?

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting.
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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

01/31/18

Meeting Date

99

Proposal Number (if applicable)

*Topic Patients' Right to Know

Amendment Barcode (if applicable)

*Name LAURIE BRIGGS

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Waive Speaking: ☐ In Support ☐ Against
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Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who?

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

01/31/18

Meeting Date

99

Proposal Number (if applicable)

Amendment Barcode (if applicable)

*Topic Patients' Right to Know

*Name Amber Hall

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City

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32301

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Email

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who?

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting.
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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

01/31/18

Meeting Date

99

Proposal Number (if applicable)

Amendment Barcode (if applicable)

*Topic Patients' Right to Know

*Name Kimberly Hoagan

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Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who?

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/31/18

Meeting Date

CS/P98

Proposal Number (if applicable)

*Topic

Parents Right to Know

Amendment Barcode (if applicable)

*Name

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*Speaking:



For



Against



Information Only

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who?

Florida Hospital Association

Are you a registered lobbyist?



Yes



No

Are you an elected official or judge?



Yes



No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

01/31/18

Meeting Date

99

Proposal Number (if applicable)

Amendment Barcode (if applicable)

*Topic Patients' Right to Know

*Name

Bryan Gowdy

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bgowdy@appellate-firm.com

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Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Florida Justice Association

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting.
Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

99

Proposal Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date _____

*Topic Amendment 7

*Name Skip Campbell

Address 1844 Colonial Dr.

Street

Coral Springs

City

Fla.

State

33071

Zip

Phone _____

Email _____

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☒ Yes ☐ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/31/2018

Meeting Date

CRC 99

Proposal Number (if applicable)

*Topic

Attys Client Privilege

Amendment Barcode (if applicable)

*Name

Mark Delegal

Address

315 S. Calhoun St #600

Phone

850 224 7000

Street

TLH

FL

32301

Email

City

State

Zip

*Speaking:

☒

For

☐

Against

☐

Information Only

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

Florida Chamber of Commerce

Are you a registered lobbyist?

☒

Yes

☐

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

Meeting Date _____

99
Proposal Number (if applicable)

*Topic Patients Right to know Adverse Medical Condition Amendment Barcode (if applicable) _____

*Name William Cotterell

Address 207 W. Park Ave Phone _____
Street

Tallahassee FL 32301 Email _____
City State Zip

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? _____

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

01/31/18

Meeting Date

99

Proposal Number (if applicable)

***Topic** Patients' Right to Know

Amendment Barcode (if applicable)

***Name**

Address

Street

Phone

Email

City

State

Zip

***Speaking:** ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☐ No

If yes, who?

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

COMMITTEE: Declaration of Rights
ITEM: CS/P 99
FINAL ACTION: Unfavorable
MEETING DATE: Wednesday, January 31, 2018
TIME: 10:00 a.m.—5:00 p.m.
PLACE: 116 Knott Building, Capitol Complex, Tallahassee, Florida

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

**Constitution Revision Commission
Declaration Of Rights Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 21

Relating to: SUFFRAGE AND ELECTIONS, Disqualifications

Introducer(s): Commissioner Rouson

Article/Section affected: Article VI, Section 4

Date: January 28, 2018

	REFERENCE	ACTION
1.	EE	Favorable
2.	DR	Pre-meeting

I. SUMMARY:

Article VI, Section 4 of the Florida Constitution prohibits a person convicted of *any* felony from being qualified to vote or hold a public office in Florida until their civil rights have been restored. Clemency is the constitutionally authorized process that provides a means through which convicted felons may be considered for relief from punishment and seek restoration of their civil rights, which include voting rights and the right to hold office. The Florida Cabinet (Governor, Attorney General, Chief Financial Officer, and Agriculture Commissioner) sit as the Board of Executive Clemency and establish the Rules of Executive Clemency. The Board has the exclusive power to grant or deny clemency.

The proposal amends Article VI, Section 4 of the Florida Constitution to provide that only persons convicted of a life or capital felony, a forcible felony (murder, manslaughter, sexual battery, etc.), or any other felony involving the use or threat of physical force or violence against an individual are prohibited from voting or holding office until restoration of their civil rights. The proposal further prohibits any person convicted of a felony from voting or holding a public office until the person has been released from incarceration and any post-conviction supervision, and has paid all court costs and restitution (or established a payment plan).

If passed by the Constitution Revision Commission, the proposal will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposal will take effect on January 8, 2019.

See “*Related Issues*” section of this analysis for information regarding similar constitutional amendments approved for the November 2018 general election ballot.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Introduction

Article VI, Section 4 of the Florida Constitution provides that no person convicted of a felony, or adjudicated in this state to be mentally incompetent, shall be qualified to vote or hold a public office until restoration of civil rights or removal of disability. This restriction is also codified in Section 97.041(2)(b), Florida Statutes.

Section 944.292, Florida Statutes, specifies that upon conviction of a felony, the civil rights (which includes voting rights) of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution.

Executive Clemency

General

In Florida, clemency is the constitutionally authorized process that provides a means through which convicted felons may be considered for relief from punishment and seek restoration of their civil rights, which include voting rights and the right to hold public office. The Governor and the other members of the Florida Cabinet (Attorney General, Chief Financial Officer, Agriculture Commissioner) sit as the Board of Executive Clemency and establish the Rules of Executive Clemency. The powers to grant Clemency are vested in the Governor with the agreement of two cabinet members. The Governor has the sole power to deny Clemency. With regard to restoration of civil rights cases under the Board's overall authority to grant or deny clemency, depending on the specifics of the case a decision on restoration of civil rights will be made by the Clemency Board either with or without a hearing. The Clemency Board generally meets four times a year to hold hearings and make decisions on clemency cases.

Under the current Rules of Executive Clemency, individuals seeking restoration of civil rights must submit an application and required court ordered documents to the Office of Executive Clemency, which is housed within the Florida Commission on Offender Review. To qualify for restoration of civil rights, an offender must have completed their sentence, including terms of supervision, must not have any pending criminal charges or outstanding detainers/warrants, have paid all victim restitution, and must meet the timeframes established by the Board of Executive Clemency. Current timeframes established by the Board of Executive Clemency require a waiting period of 5 or 7 years after completion of sentence, parole, or probation.

The Florida Commission on Offender Review operates as the investigative arm of the Clemency Board, and makes recommendations directly to the Governor and Cabinet. The Office of Executive Clemency administers the process and is the official custodian of records. The Florida Commission on Offender Review conducts comprehensive, confidential investigations on clemency applicants.

Florida Commission on Offender Review/Executive Clemency – Recent Activity

The following information is from published reports and other information obtained from the Florida Commission on Offender Review:

- At the last four meetings of the Clemency Board, there were a total of 274 restoration of civil rights applications for consideration. Of these, 108 applications were granted, 141 were denied, 24 were continued, and one was withdrawn by the applicant.
- In 2016, a total of 473 applicants were granted restoration of civil rights; in 2015, a total of 408 applicants were granted restoration of civil rights.
- In 2015, 2,352 applications for restoration of civil rights (either with or without a hearing) were received. Of this total, 839 were found to be eligible for further action. As of November 2017, of the 839 eligible applications 127 were granted, one was denied, and 649 are still pending investigation and a final decision.
- As of October 1, 2017, there were 10,377 total cases pending for restoration of civil rights.
- Once the waiting period of 5 or 7 years has been satisfied, the time it takes to process restoration of civil rights applications varies; from start to finish, final decisions can be made in as little as one year or up to several years – as of October 2017, the oldest application for restoration of civil rights had been pending for over 9 years.

Loss and Restoration of Voting RightsGeneral

As noted, in Florida loss of civil rights due to a felony conviction includes the loss of the right to vote. According to information from the National Conference on State Legislatures, the Sentencing Project, and Ballotpedia, currently all states but two (Maine and Vermont) take away the right to vote from convicted felons. However, states vary considerably in how voting rights can later be restored to those convicted of felonies. Restoration of voting rights to those convicted of felonies can be summarized within the following broad categories:

Automatic Restoration of Voting Rights Upon Completion of Prison Sentence: 14 states restore voting rights to those convicted of felonies upon completion of prison sentences (Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah.)

Automatic Restoration of Voting Rights Upon Completion of All Terms of Sentence (Prison, Parole, Probation): 23 states restore voting rights to those convicted of felonies upon completion of prison sentences and completion of all conditions of parole and/or probation (Alaska, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Kansas, Louisiana, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Washington, West Virginia, and Wisconsin.)

Conditional Automatic Restoration of Voting Rights: 7 states restore voting rights automatically to certain convicted felons only, usually contingent on the type of felony committed and/or how many felony convictions are on a person's record (Alabama, Arizona, Delaware, Mississippi, Nevada, Tennessee, and Wyoming.)

No Automatic Restoration of Voting Rights: 4 states do not allow automatic restoration of voting rights to those convicted of felonies; voting rights can only be reinstated by state officer or board (Florida, Iowa, Kentucky, and Virginia.)

Impact of Voting Rights Restrictions on Those Convicted of Felonies – National

According to a 2016 report by the Sentencing Project, an estimated total of 6.1 million Americans are prohibited from voting due to legal restrictions on citizens convicted of felony offenses. This represents a disenfranchisement rate of 2.5 percent, based on a voting age population of 247.2 million. Of these 6.1 million, it is estimated that 77 percent are not in prison but are living in their communities, having either completed their sentences (51 percent) or are serving parole or probation (26 percent.)

Impact of Voting Rights Restrictions on Those Convicted of Felonies – Florida

According to the same report, an estimated 1.7 million Floridians are prohibited from voting due to legal restrictions on citizens convicted of felony offenses, almost 28 percent of the 6.1 million national total. This represents a disenfranchisement rate of 10.4 percent, based on a voting age population of 16.2 million. Both the total number and the percentage rate represent the highest amounts of any state in the country. Of these 1.7 million, it is estimated that 94 percent are not in prison but are living in their communities, having either completed their sentences (88 percent) or are serving parole or probation (6 percent.).

B. EFFECT OF PROPOSED CHANGES:

The proposal amends Article VI, Section 4 of the Florida Constitution, adding a paragraph to provide a list of specific felonies to which the current language on being prohibited to vote or hold office until restoration of civil rights would apply. The new paragraph (a)(1) would read as follows:

(a)(1) No person convicted of a life or capital felony, a forcible felony defined under state law as murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing; projecting, placing, or discharging of a destructive device or bomb; or any other felony involving the use or threat of physical force or violence against any individual, or adjudicated in this or any other state to be mentally incompetent, is qualified to vote or hold office until restoration of civil rights or removal of disability.

Further, another new paragraph is added that reads:

(2) No person convicted of a felony may vote or hold office until the person has been released from incarceration and any post-conviction supervision, and has paid all court costs and court-ordered restitution or has established a payment plan to pay all court costs and court-ordered restitution.

Taken together, the effect of these changes appear to specify that those convicted of felonies other than the violence-related ones listed in the first paragraph would have their rights to vote and hold office automatically restored upon the completion of incarceration, post-incarceration supervision, and or formal commitment to pay restitution. Those convicted of the violence-related felonies listed in the first paragraph would not qualify to vote or hold office until they satisfied all the conditions of the second paragraph and go through the existing process to have their civil rights restored.

The felonies listed in the first paragraph roughly conform to the following Florida Department of Corrections summary categories for inmate admission statistics: Murder, Manslaughter; Sexual Offenses; Robbery; Violent Personal Offenses; and Burglary. According to Florida Department of Corrections data for fiscal year 2015-16, of the total number of inmate admissions for that year an estimated 42.3 percent were for violent offenses in the categories specified in this proposal. If the assumption is made that a similar ineligibility for automatic rights restoration percentage exists within the 1.5 million Floridians estimated by the Sentencing Project to have been convicted of felonies, completed their sentences, and have not had their rights restored, approval of this proposal would automatically restore the right to vote and hold office to approximately 858,500 Floridians.

If approved by the voters, the proposal will take effect on January 8, 2019.¹

C. FISCAL IMPACT:

Depending on how the proposal would ultimately be implemented through statute and rule, state and local governments could potentially see indeterminate increased administrative costs associated with the increase in the number of Floridians eligible to vote.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

¹ See FLA. CONST. ART XI, S. 5(E) (1968) (“Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”)

D. Related Issues:

On Tuesday, January 23, 2018, the “Voting Restoration Amendment,” a constitutional amendment proposed by citizen initiative, was approved to appear on the November 2018 general election ballot as Amendment 4. The “Voting Restoration Amendment” provides for automatic restoration of the voting rights of convicted felons, except murders or sex offenders, upon completion of all terms of sentence including parole or probation.²

² THE FLORIDA DEPARTMENT OF STATE DIVISION OF ELECTIONS, *Voting Restoration Amendment 14-01*, <http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64388&seqnum=1> (last visited Jan. 28, 2018).

By Commissioner Rouson

rousond-00008-17

201721__

A proposal to amend

Section 4 of Article VI of the State Constitution to specify which convicted felons are subject to the automatic suspension of civil rights and to provide that any convicted felon may not vote or hold office until certain conditions are met.

Be It Proposed by the Constitution Revision Commission of Florida:

Section 4 of Article VI of the State Constitution is amended to read:

ARTICLE VI

SUFFRAGE AND ELECTIONS

SECTION 4. Disqualifications.-

(a) (1) No person convicted of a life or capital felony, a forcible felony defined under state law as murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing; projecting, placing, or discharging of a destructive device or bomb; or any other felony involving the use or threat of physical force or violence against any individual, or adjudicated in this or any other state to be mentally incompetent, is ~~shall be~~ qualified to vote or hold office until restoration of civil rights or removal of disability.

(2) No person convicted of a felony may vote or hold office until the person has been released from incarceration and any post-conviction supervision, and has paid all court costs and court-ordered restitution or has established a payment plan to pay all court costs and court-ordered restitution.

(b) No person may appear on the ballot for re-election to

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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any of the following offices:

- (1) Florida representative,
- (2) Florida senator,
- (3) Florida Lieutenant governor,
- (4) any office of the Florida cabinet,
- (5) U.S. Representative from Florida, or
- (6) U.S. Senator from Florida

if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

01-31-2018

Meeting Date

Proposal Number (if applicable)

*Topic

Declaration of Rights

Amendment Barcode (if applicable)

*Name

Michelle Williams

Address

5202 Wiskant Blvd

Phone

813 424 9604

Street

Tampa

State

FL

Zip

33603

Email

tampaactivist@aol.com

*Speaking:

☒ For

☐ Against

☐ Information Only

Waive Speaking:

☒ In Support

☐ Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒ Yes

☐ No

If yes, who?

All 1.4 million Felons who this will

Are you a registered lobbyist?

☐ Yes

☒ No

Are you an elected official or judge?

☐ Yes

☒ No

effect if this doesn't pass

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/31/2018

Meeting Date

P 21

Proposal Number (if applicable)

*Topic

Schedule and Hearings, Disqualifications

Amendment Barcode (if applicable)

*Name

Mohit Schlakman

Address

FSU/CATR 426 W. Jefferson St.

Phone

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Street

Tallahassee, FL

State

32301

Zip

Email

mschlakman@fsu.edu

*Speaking:

☐

For

☐

Against

☒

Information Only

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☐

Yes

☒

No

If yes, who?

Are you a registered lobbyist?

☐

Yes

☐

No

Are you an elected official or judge?

☐

Yes

☐

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

COMMITTEE: Declaration of Rights
ITEM: P 21
FINAL ACTION:
MEETING DATE: Wednesday, January 31, 2018
TIME: 10:00 a.m.—5:00 p.m.
PLACE: 116 Knott Building, Capitol Complex, Tallahassee, Florida

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
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TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

**Constitution Revision Commission
Declaration Of Rights Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 34

Relating to: DECLARATION OF RIGHTS, Right to bear arms; Pretrial release and detention;
Prosecution for crime; offenses committed by children; Taxpayers' Bill of Rights;
Claimant's right to fair compensation

Introducer(s): Commissioner Carlton

Article/Section affected: Article I, Section(s) 8, 14, 15, 25 and 26.

Date: December 8, 2017

	REFERENCE	ACTION
1.	<u>DR</u>	<u>Pre-meeting</u>

I. SUMMARY:

This proposal amends several provisions of Article I of the Florida Constitution – the “Declaration of Rights”. The amendments are technical and non-substantive revisions identified by the Declaration of Rights Committee to improve the clarity and organization of Article I of the Florida Constitution. The amended provisions are intended to have the same substantive meaning currently accorded to them.

If passed by the Constitution Revision Commission, the proposed technical and non-substantive revisions will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposed technical and non-substantive revisions will take effect on January 8, 2019.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Article I of the Florida Constitution, the “Declaration of Rights,” comprises the basic liberties and rights guaranteed to persons in the state of Florida. The Declaration of Rights Committee, as established by the 2017-2018 Constitution Revision Commission (CRC), has the authority to examine issues and consider proposed constitutional revisions arising under or related to Article I, the Declaration of Rights.

In furtherance of the CRC constitutional mandate to “examine the state constitution,”¹ on October 3, 2017, the Declaration of Rights Committee met to identify and discuss potential technical and non-substantive revisions to Article I that would improve its clarity and organization.² The technical and non-substantive amendments identified and discussed by the Declaration of Rights Committee are attached hereto as “**Attachment A.**”

B. EFFECT OF PROPOSED CHANGES:

This proposal adopts the following Article I technical and non-substantive amendments identified and discussed by the Declaration of Rights Committee on October, 3, 2017 (see **Attachment “A”**):

- Article I, Section 8 – Right to bear arms: This section is amended to re-organize provisions relating to the mandatory three-day waiting period for handgun purchases. Subsections (b) and (d) are combined.
- Article I, Section 14 – Pretrial release and detention: This section is amended to move the dependent clause, “unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great,” to the end of the first sentence of the section rather than the beginning.
- Article I, Section 15 – Prosecution for crime; offenses committed by children: This section is amended to re-organize provisions relating to the juvenile justice system.
- Article I, Section 25 – Taxpayers’ Bill of Rights: This section is amended to remove the effective date from the text of the Florida Constitution.
- Article I, Section 26 – Claimant’s right to fair compensation: This section is amended to remove duplicative title language and the effective date from the text of the Florida Constitution.

The Article I amendments made by this proposal are intended only as technical and non-substantive revisions to improve the clarity and organization of Article I of the Florida Constitution. The amended provisions are intended to have the same substantive meaning currently accorded to them.

If approved by the voters, the proposed technical and non-substantive revisions will take effect on January 8, 2019.³

¹ FLA. CONST. art. XI, s. 2 (1968).

² *Meeting Packet*, FLORIDA CONSTITUTION REVISION COMMISSION DECLARATION OF RIGHTS COMMITTEE, October 3, 2017, available at http://flcrc.gov/PublishedContent/Committees/2017-2018/DR/MeetingRecords/MeetingPacket_46.pdf.

³ See FLA. CONST. art XI, s. 5(e) (1968) (“Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”)

C. FISCAL IMPACT:

The proposal does not appear to have a fiscal impact on state or local government.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

Attachment "A"

ARTICLE I
THE DECLARATION OF RIGHTS
TECHNICAL REVISIONS FOR COMMITTEE CONSIDERATION

SECTION 8. Right to bear arms.—

(a) The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

(b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. The mandatory 3-day waiting period shall not apply to the trade in of another handgun or to holders of a concealed weapon permit as prescribed in Florida law.

(1) For the purposes of this subsection ~~section~~, “purchase” means the transfer of money or other valuable consideration to the retailer, and “handgun” means a firearm capable of being carried and used by one hand, such as a pistol or revolver. ~~Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.~~

(2) ~~(c)~~ The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.

~~(d) This restriction shall not apply to a trade in of another handgun.~~

Section 8 Revision Note: Combines all provisions relating to the mandatory 3-day waiting period for handgun purchases into one subsection – subsection (b).

SECTION 14. Pretrial release and detention.—~~Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great,~~ Every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions except persons charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

Section 14 Revision Note: Stylistic and grammatical changes to clarify provisions regarding pretrial release and detention.

SECTION 15. Prosecution for crime; offenses committed by children.—

(a) No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial.

(b) When authorized by law, a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases. A child found delinquent shall be disciplined as provided by law. Any child charged with a violation of law as an act of delinquency, so charged shall, upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. ~~A child found delinquent shall be disciplined as provided by law.~~

Section 15 Revision Note: Stylistic and grammatical changes to clarify provisions regarding juvenile justice system.

SECTION 17. Excessive punishments; death penalty.—

(a) Excessive fines, cruel and 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.

(b) The death penalty is an authorized punishment for capital crimes designated by the legislature. 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.

Section 17 Revision Note: Revises catchline of the section to include the death penalty. Places death penalty provisions in separate subsection.

SECTION 23. Right of privacy.—

(a) Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

(b) Notwithstanding a minor's right of privacy provided in subsection (a), the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification. The Legislature shall not limit or deny the privacy

right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court.

Section 23 Revision Note: Transfers Article X, § 22 to Article I, § 23 to combine constitutional privacy provisions.

SECTION 25. Taxpayers' Bill of Rights.—By general law the legislature shall prescribe and adopt a Taxpayers' Bill of Rights that, in clear and concise language, sets forth taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers under the laws of this state. ~~This section shall be effective July 1, 1993.~~

Section 25 Revision Note: Removes effective date from the text of the constitution.

SECTION 26. Claimant's right to fair compensation.—

~~(a) Article I, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first \$250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.~~

~~(b) This Amendment shall take effect on the day following approval by the voters.~~

Section 26 Revision Note: Removes duplicative title language and the effective date from the text of the constitution.

~~SECTION 27. Marriage defined.—Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.~~

Section 27 Revision Note: Invalidated by Obergefell v. Hodges, 135 S. Ct. 2584 (2015)

By Commissioner Carlton

carlton1-00037B-17

201734__

A proposal to amend

Sections 8, 14, 15, 25, and 26 of Article I of the State Constitution to make technical and nonsubstantive revisions to improve the clarity and organization of the State Constitution and to delete provisions that have become obsolete or have had their effect.

Be It Proposed by the Constitution Revision Commission of Florida:

Sections 8, 14, 15, 25, and 26 of Article I of the State Constitution are amended to read:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 8. Right to bear arms.—

(a) The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

(b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. The mandatory three-day waiting period does not apply to the trade in of another handgun or to holders of a license to carry a concealed weapon or firearm as prescribed in Florida law. For the purposes of this subsection ~~section~~, the term "purchase" means the transfer of money or other valuable consideration to the retailer, and the term "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. ~~Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.~~

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

carlton1-00037B-17

201734__

(c) The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.

~~(d) This restriction shall not apply to a trade in of another handgun.~~

SECTION 14. Pretrial release and detention. ~~Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great,~~ Every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

SECTION 15. Prosecution for crime; offenses committed by children.—

(a) No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial.

(b) When authorized by law, a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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62 applicable to criminal cases. A child found delinquent shall be
63 disciplined as provided by law. Any child charged with a
64 violation of law as an act of delinquency ~~so charged~~ shall, upon
65 demand made as provided by law before a trial in a juvenile
66 proceeding, be tried in an appropriate court as an adult. ~~A~~
67 ~~child found delinquent shall be disciplined as provided by law.~~

68 SECTION 25. Taxpayers' Bill of Rights.—By general law, the
69 legislature shall prescribe and adopt a Taxpayers' Bill of
70 Rights that, in clear and concise language, sets forth
71 taxpayers' rights and responsibilities and government's
72 responsibilities to deal fairly with taxpayers under the laws of
73 this state. ~~This section shall be effective July 1, 1993.~~

74 SECTION 26. Claimant's right to fair compensation.—

75 ~~(a) Article I, Section 26 is created to read "Claimant's~~
76 ~~right to fair compensation."~~ In any medical liability claim
77 involving a contingency fee, the claimant is entitled to receive
78 no less than 70% of the first \$250,000.00 in all damages
79 received by the claimant, exclusive of reasonable and customary
80 costs, whether received by judgment, settlement, or otherwise,
81 and regardless of the number of defendants. The claimant is
82 entitled to 90% of all damages in excess of \$250,000.00,
83 exclusive of reasonable and customary costs and regardless of
84 the number of defendants. ~~This section provision~~ is self-
85 executing and does not require implementing legislation.

86 ~~(b) This Amendment shall take effect on the day following~~
87 ~~approval by the voters.~~

COMMITTEE: Declaration of Rights
ITEM: P 34
FINAL ACTION: Favorable
MEETING DATE: Wednesday, January 31, 2018
TIME: 10:00 a.m.—5:00 p.m.
PLACE: 116 Knott Building, Capitol Complex, Tallahassee, Florida

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting