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The 1978 Constitution Revision Commission: Florida's Blueprint for Change

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I. INTRODUCTION

TALLAHASSEE—The chilly gray sky that hung over this capital city Wednesday fit Steven Uhlfelder's mood.

Winter was coming, and the 32-year-old special counsel to retiring Gov. Reubin Askew felt like leaving . . . . [A]fter the voters' crushing rejection of the constitution revision package that had occupied him for the last 15 months, Uhlfelder didn't know Wednesday whether he even wanted to continue in Florida government.

Returning to his Capitol office after lunch, he ran into 31-year-old Tampa Rep. George Sheldon, one of the few state lawmakers who had worked for the proposed revisions.

Sheldon shrugged his shoulders.

Uhlfelder shrugged in reply.

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"What do we do now?" Sheldon asked.
"Try again in 20 years," Uhlfelder said . . . .[1]

Change often comes slowly in a democracy. In 1978, Florida voters rejected all of the recommendations of the first Florida Constitution Revision Commission ("CRC").[2] Since that time, however, many of the major recommendations of the CRC have been adopted by voters or enacted by the Florida Legislature.[3] Thus, in many ways, the CRC was simply ahead of its time as it set the stage for dramatic changes in Florida.

The willingness of the electorate and its elected representatives to subscribe ultimately to so many of the CRC's recommendations is not surprising. A tremendous amount of study and debate preceded each of the eight proposed amendments.[4] For two months the CRC traveled the state and listened to more than 600 witnesses discuss more than 800 issues during ten public hearings.[5] The CRC held additional public hearings after the proposed draft amendments were prepared.[6] In January of 1978, after twenty-five meetings, the CRC considered 257 proposed changes to the constitution and adopted eighty-seven of them.[7] Subsequently, the CRC held additional hearings throughout the state in which it solicited and received testimony from another 200 witnesses.[8] The result was a document consisting of numerous changes grouped into eight separate constitutional amendments.[9]

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1. Don Pride, *The Unmaking of Constitution Revision*, ST. PETERSBURG TIMES, Nov. 12, 1978, at A1.

2. The 1968 revision to the Florida Constitution created the unique internal mechanism for constitutional review, the Constitution Revision Commission. *See* FLA. CONST. art. XI, § 2; *see also* TALBOT D'ALEMBERTE, THE FLORIDA STATE CONSTITUTION: A REFERENCE GUIDE 146-47 (1991). The CRC, with members appointed by the Governor, the Senate President, the Speaker of the House of Representatives, the Chief Justice of the supreme court, and the Attorney General, first convened in 1977 and proposed constitutional changes for the 1978 general election ballot. A new commission will convene in 1997 to consider changes for the 1998 general election.

3. *See infra* notes 16-148 and accompanying text.

4. The CRC developed eight amendments containing 87 proposals which were placed on the 1978 general election ballot. *See Florida CRC Proposed Revision of the Florida Constitution* (1978) [hereinafter *Proposed Revision*].

5. Steven J. Uhlfelder, *The Machinery of Revision*, 6 FLA. ST. U. L. REV. 575, 579 (1978).

6. *Id.* at 583.

7. *Id.*

8. *Id.*

9. *See Proposed Revision*, *supra* note 4.

In those eight proposed amendments to the constitution, the CRC recommended forty-seven substantive and forty procedural changes.[10] More than forty percent of the substantive recommendations are now law in Florida, either by voter approval at subsequent general elections or by legislative enactment.[11] Twenty percent of the procedural recommendations have similarly been adopted or enacted.[12]

This article reviews the CRC proposals that voters ultimately adopted, or that the Legislature substantially enacted. In so doing, this article demonstrates that the 1978 CRC's success should not be measured by the short-term gloomy analysis of that morning after the 1978 ballot, because proponents of the CRC's work did not have to wait 20 years to see the fruits of their labor. Instead, the proper measure is the CRC's long-term continuing positive effect on public policy and the workings of government in Florida.

II. SUBSTANTIVE PROPOSALS

A. *Proposals Affecting Individual Rights*

The late Pat Dore,[13] a renowned scholar in Florida constitutional law, wrote in 1978 that "[t]he commission was intensely concerned about the protection of individual rights."[14] She observed that the Commission convened in the afterglow of the nation's bicentennial celebration, and "pride and good feelings . . . were still running high[,]" noting that this reality contributed to the commission's "commitment to the preservation of human liberty and individual freedom."[15] Several of the CRC's proposals regarding individual rights were ultimately adopted, and are now law in Florida.

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10. For the purposes of this article, a substantive recommendation fundamentally affects the exercise of individual rights and liberties, the process of democracy, or the raising and spending of revenues. A procedural recommendation affects the methods by which state or local government operates.

11. *See infra* notes 16-128 and accompanying text.

12. *See infra* notes 129-148 and accompanying text.

13. Professor Dore taught a generation of students at The Florida State University College of Law from 1970 until her death in 1992. In 1978, she served on the staff of the CRC.

14. Patricia A. Dore, *Of Rights Lost and Gained*, 6 FLA. ST. U. L. REV. 610, 611 (1978).

15. *Id.*

Privacy. The CRC recommended the adoption of a privacy amendment to the Florida Constitution which read: "Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein."[16] Talbot "Sandy" D'Alemberte[17] described this provision as an important protection "against governmental intrusion into purely private matters."[18] He noted the "tendencies of other industrial societies toward the superstate and abuses by government officials in this country" as reasons for the "constant vigilance" the amendment would provide.[19] Among the arguments raised by opponents of this provision was one asserting that government officials would "use it as an excuse for failing to produce public records . . . ."[20] The Legislature addressed this concern in 1980, adding to the CRC's language the following: "This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."[21] Voters adopted this amendment, including the CRC's text word-for-word in 1980.[22]

Pretrial Release. The CRC proposed an amendment to provide a presumption in favor of nonmonetary bail,[23] in order to change the existing constitutional requirement that a person charged with a crime be "release[d] on reasonable bail *with sufficient surety.*"[24] Then-Governor Reubin Askew once characterized the monetary bail system as one that "discriminates against the poor, and burdens the taxpayers with the cost of detaining those awaiting trial who need not be in jail."[25] Chairman D'Alemberte noted

16. *Proposed Revision, supra* note 4, at 1 (proposed FLA. CONST. art. I, § 23).

17. Mr. D'Alemberte served as chairman of the CRC. He is a past president of the American Bar Association, former partner of Steel Hector & Davis, and is currently the president of Florida State University.

18. Talbot "Sandy" D'Alemberte, *Revision I: The Pros and Cons*, FLA. TIMES UNION, Oct. 28, 1978, at B7.

19. *Id.*

20. Dan Paul, *Con*, THE LAKELAND LEDGER, Oct. 22, 1978, at 2.

21. Fla. CS for HJR 387, at 1788 (1980) (proposed FLA. CONST. art. I, § 23).

22. FLA. DEP'T OF STATE, DIV. OF ELECTIONS, TABULATION OF OFFICIAL VOTES, FLA. GEN. ELECTION 34 (1980) [hereinafter 1980 GEN. ELECTION]. For a comprehensive analysis of the 1978 CRC proposal, see Gerald B. Cope, Jr., *To Be Let Alone: Florida's Proposed Right of Privacy*, 6 FLA. ST. U. L. REV. 671 (1978).

23. *Proposed Revision, supra* note 4, at 1 (proposed FLA. CONST. art. I, § 14).

24. FLA. CONST. art. I, § 14 (amended 1982) (emphasis added).

25. As quoted in Bennet H. Brummer and Bruce S. Rogow, *An End to Ransom: the Case for Amending the Bail Provision of the Florida Constitution*, 6 FLA. ST. U. L. REV. 775, 775 n.1 (1978).

that the bail provision was being "updated to reflect modern practice."[26] Opponents cited recidivist criminals and condemned this "absolute right to bail . . . ."[27] Despite its rejection in 1978, by 1982 a combination of legislation and voter action made this recommendation part of Florida law. Voters amended the constitution to allow "pretrial release on reasonable conditions."[28] The Legislature enacted section 907.041 of the Florida Statutes[29] which declared its intent "to create a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release."[30]

Grand Jury Counsel. The CRC also recommended guaranteeing grand jury witnesses the right to be accompanied by, and to receive the advice of, counsel during grand jury proceedings.[31] While supporters argued the guarantee would bring fairness to grand jury proceedings, opponents warned it would "destroy the secrecy and investigatory function of the grand jury . . . ."[32] In 1992, the Legislature passed a law allowing one attorney to be present to provide a witness advice and counsel.[33]

Accessible Polls. Finally, in an effort to make government more accessible to the public, the CRC suggested an amendment to article VI, section 1, to require that elections be held in "places accessible to the public."[34] By the time this provision was before voters, the Legislature had enacted it statutorily.[35]

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26. Talbot "Sandy" D'Alemberte, *Pro*, THE LAKELAND LEDGER, Oct. 22, 1978, at 2.

27. Paul, *supra* note 20.

28. FLA. DEPT. OF ST., DIV. OF ELECTIONS, TABULATION OF OFFICIAL VOTES, FLA. GEN. ELECTION 27 (1982) [hereinafter 1982 GEN. ELECTION] (adopting Fla. HJR 43-H, at 2201 (1982), amending FLA. CONST. art. I, § 14).

29. Ch. 82-398, 1982 Fla. Laws 2150 (codified as FLA. STAT. § 907.041 (1982)).

30. *Id.*

31. *Proposed Revision*, *supra* note 4, at 1 (proposed FLA. CONST. art. I, § 15).

32. Dore, *supra* note 14, at 645.

33. Ch. 92-154, 1992 Fla. Laws 1633 (codified at FLA. STAT. § 905.17 (Supp. 1992)). The Legislature stressed that it was not creating a *right* to grand jury counsel, as the CRC proposed. Section 905.17 says, in part, "[t]his provision is permissive only and does not create a right to counsel for the grand jury witness." FLA. STAT. § 905.17 (Supp. 1992).

34. *Proposed Revision*, *supra* note 4, at 7 (proposed FLA. CONST. art. VI, § 1). The CRC considered other alternatives besides the quoted language that was eventually proposed, all in an effort to make polling places accessible to voters. *See* Alaine S. Williams, *A Summary and Background Analysis of the Proposed 1978 Constitutional Revisions*, 6 FLA. ST. U. L. REV. 1115, 1148-50 (1978).

35. Ch. 78-188, 1978 Fla. Laws 594 (codified at FLA. STAT. § 101.71 (1991)).

One That Got Away. Far and way, the most controversial individual rights proposition was the one which had the least verbiage. The CRC proposed adding the word "sex" to the basic declaration of rights in article I, section 2, prohibiting the deprivation of any right because of sex.[36] Opposition to this proposal ranged from the reasoned to the emotional. For example, commission member Sen. Dempsey Barron, D-Panama City, argued against the proposal by saying it was unnecessary and open to uncertain interpretations. Senator Barron said he believed it was unnecessary because of the state constitutional declaration, "All natural persons are equal before the law and have inalienable rights . . .;" and open to uncertain interpretations, because no one knew what a court would do with such a broad term in the future.[37] Others argued that the proposal would allow homosexuals to marry and adopt children, invalidate state laws requiring husbands to support wives, and invalidate state laws prohibiting rape and prostitution.[38] Supporters argued that the amendment was necessary to ensure that women were not discriminated against by virtue of their gender.[39]

This recommendation of the 1978 CRC has never been adopted. Legislative protections remain in many areas, such as wage and lending discrimination,[40] but an express constitutional protection of the type envisioned by the CRC is still absent from the Florida Constitution.[41]

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36. *Proposed Revision*, *supra* note 4, at 1 (proposed FLA. CONST. art. I, § 2).

37. Sen. Dempsey Barron, *Against Revision No. 2*, FLA. TIMES UNION, Oct. 30, 1978, at A7 (quoting FLA. CONST. art. I, § 1).

38. *See generally* Advertisement, *You should vote NO to Revision No.2*, TALLAHASSEE DEMOCRAT, Nov. 6, 1978.

39. *See, e.g.*, Dr. Freddie L. Groomes, *For Revision No. 2*, FLA. TIMES UNION, Oct. 30, 1978, at A7 (arguing that statutory prohibitions on gender discrimination were "subject to legislative change every year and varying judicial interpretations.").

40. *See* FLA. STAT. §§ 448.07, 725.07 (1991).

41. As further evidence that the CRC was ahead of its time, as this article was being written, the debate over the meaning and merits of sex-based discrimination continued, with two groups seeking signatures to place proposed constitutional amendments on the 1994 general election ballot. One group would constitutionally ban gay-rights laws; the other would constitutionally prohibit many forms of discrimination toward gays. *See* Steve Bousquet, *Gay rights activists launch drive to alter Constitution*, MIAMI HERALD, Oct. 1, 1993, at 5B. In the furor over gay rights, efforts to provide constitutional protection against gender-based discrimination—the general intent of the CRC—seems to have been lost. For an analysis of CRC deliberations giving insight into this general intent, see Ruth L. Gokel, *One Small Word: Sexual Equality Through the State Constitution*, 6 FLA. ST. U. L. REV. 948, 951-56 (1978).

B. *Proposals Affecting the Process of Government*

In addition to impacting individual rights and liberties, the CRC also set the stage for important changes in the process of government. Chief among these proposals for change were ones which were "inextricably interwoven" to the privacy amendment.[42] The proposals involved opening government records and operations to public inspection and view, giving constitutional authority to Florida's statutory public records and government-in-the-sunshine laws.[43]

Two important goals formed the foundation of the CRC's recommendations in this area. The first was to respond

> to the concerns of those who worried that Florida's nationally recognized devotion to 'government in the sunshine' was slowly eroding, as well as to those who maintained that the public's right to know was a principle of such fundamental importance in a democracy that it ought to be included in the declaration of rights.[44]

The second goal underlying these recommendations was "a statement of standards against which exceptions to the principle of openness [was] to be tested."[45] The key was to establish criteria to guide lawmakers and judges in deciding whether to allow an exception to the broad statement of principle of openness in government.[46] Thus, the CRC proposed constitutionally requiring open government, except when it was "essential to accomplish overriding governmental purposes or to protect privacy interests."[47] The CRC proposal allowed the Legislature to make that determination by passing a general law.

Public Records. The CRC proposed that no one should be denied the right to examine public records.[48] While some saw this proposal as having a "substantial effect" on government,[49] others said the proposal "invite[d]

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42. Dore, *supra* note 14, at 657 ("Approval of the right to be let alone meant that open government proposals also had to be approved in order to maintain a constitutional balance between the two.").

43. *See generally* FLA. STAT. ch. 119 (Supp. 1992).

44. Dore, *supra* note 14, at 664-65.

45. *Id.* at 665.

46. *Id.*

47. *Proposed Revision*, *supra* note 4, at 1 (proposed FLA. CONST. art. I, § 24).

48. *Id.*

49. Karen S. Minerva, *Revision I: The Many Basic Document Changes*, THE LAKELAND LEDGER, Oct. 22, 1978, at 1.

the Legislature to make exceptions" to the existing open records law.[50] Fourteen years after the proposal by the CRC, the Legislature placed an open records provision on the ballot,[51] and voters adopted it.[52] The 1992 language closely parallelled that of the CRC, especially in defining a standard by which the Legislature could exempt records from the new constitutional requirement of openness. The adopted language required a specific legislative finding of a "public necessity justifying the exemption . . . no broader than necessary to accomplish the stated purpose of the law."[53] Although this language has not yet been construed by an appellate court, it seems to parallel Professor Pat Dore's comments on the 1978 standard: "[I]f less drastic means are available to the government through which it can achieve that interest of overriding importance, the means selected are not essential and the legislation fails to satisfy the standard."[54]

Public Meetings. Similarly, voters in 1992 adopted a constitutional amendment making meetings of public bodies open to the public when official acts will be taken, or at which public business will be discussed.[55] The CRC proposed substantially similar language in 1978.[56]

Open Judiciary. In the same spirit, the 1978 CRC suggested that all judicial hearings and records be made open to the public, except for grand and petit jury hearings and proceedings and records closed "to accomplish overriding governmental purposes or to protect privacy interests."[57] Furthermore, the CRC expressly applied its openness requirement to judicial nominating commissions.[58] Much of this CRC recommendation is now part of the constitution. Judicial records are expressly open to public inspection by the 1992 adoption of article I, section 24.[59] All proceedings, except for deliberations of judicial nominating commissions, are expressly

50. Paul, *supra* note 20.

51. Fla. CS for HJR's 1727, 863, and 2035 (1992) (proposed FLA. CONST. art. I, § 24).

52. FLA. DEP'T. OF STATE, DIV. OF ELECTIONS, TABULATION OF OFFICIAL VOTES, FLA. GEN. ELECTION 117 (1992) (hereinafter 1992 GEN. ELECTION).

53. FLA. CONST. art. I, § 24.

54. Dore, *supra* note 14, at 666.

55. 1992 GEN. ELECTION, *supra* note 52, at 117.

56. *Proposed Revision*, *supra* note 4, at 1 (proposed FLA. CONST. art. I, § 25).

57. *Id.* (proposed FLA. CONST. art. V, § 1).

58. *Id.* at 4 (proposed FLA. CONST. art. V, § 11(c)). For a discussion of the open judiciary debate, see Dore, *supra* note 14, at 662-64.

59. *See* 1992 FLA. GEN. ELECTION, *supra* note 52, at 117.

open to the public by amendment in 1984.[60] Only judicial hearings have escaped the constitutional requirement of openness.

Thus, it is clear that the work of the 1978 CRC, although rejected that year, sent public policy ripples throughout Florida's future and marked the beginning of dramatic and important changes in the way government allowed its citizens to scrutinize government operations.

The CRC's work also influenced changes in the election process and the structure of government.

Single-Member Districts. Commission member Bill James[61] described the CRC's proposal to create single-member legislative districts[62] as "[t]he single most important change to be recommended by the Constitution Revision Commission for Florida voter approval . . . ."[63] At the time, legislators were elected from multi-member districts, a circumstance that James said made "it very difficult for citizens to identify their legislators or to monitor their service . . . [and tended] to deny minorities, ethnic groups and women, the opportunity to have a voice in their government."[64] Opponents of the change worried that urban legislators would "produce representatives and senators with such a parochial point of view that they [would] lack perspective on statewide or even citywide or countywide problems."[65] Within four years of the CRC recommendation, the Legislature made the change to single-member districts through a joint resolution.[66]

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60. FLA. DEP'T. OF STATE, DIV. OF ELECTIONS, TABULATION OF OFFICIAL VOTES, FLA. GEN. ELECTION 39 (1984) (adopting Fla. HJR 1160 1984)) (proposed FLA. CONST. art. V, § 11(d)) [hereinafter 1984 GEN. ELECTION].

61. In 1978, Mr. James was the Republican leader of the Florida House of Representatives, representing Delray Beach.

62. *Proposed Revision*, *supra* note 4, at 13 (proposed FLA. CONST. art. III, § 16).

63. Rep. Bill James, R-Delray Beach, *Benefits cited for single districts*, FLA. TIMES-UNION, Oct. 31, 1978, at 13.

64. *Id.*

65. Manning J. Dauer, *It would promote narrow views*, FLA. TIMES-UNION, Oct. 31, 1978, at B3.

66. Fla. SJR 1-E, at 1851 (1982) (codified at FLA. STAT. §§ 10.102, 10.103 (1991)). Unfortunately, neither the voters in 1978 nor the Legislature since then has adopted a CRC recommendation to remove the legislative reapportionment process from the Legislature, placing it in the hands of an independent reapportionment commission. *Proposed Revision*, *supra* note 4, at 13 (proposed FLA. CONST. art. III, § 16). The CRC's plan included reapportionment standards and subjected the reapportionment commission's report to judicial review. *Id.* Given the fiasco that results when legislators try to reapportion their own

Term Limits. Apparently responding to what it concluded were inequities between restrictions on the Governor and the various cabinet officers,[67] the CRC recommended that cabinet officers be limited to two consecutive terms.[68] The CRC adopted this proposal "with little debate"[69] and amid a much more ambitious program for overhauling the executive branch of government—abolishing the Cabinet outright.[70] Even some opponents of abolishing the cabinet system favored limiting terms of cabinet members.[71] Nonetheless, voters rejected these term limitations, apparently because it was part of the large revision package (Revision #1).[72] In 1992, however, voters adopted an initiative petition proposal and limited terms for most state elected officials, including all members of the Cabinet.[73]

Department of Health. Citing "[d]issatisfaction with the alleged low priority given public health by [the Department of Health and Rehabilitative Services],"[74] the CRC recommended creating one agency with responsi-

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districts after each decennial census, part of the 1992 reapportionment map is so hotly contested by Democrats and Republicans that it is awaiting a decision by the United States Supreme Court, see Tim Nickens, *Dade redistricting battle unfolds before high court,* MIAMI HERALD, Oct. 5, 1993, at 1A. This is an idea that remains long overdue for adoption.

67. *See, e.g., Summary and Analysis, supra* note 34, at 1118 and n.7 (observing that while governors were limited to two terms, cabinet officers had no such limits, one having served for 37 years).

68. *Proposed Revision, supra* note 4, at 2 (proposed FLA. CONST. art. II, § 5).

69. *Williams, supra* note 34, at 1119.

70. *Proposed Revision, supra* note 4, at 14 (proposed FLA. CONST. art. IV, § 4). For arguments for and against this proposal to abolish the Cabinet, see Jon C. Moyle, *Why We Should Abolish Florida's Elected Cabinet,* 6 FLA. ST. U. L. REV. 591 (1978) and Malcolm B. Johnson, *Why We Should Keep Florida's Elected Cabinet,* 6 FLA. ST. U. L. REV. 603 (1978).

71. Johnson, *supra* note 70, at 607:

> There is validity to an objection that Cabinet officers now can build separate, autocratic empires by unlimited tenure while serving under Governors who are allowed to succeed themselves only once. They can thereby become too powerful and develop proprietary attitudes toward their public offices. However, the Constitution Revision Commission admirably meets this objection with a clause . . . which would limit future Cabinet officers to two successive four-year terms if they are retained.

Id.

72. FLA. DEP'T. OF STATE, DIV. OF ELECTIONS, TABULATION OF OFFICIAL VOTES, FLA. GEN. ELECTION 26 (1978) [hereinafter 1978 GEN. ELECTION].

73. 1992 GEN. ELECTION, *supra* note 52, at 123 (adopting Florida Initiative Petition filed with Secretary of State July 23, 1992, amending FLA. CONST. art. VI, § 4).

74. *Williams, supra* note 34, at 1138.

bility for all state health care functions.[75] In 1992, the Legislature substantially enacted this recommendation.[76]

Governor's Authority. While Florida's antiquated and cumbersome cabinet system remains,[77] making Florida's chief executive the weakest in the country, some movement toward streamlining government operations and placing more responsibility with the Governor has occurred. For example, the Department of Natural Resources and the Department of Environmental Regulation have been merged to create one single Department of Environmental Protection with a secretary serving at the pleasure of the Governor,[78] and the Department of General Services has been reorganized into the Department of Management Services, supervised by the Governor alone.[79]

C. *Proposals Affecting Financing and Taxation*

The CRC made numerous recommendations affecting change in government finance and taxation.[80] These suggestions represented "an attempt to provide a more consistent constitutional structure for the fundamental law governing local revenue bond issues, and to prevent certain abuses in Florida which have unfortunately plagued local and state governments elsewhere in the United States."[81] Voters have adopted several of the recommendations since 1978, and the Legislature has enacted others.

Bond Restrictions. The CRC recommended restricting the purposes for which state revenue bonds and bonds pledging the state's full faith and

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75. *Proposed Revision, supra* note 4, at 4 (proposed FLA. CONST. art. IV, § 11).

76. *See* ch. 92-33, 1992 Fla. Laws 238, 241 (codified at FLA. STAT. § 20.42 (Supp. 1992)).

77. For a discussion of the CRC's recommendation to abolish the cabinet system entirely, see *supra* notes 68-74 and accompanying text.

78. Ch. 93-213, § 3, 1993 Fla. Laws 2129, 2133. The Department of Natural Resources was formerly run by the Governor and the Cabinet. FLA. STAT. § 20.25(1) (1991).

79. FLA. STAT. § 20.22(1) (Supp. 1992). The Department of General Services was formerly run by the Governor and the Cabinet. FLA. STAT. § 20.22(1) (1991).

80. *See generally Proposed Revision, supra* note 4, at 17-18 (proposed FLA. CONST. art. VII).

81. Arnold L. Greenfield, *Flexibility and Fiscal Conservatism: Provisions of the 1978 Constitutional Revision Relating to Bond Financing*, 6 FLA. ST. U. L. REV. 821, 823 (1978).

credit could be issued.[82] The restrictions would have limited the use of such bonds to fixed capital outlay projects and purposes incidental thereto.[83] Thus, such bonds could not have been used to finance operational costs,[84] the economic theory being that it is fiscally unwise to go into long-term debt to finance recurring state operations.[85] Although rejecting this proposal in 1978,[86] voters adopted it six years later.[87]

Water Facility Bonds. Writing that bond buyers were "seriously concerned about the ability and commitment of the state to provide a solution to its potentially dangerous water resource situation[,]" a CRC committee recommended extending pledges of the state's full faith and credit to water facilities.[88] The CRC adopted the idea[89] in part to allow "local governments to finance needed facilities at the lowest possible interest rates because of the additional security of the state's credit."[90] In 1980, voters adopted the CRC's language.[91]

Housing Bonds. The CRC recommended the creation of a new bond authorization for housing and the establishment of a state housing agency.[92] The proposal was "best understood as an economic stabilizer and as a potential source of housing capital for consumers who might be just beyond

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82. *Proposed Revision, supra* note 4, at 18 (proposed FLA. CONST. art. VII, § 11).

83. *Id.*

84. *Id.*

85. Or, put another way:

> This revision is intended to make clear that long-term bonded indebtedness should be incurred only to finance long-term improvements with a useful life that will not be substantially less than the amortization period of the debt. . . . [It] is consistent with the philosophy that long-term debt should not be incurred to fund recurring expenditures which in turn cause pyramiding principal and interest obligations. Experiences in other states have indicated that there is just a short step to disaster when current expenses are included in an entity's capital budget.

Greenfield, supra note 81, at 824 (citing the "near bankruptcy of New York City" for support).

86. 1978 GEN. ELECTION, *supra* note 72, at 27.

87. 1984 GEN. ELECTION, *supra* note 60, at 41 (adopting Fla. CS for CS for SJR 612, at 2223 (1984), amending FLA. CONST. art. VII, § 11).

88. *Greenfield, supra* note 81, at 828 n.18.

89. *Proposed Revision, supra* note 4, at 17 (proposed FLA. CONST. art. VII, § 14).

90. *Greenfield, supra* note 81, at 828.

91. 1980 GEN. ELECTIONS, *supra* note 22, at 34 (adopting Fla. HJR 1471, at 1790 (1980), amending FLA. CONST. art. VII, § 14).

92. *Proposed Revision, supra* note 4, at 17 (proposed FLA. CONST. art. VII, § 16).

the limits of the supply of mortgage money at reasonable interest rates without this additional source of funding."[93] Even an opponent of other finance and taxation changes supported this provision.[94] Nonetheless, voters rejected this proposal,[95] as they did to a similar proposal in 1976.[96] In 1980, however, a substantially similar proposal was adopted.[97]

Homestead Exemption/Natural Person. In 1978, only property owners who were "the head of a family" could claim a constitutional homestead protection from forced sale.[98] The CRC recommended expanding the exemption provision to include all "natural persons" who owned property.[99] One commissioner urged that the change was required by "the facts of life" which included "an enormous number of divorces," "full recognition that the sociological foundations of society have changed," and that "many single women . . . are heads of households . . . ."[100] Voters adopted this change in 1984.[101]

Solar Energy Exemption. The CRC also recommended allowing the Legislature to exempt from property taxes for ten years any increases in assessed valuation which were due to the installation of solar energy systems.[102] Coming less than five years after the OPEC oil crisis, the proposal was seen as "an incentive for the use of solar energy."[103] One proponent of the change spelled out its benefits clearly:

> Since 88 percent of Florida's energy needs are supplied by oil and natural gas, Florida is extremely vulnerable to energy shortages and

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93. *Greenfield, supra* note 81, at 832-33.

94. Jon Moyle, *Against*, FLA. TIMES-UNION, Nov. 4, 1978, at B7 ("A housing finance agency is certainly needed.").

95. 1978 GEN. ELECTION, *supra* note 72, at 27.

96. *Greenfield, supra* note 81, at 830 n.23.

97. 1980 GEN. ELECTION, *supra* note 22, at 34 (adopting Fla. SJR 6-E, at 1776 (1980), creating FLA. CONST. art. VII, § 16).

98. *See* FLA. CONST. art. X, § 4(a) (1977).

99. *Proposed Revision, supra* note 4, at 8 (proposed FLA. CONST. art. X, § 3(a)).

100. Dennis J. Wall, *Homestead and the Process of History: The Proposed Changes in Article X, Section 4*, 6 FLA. ST. U. L. REV. 877, 905 (1978) (quoting Commissioner Yvonne Burkholz).

101. 1984 GEN. ELECTION, *supra* note 60, at 38 (adopting Fla. HJR 40, at 2369 (1983), amending FLA. CONST. art. X, § 4(a)).

102. *Proposed Revision, supra* note 4, at 17 (proposed FLA. CONST. art. VII, § 4(b)(3)).

103. *Williams, supra* note 34, at 1156 (citing Transcript of Florida CRC proceedings 295 (Jan. 24, 1978) (remarks of Commissioner Ware)).

> increasing costs. These energy sources are also potential polluters of air and water, and Florida should encourage the development of solar energy industries and technology as soon as possible.[104]

Following the CRC's lead, the 1980 Legislature enacted a partial tax exemption for renewable energy sources.[105]

Historic Property Valuation. The CRC also recommended authorizing the Legislature to give preferential tax treatment to historic property in order to encourage its preservation.[106] While this provision has not been expressly adopted, in 1992 voters approved a constitutional amendment that allows counties and municipalities to exempt historic properties from ad valorem taxation and authorizes the Legislature to determine the duration of such exemptions.[107]

"Widower" Exemption. Also in 1978, the Florida Constitution provided for a $500 personal property tax exemption for widows of persons who were blind or disabled.[108] Citing "the interests of fairness and consistency,"[109] the CRC recommended including widowers.[110] Voters finally made this change in 1988.[111]

Inventory Classification. Furthermore, the CRC suggested granting the Legislature the power to classify inventories for tax purposes and allowing the Legislature to exempt inventories from taxation completely, if it so chose.[112] The main purpose of this provision was to provide constitutional authority to the legislative practice of classifying different inventories differently for tax purposes.[113] Although the provision was rejected in

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104. Sen. Ken Plante, R-Winter Park, *For*, FLA. TIMES-UNION, Nov. 4, 1978, at B7.

105. Ch. 80-163, 1980 Fla. Laws 525, 529 (codified at FLA. STAT. § 196.175 (1991)).

106. *Proposed Revision, supra* note 4, at 17 (proposed FLA. CONST. art. VII, § 3(e)).

107. 1992 GEN. ELECTION, *supra* note 52, at 118 (adopting Fla. SJR 152, at 3310 (1992), creating FLA. CONST. art. VII, § 3(e)).

108. FLA. CONST. art. VII, § 3(b) (amended 1988).

109. *Williams, supra* note 34, at 1153.

110. *Proposed Revision, supra* note 4, at 17 (proposed FLA. CONST. art. VII, § 3(b)).

111. FLA. DEP'T. OF STATE, DIV. OF ELECTIONS, TABULATION OF OFFICIAL VOTES, FLA. GEN. ELECTION 54 (1988) (adopting Fla. CS for SJR 318, 356, at 2430, amending FLA. CONST. art. VII, § 3(b)) [hereinafter 1988 GEN. ELECTION].

112. *Proposed Revision, supra* note 4, at 17 (proposed FLA. CONST. art. VII, § 4(b)(1)).

113. *Williams, supra* note 34, at 1154 ("The new language would legitimize differential assessment levels for inventory.").

1978,[114] voters adopted identical language two years later.[115]

"Second Gas Tax". The CRC also made two recommendations related to the "second gas tax"[116] that were ultimately adopted. The CRC suggested allowing the tax to be used for the maintenance of roads, instead of only for acquisition and construction.[117] The CRC also recommended allowing the pledging of funds from the tax and "other legally available pledged revenues" to retire road bonds.[118] This road bond provision was considered "very significant" to help cover the debt service for road projects.[119] Voters amended the constitution in 1980 to adopt both of these changes.[120]

Thus, although it was unsuccessful in persuading voters to adopt numerous taxation and finance reforms in 1978, much of the CRC's work in the area ultimately became law.

Another One That Got Away. Hoping to reform a system "fraught with confusion and inequity,"[121] the CRC recommended allowing the Legislature to exempt leasehold interests in governmentally owned property from ad valorem taxes.[122] To qualify for the exemption, the property had to be used "for a public purpose in connection with providing air, ground or water transportation or in providing services to the public in connection with such transportation, whether or not operated for profit."[123] Opponents of this measure labelled it a tax break for special interests, namely, big businesses that happened to lease government property for private purposes.[124] These opponents supported judicial and legislative decisions "which, in the interest

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114. 1978 GEN. ELECTION, *supra* note 72, at 28.

115. 1980 GEN. ELECTION, *supra* note 22, at 34 (adopting Fla. SJR 12-E, at 1779 (1980), amending FLA. CONST. art. VII, § 4(b)).

116. The constitution describes this "second gas tax" as, "[a] state tax . . . of two cents per gallon upon gasoline and other like products of petroleum and an equivalent tax upon other sources of energy used to propel motor vehicles . . . ." FLA. CONST. art. XII, § 9(c)(1).

117. *Proposed Revision*, *supra* note 4, at 11 (proposed FLA. CONST. art. XII, § 9(c)(5)).

118. *Id.*

119. *Greenfield*, *supra* note 81, at 838.

120. 1980 GEN. ELECTION, *supra* note 22, at 34 (adopting Fla. SJR 824, at 1762 (1980), amending FLA. CONST. art. XII, § 9(c)(5)).

121. Bonnie Roberts, *Ad Valorem Taxation of Leasehold Interests in Governmentally Owned Property*, 6 FLA. ST. U. L. REV. 1085, 1085 (1978).

122. *Proposed Revision*, *supra* note 4, at 17 (proposed FLA. CONST. art. VII, § 3(d)).

123. *Id.* For an analysis of the history of and arguments supporting and opposing the leasehold issue, see *Roberts*, *supra* note 121.

124. *See, e.g.*, Moyle, *supra* note 94 at B7.

of fairness, have restricted tax exemptions for leasehold interests to those instances where the government property is used by the leaseholder for a 'public purpose.'"[125] The opponents prevailed in 1978,[126] and again in 1992 when the Taxation and Budget Reform Commission placed a similar issue before voters.[127]

III. PROCEDURAL PROPOSALS

The CRC sought not only to secure clearer and fairer rights for Florida citizens, but also to produce a government that was more efficient and responsive. To that end, it recommended numerous procedural changes, many of which were ultimately adopted.[128] Generally, these proposals were aimed at various degrees of reform in the three branches of government.

A. *Proposals Affecting Legislative Procedures*

Two of the CRC's proposals directly affecting legislative procedures ultimately became incorporated into Florida law.

First Reading by Publication. Before a bill could be considered by the Legislature, the clerk of each house had to read the bill aloud on three separate days, either by title or in its entirety if requested by one-third of the members present.[129] It took a supermajority (two-thirds) of the members present to waive this constitutional requirement.[130] The CRC suggested allowing the first reading to be accomplished by publication in a legislative journal, largely as a "timesaving measure."[131] Voters adopted this recommendation when the Legislature placed it on the ballot again in 1980.[132]

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125. *Id.*

126. 1978 GEN. ELECTION, *supra* note 72, at 28.

127. Letter from Tom Rankin, Florida Taxation and Budget Reform Commission, to Jim Smith, Secretary of State (May 7, 1992) (proposed FLA. CONST. art. VII, § 3) (on file with the Secretary of State).

128. *See infra* notes 129-47 and accompanying text.

129. FLA. CONST. art. III, § 7 (amended 1980).

130. *Id.*

131. *Williams*, *supra* note 34, at 1124.

132. 1980 GEN. ELECTION, *supra* note 22, at 34 (adopting Fla. SJR 1349 at 34 (1980), amending FLA. CONST. art. III, § 7).

February Session. School officials, who relied heavily on state funding for their budgeting, complained to the CRC that regular legislative sessions under the 1968 constitution—beginning in April and concluding in June[133]—failed to give them adequate time to prepare for the school year.[134] The CRC accordingly recommended sessions beginning in February.[135] In 1990, the Legislature once again placed the issue before voters, and it was adopted.[136]

B. *Proposals Affecting Judicial Procedures*

Like proposals affecting legislative procedures, those relating to the operation of the judiciary were adopted after the CRC's work.

County Court Impeachments. Article III, section 17(a) provided that certain state officers, including all justices and judges except for county court judges, could be impeached "for misdemeanor in office."[137] In order to "provide equal treatment with respect to impeachment for county and circuit court judges[,]"[138] the CRC recommended applying this impeachment section to county court judges.[139] Voters did just that ten years after rejecting the CRC's recommendation.[140]

Jurisdiction Over the Public Service Commission. The CRC proposed that action of the Public Service Commission be reviewable by writ of certiorari to the Florida Supreme Court.[141] Voters substantially adopted this recommendation in 1980.[142]

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133. FLA. CONST. art. III, §§ 3(b), (d) (amended 1990).

134. *Williams*, supra note 34, at 1122.

135. *Proposed Revision, supra* note 4, at 2 (proposed FLA. CONST. art. III, § 3(b)).

136. FLA. DEP'T. OF STATE, DIV. OF ELECTIONS, TABULATION OF OFFICIAL VOTES, FLA. GEN. ELECTION 85 (1990) (adopting Fla. SJR 1990, 2, (1990), amending FLA. CONST. art. III, § 3).

137. FLA. CONST. art. III, § 17(a) (amended 1988). The constitution provided discipline for county court judges only by suspension by the Governor. *Williams, supra* note 34, at 1130.

138. *Williams, supra* note 33, at 1130.

139. *Proposed Revision, supra* note 4, at 3 (proposed FLA. CONST. art. III, § 17(a)).

140. *See* 1988 GEN. ELECTION, *supra* note 111, at 53.

141. *Proposed Revision, supra* note 4, at 16 (proposed FLA. CONST. art. V, § 3(b)(3)). For a listing of CRC records reflecting discussions about this change, see *Williams, supra* note 34, at 1141 nn.17-21.

142. 1980 GEN. ELECTION, *supra* note 22, at 34 (adopting Fla. SJR 20-C (1979), amending FLA. CONST. art. V, § 3). The procedure for review was changed, however, from

Judicial Nomination Procedures. The CRC concluded that it was important that the twenty-six judicial nominating commissions in the state be constitutionally required to operate under a set of uniform rules of procedure.[143] Accordingly, it proposed that the supreme court be required to prescribe those uniform rules.[144] This recommendation was partially adopted in 1984.[145]

C. *Proposals Affecting Executive and General Government Procedures*

Finally, in addition to legislative and judicial procedures, the CRC set the stage for some changes in the procedures of the executive branch of government. Among them was one affecting the Public Service Commission. The CRC recommended providing constitutional authority for the Public Service Commission and making its membership consist of five commissioners appointed by the Governor instead of three elected commissioners.[146] The 1978 Legislature made the latter change before the issue went on the ballot.[147]

IV. CONCLUSION

The 1978 CRC succeeded, although not as it had intended.[148] The CRC hoped for a quick change to the Florida Constitution. Instead, the change has been gradual, with some recommendations being statutorily enacted rather than constitutionally adopted. Thus, despite the original appearance of failure on that bleak winter morning after the 1978 general election, the CRC has had a continuing, tremendous impact on Florida law

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certiorari to direct appeal. FLA. CONST. art. V, § 3.

143. *Williams*, *supra* note 34, at 1146.

144. *Proposed Revision*, *supra* note 4, at 4 (proposed FLA. CONST. art. V, § 3).

145. 1984 GEN. ELECTION, *supra* note 60, at 39 (adopting Fla. HJR 1160 (1984), amending FLA. CONST. art. V, § 11(d)). The resolution, proposed by the Legislature and ultimately adopted, removed the requirement that the supreme court prescribe the rules, allowing the JNC's themselves to do so, with legislative and supreme court oversight. *See* FLA. CONST. art. V, § 11(d).

146. *Proposed Revision*, *supra* note 4, at 16 (proposed FLA. CONST. art. IV, § 10).

147. Ch. 78-426, §§ 2-3, 1978 Fla. Laws 1419, 1420-23 (codified at FLA. STAT. §§ 350.01, 350.031 (1991)).

148. Florida voters may have intuitively understood this truth when, in 1980, they overwhelmingly rejected a ballot proposal to eliminate the CRC and its bidecennial review of the state constitution. *See* 1980 GEN. ELECTION, *supra* note 22, at 34.

and public policy in the last fifteen years. It turned out that waiting twenty years was not necessary.

Under the leadership of Sandy D'Alemberte, the CRC highlighted many significant public policy issues that had not been discussed or considered in Florida before. For this reason, the CRC continues to have a substantial impact on Florida law today. Some of the fifteen-year-old CRC recommendations remain current topics of debate. For example, the meaning of sexual equality is still unresolved.[149] Similarly, the CRC recommended gubernatorial appointment and merit retention, rather than election, for circuit and county court judges.[150] This idea, too, remains a topic of contemporary debate.[151]

Thus, the 1978 Constitution Revision Commission truly was ahead of its time. The work that served as a model since 1978 will continue to do so as Floridians prepare for the work of the 1998 Constitution Revision Commission and its suggested revisions to the state's most basic document of self-governance.

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149. *See supra* note 41.

150. *Proposed Revision*, *supra* note 4, at 16-17 (proposed FLA. CONST. art. V, §§ 10, 11).

151. For a persuasive argument favoring merit retention instead of election at the circuit and county court levels, see Leander Shaw, Jr., *Florida's Judicial Merit Selection and Retention System: The Better Alternative*, 20 FLA. ST. U. L. REV. 283 (1992).