

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1743 CS (PCB ETEL 05-01) Constitutional Amendments
SPONSOR(S): Ethics & Elections Committee & Reagan
TIED BILLS: **IDEN./SIM. BILLS:** SB 2022

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Ethics & Elections Committee	11 Y, 0 N	Mitchell	Mitchell
1) Judiciary Committee	8 Y, 0 N	Thomas	Hogge
2) State Administration Council	8 Y, 0 N, w/CS	Mitchell	Bussey
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

On November 2, 2004, Florida voters approved Constitutional Amendment 2, an amendment proposed by joint resolution of the Legislature to amend Article IV, s. 10, and Article XI, s. 5, of the State Constitution. The amendment became effective January 4, 2005. The amendment:

- Advanced the deadline for the Secretary of State to receive all certified initiative petition signatures from the county supervisors of elections, from the 91st day before a general election to February 1 of each general election year.
- Required the Florida Supreme Court to render its written opinion concerning the validity of an initiative petition by a date certain—April 1—of each general election year, rather than rendering it “expeditiously.”

The bill implements the provisions of Constitutional Amendment 2. Specifically, the bill:

- Requires the Attorney General to petition the Supreme Court for an advisory opinion within 30 days after the Attorney General receives a financial impact statement from the Financial Impact Estimating Conference.
- Requires the Attorney General to provide a copy of the petition to the Secretary of State and the principal officer of the sponsor of the initiative.
- Provides that if the Supreme Court does not issue an opinion by April 1, then the petition is deemed valid and approved for placement on the ballot.
- Makes conforming changes to dates where necessary.

The bill is effective upon becoming a law.

A STRIKE-ALL WAS ADOPTED IN THE STATE ADMINISTRATION COUNCIL ON APRIL 20, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Constitutional Amendments

Amendments to Florida's Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizen's initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.¹ Depending on the method, all proposed amendments or revisions to the constitution must be submitted to the electors at the next general election 1) held more than ninety days after the joint resolution, 2) 180 days after the report of the Constitutional Revision Commission or Taxation Budget Reform Commission, or 3) for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election is to be held.²

Proposals added to the State Constitution through the citizen initiative process may be refined by statute or administrative rule, provided such refinement is necessary to ensure ballot integrity.³

2003 House Select Committee on Constitutional Amendments

On October 20, 2003, the Florida House of Representatives created the Select Committee on Constitutional Amendments to assess how Florida amends its constitution and to make recommendations for possible change to the process. The Select Committee held ten public hearings and on March 15, 2004, made numerous recommendations regarding the existing constitutional amendment process. One of the recommendations was that citizen initiatives be certified by the Secretary of State much sooner than 90 days before a general election. The explanation contained in the recommendation was:

Such extension of time allows more deliberation, legislative hearings and possible alternatives to be placed on the ballot. It also permits earlier termination of litigation so that ballots are finalized earlier. Without this change, any statutory process reforms must reflect the continued ability to file the signatures as late as the first week in August, creating serious logistic problems for both the election machinery and the courts.

To that end, the House Committee on Procedures drafted and adopted a joint resolution (HJR 1947), requiring the Secretary of State to certify citizen initiatives at least 240 days prior to a general election. The Legislature ultimately passed the Senate version of the joint resolution (SJR 2394). The joint resolution was presented to Florida voters as Constitutional Amendment 2.

¹ See Art. XI, ss. 1-4, and 6, Fla. Const.

² See Art. XI, ss. 2, 5, and 6, Fla. Const.

³ See *State ex rel. Citizens Proposition for Tax Relief v. Firestone*, 386 So.2d 561 (Fla. 1980); *Smith v. Coalition to Reduce Class Size*, 827 So.2d 959 (Fla. 2002).

On November 2, 2004, Florida voters approved⁴ Constitutional Amendment 2 to amend Article IV, s. 10, and Article XI, s. 5, of the State Constitution. The amendment became effective January 4, 2005. The amendment:

- Advanced the deadline for the Secretary of State to receive all certified initiative petition signatures from the county supervisors of elections, from the 91st day before a general election to February 1 of each general election year.
- Required the Florida Supreme Court to render its written opinion concerning the validity of an initiative petition by a date certain—April 1—of each general election year, rather than rendering it “expeditiously.”

Historically, the Supreme Court opinion addresses whether the initiative complies with the single subject requirement of Article XI, section 3, of the Florida Constitution, the ballot title and summary requirements of s. 101.161, F.S., and the financial impact statement requirements of s. 100.371, F.S.⁵

Effect of Proposed Changes

The bill implements the changes approved in Constitutional Amendment 2

Specifically, the bill amends s. 16.061, F.S., to:

- Require the Attorney General to petition the Supreme Court for an advisory opinion for compliance with the provisions of s. 100.371(6), F.S., within 30 days after the Attorney General receives a financial impact statement from the Financial Impact Estimating Conference.
- Require the Attorney General to provide a copy of the petition to the Secretary of State and the principal officer of the sponsor of the initiative.
- Provide that if the Supreme Court does not issue an opinion by April 1, then the petition is deemed valid and approved for placement on the ballot.

The bill also amends s. 100.371, F.S., to provide that:

- A constitutional amendment proposed by initiative will be placed on the ballot if filed with the Secretary of State by February 1 of the year in which the general election considering the proposal is to be held.
- Certification of the ballot position will be issued once the required verified signatures have been submitted to the Secretary of State.
- Pursuant to Constitutional Amendment 2, the relevant date for the Supreme Court to issue advisory opinions regarding the validity of financial impact statements is April 1 of the year in which the general election considering the proposal is to be held.

The bill is effective upon becoming a law.

C. SECTION DIRECTORY:

⁴ Votes For – 4,574,361; Votes Against – 2,109,013.

⁵ Financial Impact statements are required to be clear and unambiguous and no more than 75 words in length. Section 100.371(6)(b)3., F.S.

Section 1: Amends s. 16.061, F.S., relating to the responsibilities of the Attorney General regarding initiative petitions.

Section 2: Amends s. 100.371, F.S., relating to initiatives and their placement on the ballot.

Section 3: Provides that the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill itself does not appear to have any direct economic impact on the private sector. The approved constitutional amendment, however, that the bill is implementing, does provide earlier notice of what issues are proposed to the State Constitution via the citizens initiative process.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

Article IV, section 10, of the Florida Constitution requires the Attorney General to, "as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI." It is not clear that the validity of a financial impact statement falls within the phrase "the validity of any initiative petition."

The Attorney General petitioned the Florida Supreme Court to consider the validity of the financial impact statements for all six of the initiatives placed on the ballot last year and to consider the validity

of the financial impact statements for at least three other initiatives that were never placed on the ballot (for reasons unrelated to the financial impact statements). In none of these rulings did the Supreme Court question the jurisdiction of the court to issue such advisory opinions, or the authority of the Attorney General to petition for the Court for such advisory opinions.⁶

B. RULE-MAKING AUTHORITY:

There appears to be sufficient rulemaking authority pursuant to s. 100.371(7), F.S., for the Department of State to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A STRIKE-ALL WAS ADOPTED IN THE STATE ADMINISTRATION COUNCIL ON APRIL 20, 2005.

The strike-all makes the following changes to the bill:

- Eliminates the requirement that the Attorney General request an opinion of the Supreme Court on the validity of the financial impact statement that was contained in s. 16.061, F.S..
- Clarifies the contents of a financial impact statement.
- Permits a sponsor or an elector to challenge a financial impact statement in Circuit Court. If a new statement has not been approved by April 1, the ballot shall state that the financial impact could not be reasonably determined.

NOTE: The bill as amended needs an additional amendment prepared to address what appears to be a grammatical problem on lines 135-138 (of the strike-all). Without such a change, the sentence in those lines does not read properly.

⁶ See final orders in Supreme Court case numbers: SC04-1051, SC04-1052, SC04-1053, SC04-1054, SC04-1055, SC04-1056, SC04-1141, SC04-1172, SC04-1290, and SC04-1497.