

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Ethics and Elections Committee

BILL: CS/SB 720

INTRODUCER: Ethics and Elections Committee and Senator Posey

SUBJECT: Elections/Petition Process

DATE: March 29, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kruse</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>TA</u>	_____
4.	_____	_____	<u>WM</u>	_____
5.	_____	_____	<u>RC</u>	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 720 (hereinafter, "CS/SB 720") imposes a series of requirements on the initiative petition process. The bill attempts to closely regulate the petition verification process, to require that additional information be provided to a voter who signs a petition, and to regulate petition circulators, in particular paid circulators, primarily by requiring greater disclosure on the part of the circulators.

Except as otherwise provided, CS/SB 720 provides an effective date of August 1, 2006.

Committee Substitute for Senate Bill 720 amends the following sections of the Florida Statutes: s. 99.097, s. 100.371, and s. 101.161.

II. Present Situation:

The Constitution of the State of Florida provides for constitutional amendment by initiative. The constitution states that this power may be invoked by "filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen."¹

Currently, under Florida law, constitutional initiative petitions are verified by supervisors of elections on a name-by-name, signature-by-signature basis, pursuant to an opinion of the First

¹ Art. XI, s. 3, Florida Constitution.

District Court of Appeal in 1978.² Supervisors are paid in advance the sum of 10 cents for each signature checked or the actual cost of checking such signatures, whichever is less. The person or organization collecting the petitions is responsible for paying this fee.³

Initiative sponsors are required to register as political committees, and are required to receive approval from the Secretary of State for the petition form used to obtain initiative signatures. Constitutional amendments proposed by initiative are placed on the ballot for the general election if the requisite number of validated signatures is obtained by February 1st of the year in which such election is held. The Secretary issues a certification after receiving sufficient verification certificates from the supervisors of elections. The supervisors are required to promptly verify signatures submitted by sponsors, and upon completion of verification of the signatures, the supervisors are required to execute a verification certificate indicating the total number of signatures checked, the number valid, and the distribution by congressional district.⁴

Certain criminal sanctions exist with regard to the voter registration and petition process. Paying a person to register to vote, paying someone to solicit voter registrations based upon the number of registrations obtained, and altering a voter registration application are all third degree felonies.⁵ Signing a petition for a particular issue more than once, or signing another person's name, or a fictitious name, to a petition, is a first degree misdemeanor.⁶ Supervisors of elections are currently authorized to investigate fraudulent registrations and illegal voting, and may report their findings to the state attorney or the Florida Elections Commission.⁷

During the 2004 election cycle, numerous stories appeared in newspapers throughout the state of Florida concerning alleged petition fraud. Two petition gatherers were arrested in Santa Rosa County for over 40 counts each of uttering a forged document.⁸ Several other elections supervisors found petitions signed with the names of dead voters.⁹

The Florida Department of Law Enforcement (FDLE) issued a press release in October of 2004 indicating that it had received numerous complaints relating to voting irregularities, and had initiated several investigations. Specifically, the FDLE created regional elections task forces to address the issue of voter fraud in a statewide manner. While the FDLE did not reveal details of the investigations, it noted that the investigations focused on the following conduct:

“In some cases, persons who believed they were signing petitions later found out that their signatures or possible forged signatures were used to complete a fraudulent voter registration. In other instances, it appears that workers hired to obtain legitimate voter registrations filled in the information on the registration forms that should have been completed by the registrants. On several occasions, workers appear to have signed multiple voter registrations themselves using

² See, *Let's Help Florida v. Smathers*, 360 So.2d 494 (Fla. 1st DCA 1978).

³ s. 99.097, F.S.

⁴ s. 100.371, F.S.

⁵ s. 104.012, F.S.

⁶ s. 104.185, F.S.

⁷ s. 104.42, F.S.

⁸ See, “Two Pace residents accused in voter scam,” Derek Pivnick, Pensacola News Journal, p. 1A, July 2, 2004.

⁹ See, “Names of the dead found on petitions,” Joni James and Lucy Morgan, St. Petersburg Times, September 28, 2004.

information obtained during the registration drive. In many of the situations complained about, the workers were being paid on the basis of each registration form submitted.”¹⁰

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 720 imposes a series of requirements on the initiative petition process. The bill attempts to closely regulate the petition verification process, to require that additional information be provided to a voter who signs a petition, and to regulate petition circulators, in particular paid circulators, primarily by requiring greater disclosure on the part of the circulators.

Section 1. Verification of Signatures on Petitions.

This section codifies the current requirement that petitions to secure ballot placement for an issue, and newly created petition revocations, must be verified by a name-by-name, signature-by-signature check of the number of valid signatures on the petitions.

Committee Substitute for Senate Bill 720 prohibits an initiative sponsor that submits petitions to secure ballot placement for an issue and that files a certification of undue burden from providing compensation to any paid petition circulator before paying all supervisors for checking signatures or before reimbursing the General Revenue Fund for such costs.¹¹

The proposed language provides a political committee or any elector the opportunity to contest the proper verification of a signature on a petition, i.e., whether the supervisor of elections performed a name-by-name, signature-by-signature check of the number of valid signatures on the petitions, and that the petition and signatures affixed to the petitions complied with all provisions of law, in circuit court. Any contest of the verification of signatures must be filed no later than 90 days after the Secretary of State issues a certificate of ballot position for the issue. The contestant must demonstrate that one or more petitions were improperly verified; any signatures shown to be improperly verified may not be counted toward the number of valid signatures required for ballot placement. If the contestant demonstrates by a preponderance of the evidence that, due to improper verification, there was an insufficient number of valid signatures to qualify an issue for ballot placement and the Secretary of State has already issued a certificate of ballot position, then the issue shall be removed from the ballot. If it is impractical to remove the issue from the ballot, then any votes cast for or against the issue may not be counted and shall be invalid. The bill provides a 90-day window (from the date the Secretary of State issued a certificate of ballot position) for bringing an action under the new subsection.

Section 2. Initiatives; procedure for placement on ballot.

This section requires that an initiative petition must be filed with the Secretary of State no later than February 1 of the year in which the general election is to be held and that the Secretary of

¹⁰ “FDLE Investigates Statewide Voter Fraud,” press release, Florida Department of Law Enforcement, October 21, 2004.

¹¹ Current s. 99.097, F.S., requires a fee of 10 cents to be paid by the sponsor, in advance, for each signature that is verified on an initiative petition; a certificate of undue burden is filed to defer the cost of verification when the cost would pose an undue burden on the financial resources of the sponsor.

State must issue the certification of ballot position upon receipt of verification certificates for the requisite number and distribution of signatures for placement. The requirements of s. 100.371, F.S., relating to initiative petitions are amended to:

- Require that the petition form must consist of and be circulated as one card or sheet of paper;
- Provide that every signature on a petition must be dated by the elector when made;
- Require that the contents of a petition form be limited to those items required by statute or rule;
- Provide that a petition form is a political advertisement and is therefore subject to the requirements of ch. 106, F.S.; and
- Require supervisors of elections to record the date each petition form was received by the supervisor and the date the signature on the form was verified.

Further, s. 100.371, F.S., is amended to provide requirements for a signature on a petition form to be valid. For a signature on a form to be valid, it must include:

- The original signature of the purported elector;
- The date on which the purported elector signed the form;
- The name, street address, county, and either the voter registration number or date of birth of the purported elector;
- That the purported elector is a duly qualified and registered elector authorized to vote in the county in which the signature is submitted;
- That the elector must have signed the form no more than 35 days from the date the form was received by the supervisor of elections; and
- That the elector indicated that he or she was presented with the form by a petition circulator.

The CS/SB 720 provides that an elector may revoke his or her signature by submitting to the supervisor of elections a signed petition revocation form. The form is subject to the same requirements as the petition form under the elections code. A revocation form must be submitted with the appropriate supervisor of elections no later than February 1 of the year of the general election in which the initiative amendment is certified for ballot position. The supervisor of elections is required to promptly verify signatures on petition and revocation forms and process the forms within thirty days of receiving payment. The supervisor of elections must execute a certificate indicating the signatures that are validly revoked, and transmit the certificate to the Secretary of State. The proposed language would also require the supervisor of elections to keep, in addition to the signed petition forms, the revocation forms for at least one year after the election in which the issue appeared on the ballot or until the Secretary of State notifies the supervisor that the committee responsible for the petition is not pursuing a ballot position. The CS/SB 720 provides that a petition is deemed to be filed with the Secretary of State on the date it is determined that a sufficient number of valid and verified petitions have been signed by the constitutionally required distribution of electors, subject to their right of revocation.

The proposed language defines “petition circulator” as any person who, in the context of a direct face-to-face conversation, presents to another person for possible signature a petition form or petition revocation form regarding ballot placement for an initiative. “Paid petition circulator” is

defined to be a petition circulator who receives any compensation as either a direct or indirect consequence of the activities described under the definition of “petition circulator.” A paid petition circulator, when circulating petitions, must wear a prominent badge identifying him or her as a “PAID PETITION CIRCULATOR.”

The CS/SB 720 authorizes an owner, lessee, or other person lawfully exercising control over private property to:

- Prohibit activity which supports or opposes initiatives; or
- Permit or prohibit activity which supports or opposes a particular initiative allowing a property owner to select which circulators will be allowed on their property to circulate petitions; or
- Permit activity which supports or opposes initiatives, subject to uniform time, place, or manner restrictions.

All petitions must comply with all provisions of the law, and may not be verified until compliance is met.

The proposed language requires the Financial Impact Estimating Conference to complete an analysis and a statement of financial impact for the ballot regarding the estimated financial impact of the initiative on the public sector of the state within 45 days after receiving the proposed initiative from the Secretary of State. The ballot must also include a statement to the effect that the financial impact statement is required by law and should not be construed as an endorsement; this statement shall be prescribed through rule by the Department of State. The CS/SB 720 also changes the deadline by which the Supreme Court must either approve or issue an advisory opinion regarding the statement from the 75th day before the election to April 1st of the general election year.

Section 3.

Technical conforming change.

Section 4.

Effective January 1, 2007, s. 100.371, F.S., is amended to provide:

- That a petition is deemed to be filed with the Secretary of State on the date it is determined that a sufficient number of signed and verified petitions have been signed by the constitutionally required distribution of electors, subject to their right of revocation;
- That the supervisor of elections promptly record the dates the petition forms are received and verified as valid in the statewide voter registration system;
- That the supervisor of elections promptly record each valid petition-revocation and each petition verified in the statewide voter registration system; and
- That all signatures shall be dated by the electors to establish the 4 year signature validity period.

Section 5. Referenda; ballots.

The CS/SB 720 amends a cross reference.

Section 6.

Technical conforming change.

Section 7.

The CS/SB 720 amends a cross reference.

Section 8. Petitions subject to this act.

This section allows signatures gathered and submitted for verification prior to the effective date of this act to be verified and counted. All petitions submitted after the effective date are subject to the provisions of this act. The proposed language invalidates all petition forms approved by the Secretary of State prior to the effective date of this act, and requires a sponsor to submit a new petition form to the Secretary for approval in accordance with the requirements of this act.

Section 9. Severability.

This section provides a severability clause that permits any provision of this act that is found to be invalid to be severed from the valid portions of the act.

Section 10. Effective Date.

Except as otherwise provided in the committee substitute, this section provides an effective date of August 1, 2006.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In Buckley v. American Constitutional Law Foundation, Inc., the United States Supreme Court specifically did not address whether a requirement to wear badges that indicate

whether the circulator is paid or a volunteer “would pass constitutional muster standing alone.” The Court opined, however, that requiring a badge that included personal identification information at the precise moment when the circulator’s interest in anonymity is greatest is injurious to free speech.¹²

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹² *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 200 (1999). In its opinion, the Court reiterated several times that the arguments raised by the challengers to the statutory requirements only addressed the personal identification aspect of the badge—not the paid/volunteer status—and therefore the opinion was limited to the personal identification requirement, only.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
