

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 61 Percentage of Elector Votes Required to Approve Constitutional Amendment or Revision

**SPONSOR(S):** Roth

**TIED BILLS:** **IDEN./SIM. BILLS:** SJR 1238

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Public Integrity & Elections Committee	11 Y, 6 N	Pardo	Rubottom
2) Judiciary Committee	13 Y, 6 N	Mawn	Kramer

### SUMMARY ANALYSIS

Florida electors can amend the State Constitution by approving an amendment or revision originating from one of five sources: the Legislature, the Constitution Revision Commission, the Taxation and Budget Reform Commission, a citizen initiative, or a constitutional convention. For an amendment or revision to take effect, at least sixty percent of the electors voting on the measure must approve it. An approved amendment or revision takes effect 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.

HJR 61 changes the threshold required to approve an amendment or revision from sixty percent of the electors voting on the measure to sixty-six and two-thirds percent of such electors. However, the HJR specifies that the repeal of a constitutional amendment or revision only requires the approval by vote of at least the same percent of the electors as was required at the time of the amendment or revision's passage.

The HJR has a nonrecurring fiscal impact on the Department of State for the publication of the proposed constitutional amendment in newspapers of general circulation in each county and for publication of booklets or posters with the amendment language for use in polling places. Such requirements would have to be met if HJR 61 passes both houses of the Legislature.

The HJR, if passed by the Legislature, would be considered by the electorate at the next general election on November 8, 2022. If adopted during this election, the HJR would take effect January 3, 2023.

**A joint resolution proposing an amendment or revision to the Florida Constitution, such as HJR 61, requires a three-fifths vote of the membership of each house of the Legislature to appear on the next general election ballot. If the HJR is subsequently placed on the ballot, the Constitution requires approval by sixty percent of the electors voting on the measure for passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

The State Constitution is the charter of the liberties of Floridians.<sup>1</sup> It may be amended only if the electors approve an amendment or revision originating from the Legislature, the Constitution Revision Commission (CRC), the Taxation and Budget Reform Commission (TBRC), a citizen initiative, or a constitutional convention.<sup>2</sup> A citizen initiative must embrace only one subject,<sup>3</sup> but proposals that originate from the other sources are not so limited.<sup>4</sup>

After the Legislature, CRC, TBRC, citizen initiative, or constitutional convention successfully proposes an amendment or revision, the measure is placed on the ballot at the next general election,<sup>5</sup> which occurs every even-numbered year on the first Tuesday after the first Monday in November.<sup>6</sup> The proposed amendment or revision must be published twice in newspapers of general circulation, once in the tenth week preceding the election and once in the sixth week, to notify the electors of the measure.<sup>7</sup>

If at least sixty percent of the electors<sup>8</sup> voting on the measure approve it, the measure passes and becomes part of the State Constitution.<sup>9</sup> Since adoption of the sixty percent threshold in 2006, electors have voted on 50 proposed constitutional amendments,<sup>10</sup> 31 of which were approved and 19 of which were rejected.<sup>11</sup>

An approved amendment or revision takes effect 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.<sup>12</sup>

#### Effect of Proposed Changes

HJR 61 changes the threshold required for approving a constitutional amendment or revision from sixty percent of the electors voting on the measure to sixty-six and two-thirds percent of such electors. Of the 31 measures that have passed since the 60% threshold was implemented in 2006, only fourteen would have been passed under a sixty-six and two thirds threshold requirement.

However, the HJR specifies that the repeal of a constitutional amendment or revision only requires approval by vote of at least the same percent of such electors as was required at the time of the amendment or revision's passage. For example, under the HJR, any amendment or revision passed before 2006 may be repealed by a simple majority of the electors voting on the measure, and any amendment passed between 2006 and 2020 would require a 60 percent vote of such electors.

A joint resolution proposing a constitutional amendment or revision, such as HJR 61, requires a three-fifths vote of the membership of each house of the Legislature to appear on the next general election

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<sup>1</sup> *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1064 (Fla. 2010) (internal citations omitted).

<sup>2</sup> Art. XI, Fla. Const.

<sup>3</sup> Art. XI, s. 3, Fla. Const.

<sup>4</sup> Art. XI, ss. 1, 2, 4, and 6, Fla. Const.

<sup>5</sup> Art. XI, s. 5(a), Fla. Const.

<sup>6</sup> Art. VI, s. 5(a), Fla. Const.

<sup>7</sup> Art. XI, s. 5(d), Fla. Const.

<sup>8</sup> In 2005, the Legislature passed HJR 1723, which proposed a constitutional amendment raising the vote threshold for the approval of a constitutional amendment from a majority of voters voting on an amendment to sixty percent of voters voting on an amendment. The amendment was placed on the ballot in the 2006 general election and passed with 57.8 percent of the vote. See 2006 Election Results, DEPARTMENT OF STATE, available at <https://results.elections.myflorida.com/Index.asp?ElectionDate=11/7/2006&DATAMODE=> (last visited April 7, 2021).

<sup>9</sup> Art. XI, s. 5(e), Fla. Const.

<sup>10</sup> Am. HJR 1723, 2005, was adopted by the voters in 2006.

<sup>11</sup> Florida Div. of Elections, *Initiatives/Amendments/Revisions Database*, available at <https://dos.elections.myflorida.com/initiatives/> (last visited April 7, 2021).

<sup>12</sup> *Id.*

ballot.<sup>13</sup> The HJR, if passed by the Legislature, would be considered by the electorate at the next general election on November 8, 2022, where sixty percent of the electors voting on the measure must approve it for passage. If approved, the HJR will take effect January 3, 2023.

**B. SECTION DIRECTORY:**

Not applicable.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Article XI, s. 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The Division of Elections (Division) within the Department of State must advertise the full text of the amendment twice in a newspaper of general circulation in each county where the amendment will appear on the ballot. The Division must also provide each supervisor of elections with either booklets or posters displaying the full text of each proposed amendment,<sup>14</sup> regardless of whether the amendment passes. Such requirements would have to be met if HJR 61 passes both houses of the Legislature.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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<sup>13</sup> Art. I, s. 1, Fla. Const.

<sup>14</sup> S. 101.171, F.S.

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The mandates provision applies only to a general law, not to a joint resolution to amend the Constitution.

2. Other:

A joint resolution proposing a constitutional amendment or revision, such as HJR 61, requires a three-fifths vote of the membership of each house of the Legislature to appear on the next general election ballot.<sup>15</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**