

# 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.)

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Prepared By: Judiciary Committee

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BILL: CS/SB 720

INTRODUCER: Ethics and Elections Committee and Senator Posey

SUBJECT: Initiative Procedures and Standards

DATE: April 18, 2006

REVISED: \_\_\_\_\_

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

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## I. Summary:

This bill imposes additional requirements on petition gathering to secure ballot position for an issue. For example, the bill requires paid and volunteer petition circulators to list their names and addresses on petition forms. Another provision of the bill requires paid petition circulators to wear a badge identifying themselves prominently as paid circulators.

The bill also provides that the petitions are not valid unless they strictly comply with all requirements of law. Under the bill, an elector or political action committee may challenge the validity of petitions for ballot position for an issue. A court must remove an issue from ballot position if the issue lacked a sufficient number of valid petitions. A court must also invalidate the vote on an issue if there were an insufficient number of valid petitions.

This bill amends the following sections of the Florida Statutes: 99.097, 100.371, and 101.161. The bill also repeals sections 28 and 33 of chapter 2005-278, Laws of Florida.

## II. Present Situation:

During the 2004 election cycle, numerous stories appeared in newspapers concerning fraud in the petition process to place constitutional amendments on the ballot. Two petition gatherers were arrested in Santa Rosa County for over 40 counts each of uttering a forged document.<sup>1</sup> Several other elections supervisors found petitions signed with the names of dead voters.<sup>2</sup>

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<sup>1</sup> See "Two Pace residents accused in voter scam," Derek Pivnick, Pensacola News Journal, p. 1A, July 2, 2004.

<sup>2</sup> See "Names of the dead found on petitions," Joni James and Lucy Morgan, St. Petersburg Times, September 28, 2004.

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 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.<sup>3</sup>

### **Petitions**

Petitions signed by the requisite number of voters may be used to place an issue<sup>4</sup> before the voters and for several other purposes.<sup>5</sup> Most notably, petitions are used to secure ballot position for constitutional amendments proposed by citizen initiatives. Section 3, Art. XI, State Const., which authorizes citizen initiatives, states:

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It 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.

Accordingly, signatures equal to 8 percent of the votes cast in the last presidential election must be gathered to place a citizen initiative amendment on the ballot. “For the 2006 General Election Ballot, 611,009 signatures are required.”<sup>6</sup>

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<sup>3</sup> “FDLE Investigates Statewide Voter Fraud,” press release, Florida Department of Law Enforcement, October 21, 2004.

<sup>4</sup> Under s. 106.011(7), F.S., the term “‘issue’ means any proposition which is required by the State Constitution, by law or resolution of the Legislature, or by the charter, ordinance, or resolution of any political subdivision of this state to be submitted to the electors for their approval or rejection at an election, or any proposition for which a petition is circulated in order to have such proposition placed on the ballot at any election.”

<sup>5</sup> Petitions may be used to place an issue before the voters, for a candidate to qualify for office, to recall a local elected official, to change the method of the selection of trial court judges. *See* s. 3, Art. XI, State Const.; ss. 99.095, 100.371, 105.035, and 100.361, F.S.

<sup>6</sup> Florida Department of State, Division of Elections, Initiative Petition Process: Congressional District Requirements, *available at* <http://election.dos.state.fl.us/initiatives/congres.shtml>.

## Citizen Initiative Petition Form

Rule 1S-2.009(2), F.A.C., provides that the format for a citizen initiative petition to propose a constitutional amendment must:

- a. [Be] printed on separate cards or individual sheets of paper. The minimum size of such forms shall be 3 inches by 5 inches and the maximum shall be 8 1/2 inches by 11 inches.
- b. [Be] clearly and conspicuously entitled at the top of the form “Constitutional Amendment Petition Form.”
- c. Include[] adequate space for the signee’s name, legal residential street address, city, county, date of birth, signature, and date of signature.
- d. Contain[] the ballot title that shall not exceed 15 words and the ballot summary of the proposed amendment or other public measure that shall not exceed 75 words in length as prescribed in subsection (4).
- e. Conspicuously contain[] the full text of the amendment being proposed including the article and section being created or amended, preceded by a ballot title and ballot summary. If the text must be printed on both sides of the form, it shall be clearly indicated that the text is continued or begins on the other side.
- f. Contain[] space for only one elector’s signature. The Division [of Elections] will not approve petition forms providing for multiple signatures per page.
- g. [Be] marked, in accordance with s. 106.143, F.S., governing political disclaimers, with “paid political advertisement” or contain[] the abbreviation “pd. pol. adv.” and identify[] the name of the sponsoring political committee, and the name of the entity paying for the advertisement if different from the name of the sponsoring political committee.
- h. Contain[] space, in accordance with s. 106.19(3), F.S., for the name and address of a paid petition circulator, in the event the petition form is gathered by a paid petition circulator.

## Verification

County supervisors of election must verify signatures on initiative petitions.<sup>7</sup> An initiative sponsor must pay the verification cost of 10 cents per signature or the actual cost, whichever is less.<sup>8</sup> Supervisors of elections may verify the signatures on a name-by-name or random sampling basis, whichever is “the most inexpensive and administratively feasible.”<sup>9</sup> However, random sampling may be used only if the number of signature is “equal to or exceeds one hundred and fifteen percent (115%) of the number required to attain ballot position.”<sup>10</sup> Nevertheless, signatures will be verified free of charge if the cost imposes an undue burden on an initiative sponsor.

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<sup>7</sup> Section 99.097, F.S.

<sup>8</sup> Section 99.097(4), F.S.

<sup>9</sup> Section 99.097(1), F.S.

<sup>10</sup> Rule 1S-2.008(3), F.A.C.

To verify a signature on a petition, a supervisor of elections must compare the signature with the voter's signature in the registration books.<sup>11</sup> If the signee lists an address that is different than his or her registered address, the petition is treated as if the registered address was listed.<sup>12</sup> Additionally, a supervisor must:

ensure that each person signing [a] petition form is a registered elector in that county and that the date the elector signed the petition form is not more than four years prior to the date the Supervisor verified the petition. The Supervisor shall not verify a signature on an initiative petition form unless all of the following information is contained on the petition form:

- (a) The signee's name,
- (b) The signee's residential street address (including city and county),
- (c) The signee's date of birth,
- (d) The signee's signature, and
- (e) The date the elector signed the petition.<sup>13</sup>

### ***Certification of Petitions***

Upon completion of the verification . . . the Supervisors of Elections shall submit to the Division of Elections a certificate indicating the total number of signatures checked, the number of signatures verified, the number verified as registered electors and the distribution by congressional district. Each Supervisor of Elections shall submit a copy of one petition showing the text of the constitutional amendment with each certificate of verification. All certifications must be received by the Division of Elections no later than 5:00 p.m. on February 1 of the year in which the election is held.<sup>14</sup>

### ***Certificate of Ballot Position***

Upon a determination that the constitutionally requisite number of signatures and distribution of signatures by congressional districts has been obtained, the Secretary of State shall issue a certificate of ballot position to the sponsoring political committee.<sup>15</sup>

### **Challenges to Verification**

The results of signature verification through random sampling can be challenged within 10 days after a petition is certified.<sup>16</sup> Based on the challenge, a statute provides that a court may order the verification of signatures on a name-by-name basis.<sup>17</sup>

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<sup>11</sup> Section 99.097(3)(a), F.S.

<sup>12</sup> Section 99.097(3)(b), F.S.

<sup>13</sup> Rule 1S-2.0091(2), F.A.C.

<sup>14</sup> Florida Department of State, *supra* note 6.

<sup>15</sup> *Id.*

<sup>16</sup> Section 99.097(5), F.S.

<sup>17</sup> *Id.*

Prior to the 2004 General Election, a lawsuit was filed alleging that paid petition circulators for the Slot Machine Amendment falsified signatures on many petitions.<sup>18</sup> The plaintiffs also alleged that the:

Supervisors of Elections employed deficient methods of signature verification and that because of this the Florida Secretary of State relied on invalid signatures when issuing a Certificate of Ballot Position. Finally the plaintiffs allege[d] that but for the certification of the invalid petitions, . . . the requisite number and distribution of petitions necessary for the initiative to be placed on the ballot

would not have been obtained.<sup>19</sup> The trial court concluded that “any improper signature gathering which may have occurred on the petitions was cured by the election in which the voters approved the Slot Machine Amendment.”<sup>20</sup> The court also stated that the separation of powers doctrine prevented it from interfering with the methods used to verify the petitions.<sup>21</sup> The decision in the case is under appeal.

### **Citizen Initiative Filing Deadline**

Formerly, under s. 5(a), Art. XI, State Const., citizen initiatives amendments could appear on a general election ballot within 91 days of filing with the Secretary of State.<sup>22</sup> During the 2004 General Election, the voters approved a constitutional amendment that requires citizen initiatives to be filed by “February 1, of the year in which the general election is held.”<sup>23</sup>

### **Property Rights**

The extent to which a property owner may regulate political activity on his or her property is not well established under Florida law. Committee staff has located only two circuit court opinions discussing the issue in Florida.

In *Wood v. State*, Mr. Wood was attempting to gather signatures in a mall to qualify for office by petition.<sup>24</sup> He was arrested for trespassing after he declined to leave the mall premises or stop soliciting signatures.<sup>25</sup> The *Wood* court held that a mall is a “quasi-public” place in which peaceful political activity was protected by the State Constitution.<sup>26</sup>

In *Publix Supermarkets, Inc., v. Tallahasseeans for Practical Law Enforcement*, Publix sought to prohibit petition gatherers from collecting signatures on its property.<sup>27</sup> The court held that Publix

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<sup>18</sup> Final Summary Judgment, *Floridians Against Expanded Gambling v. Floridians for a Level Playing Field*, No. 04-CA-2342 (Fla. 2d Cir. Ct. Jan 6. 2005).

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.* at 3-4.

<sup>21</sup> *Id.* at 5.

<sup>22</sup> See s. 5(a), Art. XI, State Const., as it existed prior to the 2004 General Election.

<sup>23</sup> See s. 5(a) and (b), Art. XI, State Const.

<sup>24</sup> *Wood v. State*, 2003 WL 1955433 (Fla. Cir. Ct. 2003).

<sup>25</sup> *Id.* at \*1.

<sup>26</sup> *Id.* at \*2-3.

<sup>27</sup> *Publix Supermarkets, Inc., v. Tallahasseeans for Practical Law Enforcement*, 2005 WL 3673662 (Fla. Cir. Ct. 2005). The petition gatherers sought to propose an amendment to the Tallahassee Municipal Charter. The proposed amendment would

had the right to exclude petition gatherers from its property, while at the same time permitting civic and service organizations access to the property.<sup>28</sup> The court also stated that a supermarket is not a “quasi-public” place and that the State Constitution only prevents government infringement of speech, anyway.<sup>29</sup>

### III. Effect of Proposed Changes:

This bill imposes additional requirements on petition gathering to secure ballot position for an issue. The bill also provides that the petitions are not valid unless they strictly comply with all requirements of law. Further, the bill permits an elector or political action committee to challenge the validity of petitions seeking ballot position for an issue. A court must remove an issue from ballot position if the issue lacked a sufficient number of valid petitions. A court must also invalidate the vote on an issue if there were an insufficient number of valid petitions.

#### **New Requirements for Petition Circulators (Section 2.)**

The bill requires paid and volunteer petition circulators to list their name and address on petition forms for ballot placement of an issue. A similar requirement was formerly codified in s. 110.371(2)(c), F.S.; however, that provision may have been repealed through a drafting error.<sup>30</sup> The former requirement, however, only required paid petition circulators to list their names and addresses on petition forms.

The bill also requires paid petition circulators to wear a prominent badge identifying themselves as paid petition circulators.

#### **New Petition Verification Procedures (Sections 1. and 2.)**

This bill requires supervisors of elections to verify several pieces of information in addition to signatures on petitions for ballot position. However, the verification process provided in the bill is similar to the process provided in Rule 1S-2.0091, F.A.C. The bill in s. 100.371(4), F.S., provides that a petition must comply with the following to be counted as valid:

- (a) The form must contain the original signature of the purported elector;
- (b) The purported elector must accurately record on the form the date on which he or she signed the form;
- (c) The date the elector signed the form, as recorded by the elector, must be no more than 35 days before the date the form is received by the supervisor of elections;
- (d) The form must accurately set forth the purported elector’s name, street address, county, and voter registration number or date of birth; and

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have required “law enforcement authorities to make cases involving an adult’s personal use of marijuana within the City of Tallahassee the ‘lowest law enforcement priority.’” *Id.* at \*1.

<sup>28</sup> *Id.* at \*5.

<sup>29</sup> *Id.* at \*3.

<sup>30</sup> See *Dockery v. Hood*, 922 So. 2d 258, 261 (Fla. 1st DCA 2006) (stating that the publication of the 1999 Florida Statutes without the requirements of s. 100.371(2)(c), F.S. (1997), effectively repealed those requirements).

(e) The purported elector must be, at the time he or she signs the form, a duly qualified and registered elector authorized to vote in the county in which his or her signature is submitted.

The bill does not suggest how or why a supervisor must verify the accuracy of a date recorded on the petition under paragraph (b) above. A need to date a petition would not exist if a supervisor could have independent knowledge of the date a petition was signed. Perhaps the bill intends to require that supervisors verify that petitions are dated. Alternatively, the bill may have been intended to require invalidation of petitions dated by a person other than a signor. Accordingly, the Legislature may wish to clarify its intent in paragraph (b).

### ***Signature Verification***

The bill abolishes the use of random sampling to verify signatures on petitions to secure ballot placement of an issue. Instead, signatures must be verified on a name-by-name basis. The bill, however, continues to permit the use of random sampling to verify signatures on petitions for other than ballot placement of an issue.

### ***Verification Costs***

The bill preserves the requirements of existing law for petition sponsors to pay signature verification costs, unless the costs impose an undue burden. The bill, however, effectively provides that verifications costs are not an undue burden to initiative sponsors that pay petition circulators.

In *Guetzloe v. City of Daytona Beach*, the court held that the “City was not required to hold a referendum on proposed amendments to the City’s Charter because the statutorily-mandated fees for verification of the petition signatures were not paid.”<sup>31</sup>

### **Challenges to Petition Verification (Section 1.)**

The bill permits an elector or political action committee to challenge the verification of petitions for ballot position for an issue, certification of ballot position, and election results based on improperly verified petitions. The bill further provides petitions are not valid unless they strictly comply with all requirements of law. Challenges must be brought within 90 days after the Secretary of State issues a certificate of ballot position.

The bill states in s. 99.097(6)(b), F.S.:

If the contestant demonstrates by a preponderance of the evidence that one or more petitions were improperly verified, the signatures appearing on such petitions may not be counted toward the number of valid signatures required for ballot placement.

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<sup>31</sup> *Guetzloe v. City of Daytona Beach*, 901 So. 2d 415, 415 (Fla 5th DCA 2005).

This provision appears to mean that invalid petitions cannot count toward ballot position. The bill also provides that an issue granted ballot position must be removed from the ballot if the issue was not supported by a sufficient number of valid petitions. Further, the vote on such an issue that is impractical to remove from a ballot will be invalidated.

### **Property Rights (Section 2.)**

The bill provides that property owners and other persons in control of property may prohibit or selectively permit petition gathering on the property.

### **Statewide Voter Registration System (Sections 3. and 4.)**

Section 28, ch. 2005-278, L.O.F., which amends s. 100.371, F.S., is scheduled to take effect on January 1, 2007. That law changes s. 100.371, F.S., to provide for recording verified petitions in the statewide voter registration system. The information in the registration system replaces certificates filed by supervisors listing the number of petitions verified. Section 4. of the bill preserves the effect of s. 28, ch. 2005-278, L.O.F. Section 4. of the bill, however, conforms the provisions of s. 28, ch. 2005-278, L.O.F., to the substantive provisions of the bill.

### **Miscellaneous (Sections 1. through 7.)**

This bill also contains provisions that:

- Require initiative petitions signed by an elector to be dated by an elector;
- Require that initiative forms comply with the requirements of political advertisements;
- Provide for forms by which an elector may revoke a signature on a petition;
- Change dates to conform to an amendment to s. 5, Art. XI, State Const, which requires citizen initiatives to be filed by February 1, of the year in which a general election is held;
- Require ballots to contain a statement to the effect that the financial impact statement should not be construed as an endorsement by the state of a proposed amendment to the State Constitution; and
- Make technical changes.

### **Effective Date (Section 10.)**

The bill takes effect on August 1, 2006, except as otherwise provided therein.

## **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.<sup>32</sup>

In *Smith v. Coalition to Reduce Class Size*, the Florida Supreme Court stated:

“[i]n considering any legislative act or administrative rule which concerns the initiative amending process, we must be careful that the legislative statute or implementing rule is necessary for ballot integrity.”<sup>33</sup>

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill will make citizen initiative petitions more susceptible to legal challenges.

**C. Government Sector Impact:**

This bill may require supervisors of elections to perform additional duties to verify petitions for ballot position of an issue.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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<sup>32</sup> *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.

<sup>33</sup> *Smith v. Coalition to Reduce Class Size*, 827 So. 2d 959, 963 (Fla. 2002) (quoting *State ex rel. Citizens Proposition for Tax Relief v. Firestone*, 386 So. 2d 561, 566 (Fla. 1980).



## **VIII. Summary of Amendments:**

None.

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

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