CALL TO ORDER

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

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

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

PLEDGE

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

SPECIAL GUESTS

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

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

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

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

REPORTS OF COMMITTEES

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

The proposal was placed on the calendar.

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

The proposals were placed on the calendar.

MATTERS ON RECONSIDERATION

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

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

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

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

RECESS

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

CALL TO ORDER

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

MATTERS ON RECONSIDERATION, continued

The Commission resumed consideration of—

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

Yeas—12
Brochin  Freidin  Lowndes  Smith
Evans-Jones  Henderson  Nabors  Sundberg
Ford-Coates  Kogan  Riley  Wetherington

Nays—16
Barkdull  Crenshaw  Langley  Rundle
Barton  Evans  Mathis  Scott
Butterworth  Hawkes  Morsani  Thompson
Connor  Jennings  Planas  Zack

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

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

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

The vote was:

Yeas—12
Brochin  Freidin  Lowndes  Smith
Evans-Jones  Henderson  Nabors  Sundberg
Ford-Coates  Kogan  Riley  Wetherington

Nays—29
Barkdull  Crenshaw  Langley  Rundle
Barton  Evans  Mathis  Scott
Butterworth  Hawkes  Morsani  Thompson
Connor  Jennings  Planas  Zack

Yeas—None

Nays—None

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

As amended which was previously reconsidered this day.

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

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

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

The vote was:

Yeas—12
Brochin  Freidin  Lowndes  Smith
Evans-Jones  Henderson  Nabors  Sundberg
Ford-Coates  Kogan  Riley  Wetherington

Nays—16
Barkdull  Crenshaw  Langley  Rundle
Barton  Evans  Mathis  Scott
Butterworth  Hawkes  Morsani  Thompson
Connor  Jennings  Planas  Zack

Committee Substitute for Proposal 13 as amended which failed. The vote was:

Yeas—12
Brochin  Freidin  Lowndes  Smith
Evans-Jones  Henderson  Nabors  Sundberg
Ford-Coates  Kogan  Riley  Wetherington

Nays—29
Barkdull  Crenshaw  Langley  Rundle
Barton  Evans  Mathis  Scott
Butterworth  Hawkes  Morsani  Thompson
Connor  Jennings  Planas  Zack

Yeas—None

Nays—None

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

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

Proposal 130—A proposal to revise ARTICLE XI, s. 3, Fla. Const.; requiring an initiative petition to be signed by a specified percentage of the electors from each congressional district.

failed February 11 was taken up and the motion failed.

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

Committee Substitute for Proposals 138 and 89—A proposal to revise ARTICLE X, s. 15, Fla. Const.; limiting the use of state lottery net proceeds to financing certain educational facilities or funding early childhood care and education programs.

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

The vote was:

Yeas—13
Barton  Freidin  Mills  Rundle
Brochin  Lowndes  Nabors  Smith
Evans-Jones  Mathis  Riley  Sundberg
Ford-Coates  Kogan  Lowndes  Smith

Nays—15
Barkdull  Evans  Kogan  Thompson
Butterworth  Hawkes  Langley  Wetherington
Connor  Henderson  Morsani  Zack
Crenshaw  Jennings  Planas  Scott

Consideration of Proposal 144 was deferred.

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

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

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

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

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

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

ARTICLE IV
EXECUTIVE

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

[Renumber subsequent section(s).]

And the title is amended as follows:

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

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

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

ARTICLE IV
EXECUTIVE

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

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

Yeas—28
Mr. Chairman  Evans  Kogan  Riley
Barkdull  Evans-Jones  Lowndes  Smith
Barton  Ford-Coates  Lowndes  Smith
Brochin  Freidin  Mathis  Sundberg
Butterworth  Hawkes  Mills  Thompson
Connor  Henderson  Morsani  Wetherington
Crenshaw  Jennings  Planas  Zack

Nays—None

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

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

Committee Substitute for Proposals 172 and 162—A proposal to repeal ARTICLE III, s. 16, Fla. Const., relating to legislative apportionment and create ARTICLE II, s. 10, Fla. Const.; providing for a commission to establish legislative and congressional districts; providing for the appointment of members to the commission; requiring that the chief justice of the supreme court fill certain vacancies on the commission;
(2) Within 45 days after the 16 commissioners are certified to the secretary of state, one additional commissioner, who shall be designated chair of the commission, shall be appointed by a vote of at least nine commissioners and certified to the secretary of state.

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

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

Amendment 1 as amended was adopted.

COMMISSIONER THOMPSON PRESIDING

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

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

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

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

SPECIAL ORDER

Consideration of Proposal 91 and Proposal 46 was deferred.

The Commission resumed consideration of—

Proposal 59—A proposal to revise ARTICLE X, s. 13, Fla. Const.; providing limitations upon the amount of damages payable by the state when a court finds the state liable; providing for a bad-faith surcharge; placing a limit on attorney's fees.

—was previously considered February 12.

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

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

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

SECTION 13. Suits against the state.—Provision may be made by general law for bringing suit against the state, its political subdivisions, agencies, districts, and municipalities, as to all liabilities now existing or hereafter originating; provided that in such a suit a person may
recover damages up to a maximum amount of $200,000, plus costs, other than attorney's fees incurred in the suit. Such amount may be increased by general law, and in any event, the maximum amount of damages shall be increased each year by the same percentage as the percentage increase in the consumer price index, or a successor index, published by the federal government. In the event of a finding of bad faith on the part of the governmental entity in the settlement of such a suit, there shall be a waiver of sovereign immunity against the governmental entity to the extent of such bad faith, as determined by general law. There shall be no waiver of sovereign immunity for planning functions. Punitive damages shall not be recoverable against a governmental entity.

And the title is amended as follows:

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

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

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

And the title is amended as follows:

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

The vote was:

Yeas—13
Barnett Hawkes Lowndes Rundle
Connor Jennings Morsani Smich
Evans Langley Riley Zack
Freidin

Nays—13
Mr. Chairman Ford-Coates Mathis Planas
Barkdull Henderson Mills Scott
Barton Kogan Nabors Wetherington
Brochin

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

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

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

MOTION TO RECONSIDER AMENDMENT

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

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

CHAIRMAN DOUGLASS PRESIDING

MOTION

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

MATTERS ON RECONSIDERATION

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

COMMITTEE MEETING CHANGE

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

CORRECTION AND APPROVAL OF JOURNAL

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

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

RECESS

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