

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 773  
**SPONSOR(S):** Goodlette  
**TIED BILLS:**

Petition Process

**IDEN./SIM. BILLS:** SB 1244

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Ethics &amp; Elections Committee</u>	<u>5 Y, 4 N</u>	<u>Mitchell</u>	<u>Mitchell</u>
2) <u>Transportation &amp; Economic Development Appropriations Committee</u>	<u></u>	<u>McAuliffe</u>	<u>Gordon</u>
3) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

HB 773 creates the "Petition Fraud and Voter Protection Act" and establishes a number of safeguards for the initiative petition process. The bill attempts to more closely regulate the petition verification process, to require that additional information be provided to a voter who signs an initiative petition, and to regulate circulators, in particular *paid* circulators, by requiring greater disclosure.

The bill also authorizes additional criminal sanctions against people who abuse the petition process, either through fraud or misrepresentation, or through the misuse of signed petitions or voter registrations.

A similar version of this bill passed the House by a vote of 96-22 in 2005 (HB 1471), but died on the Senate calendar on May 6, 2005.

HB 773 contains new grants of rulemaking authority to the Division of Elections (See Section III).

Except as otherwise expressly provided, the bill is effective August 1, 2006.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

#### **Personal Responsibility**

The bill implicates the principle of promoting personal responsibility in that it requires persons who collect signatures for citizen initiatives to be held more accountable for the accuracy of the signatures and to provide additional information to voters when they sign initiative petitions.

### B. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

Art. XI, Fla. Const., governs amendments to the State Constitution. A proposed amendment is presented to the voters pursuant to one of the following methods<sup>1</sup>:

- Joint resolution passed by 3/5 vote of each house of the Legislature;
- Initiative petition;
- Proposal by the Constitution Revision Commission;
- Proposal by the Taxation and Budget Reform Commission; or
- Proposal by a constitutional convention.

Prior to the 1968 revision of the State Constitution, amendments could be proposed only by constitutional convention or through resolutions adopted by the Legislature. Florida adopted the citizen initiative process in 1968.<sup>2</sup> The first initiative appeared on Florida's ballot in 1976 and was adopted by the voters.<sup>3</sup> From 1976-2002, there have been 104 proposed constitutional amendments on the ballot, 21 of which were proposed by initiative.<sup>4</sup> Sixteen of the 21 initiative amendments were approved by Florida's electors.<sup>5</sup>

During the past ten years, there has been a marked increase in the number of citizen initiatives. In 1996, 37 initiatives were circulated, three of which made the ballot; in 1998, 27 initiatives were circulated, none of which made the ballot; in 2000, 16 initiatives were circulated, one of which made the ballot; and in 2002, 23 initiatives were circulated, four of which made the ballot.<sup>6</sup>

The procedure for placing an initiative on the ballot is provided in s. 100.371, F.S. To obtain ballot position:

- the sponsor of an amendment must register as a political committee pursuant to s. 106.03, F.S., and submit the text of the amendment with the form on which the signatures will be obtained; the form must be approved by the Secretary of State before signatures are obtained;

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<sup>1</sup> Art. XI, s. 1, Fla. Const. (legislature); Art. XI, s. 2, Fla. Const. (Revision Commission); Art. XI, s. 3, Fla. Const. (citizen initiative); Art. XI, s. 4, Fla. Const. (constitutional convention); Art. XI, s. 6, Fla. Const. (Taxation and Budget Reform Commission).

<sup>2</sup> Art. XI, s. 3, Fla. Const.

<sup>3</sup> Amendment #1; Art. II, s. 8, Fla. Const. (The so-called "Sunshine Amendment." Votes For - 1,765,626; Votes Against - 461,940).

<sup>4</sup> Statistics provided by the Division of Elections.

<sup>5</sup> Id.

<sup>6</sup> Id. While there were no citizen initiatives on the ballot in 1998, there were four amendments proposed by legislative resolution and nine amendments proposed by the Constitutional Revision Convention.

- the Secretary of State must determine the total number of valid signatures and the distribution from congressional districts<sup>7</sup>; signatures are valid for four years from the date when made;
- the certification of ballot position must be completed by February 1 of the year the general election is held<sup>8</sup>; and
- the Supreme Court must approve the validity of the proposal.

In 2004, 488,722 signatures were required for ballot certification; in 2006, 611,009 signatures were required for ballot certification.

As of January 31, 2006, there are 50 active citizen initiatives according to the Division of Elections web site<sup>9</sup>. Pursuant to a constitutional amendment adopted in 2004, initiative petitions must be filed and certified with the custodian of state records (Department of State) by February 1 of the year in which the general election is held.<sup>10</sup> There are two citizen initiatives that made ballot position by the required February 1 deadline for the 2006 general election.

The first proposed amendment requires the legislature to annually use some of the state's tobacco settlement funds for a statewide tobacco education and prevention program targeted at youth.<sup>11</sup> The second proposed amendment would create a fifteen member commission to replace the legislature to apportion single-member legislative and congressional districts.<sup>12</sup>

### **Criminal Penalties**

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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup> Several other supervisors of elections found petitions signed with the names of dead voters.<sup>17</sup>

The Florida Department of Law Enforcement issued a press release in October of 2004 indicating that it had received numerous complaints relating to voting irregularities regarding voter fraud, and had initiated several investigations. While the FDLE did not reveal details of the investigations, it did say the investigations focused on the following conduct:

<sup>7</sup> Art. XI, s. 3, Fla. Const., requires that signatures be obtained in at least ½ of the state's congressional districts, and of the state as a whole, equal to eight percent of the voters casting ballots in the last Presidential election.

<sup>8</sup> The new February 1 deadline was approved in the 2004 general election and is contained in s. 5(b), Art. XI, Fla. Const. Section 100.371, F.S., which implements this constitutional provision was amended in 2005 to include the February 1 deadline (s. 28, ch. 2005-278, Laws of Fla.), but the change is not effective until January 1, 2007.

<sup>9</sup> <http://election.dos.state.fl.us/initiatives/initiativelist.asp>

<sup>10</sup> S.J.R. 2394 amended s. 5, Art. XI, Fla. Const., and was approved by the voters on November 2, 2004.

<sup>11</sup> Floridians for Youth Tobacco Education, Inc. The smoking education initiative began July 20, 2005, and collected 650,403 certified petition signatures. Information taken from the Division of Elections web site.

<sup>12</sup> Committee for Fair Elections. The apportionment commission initiative began March 23, 2005, and collected 689,325 certified petition signatures. Information taken from the Division of Elections web site.

<sup>13</sup> s. 104.012, F.S.

<sup>14</sup> s. 104.185, F.S.

<sup>15</sup> s. 104.42, F.S.

<sup>16</sup> See, "Two Pace residents accused in voter scam," Derek Pivnick, *Pensacola News Journal*, page 1A, July 2, 2004.

<sup>17</sup> See, "Names of dead persons found on petitions," Joni James and Lucy Morgan, *St. Petersburg Times*, September 28, 2004.

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>18</sup>

### **Effect of Proposed Changes**

See **Section Directory** below.

#### C. SECTION DIRECTORY:

**Section 1. Provides a title, “Petition Fraud and Voter Protection Act.”**

**Section 2. Amends s. 99.097, F.S., regarding the verification of signatures on petitions.**

- Clarifies that the supervisors of elections are verifying signatures and not checking names.
- Requires that petitions be verified one at a time and not by random sample. (This codifies current practice and only applies to initiative petitions and not candidate qualifying petitions.)
- Prohibits counting petitions toward ballot placement unless all provisions are met.
- Prohibits a petition sponsor from providing compensation to any paid petition circulator if the sponsor has filed an oath of undue burden, unless the sponsor first pays all supervisors for each signature checked, or reimburses the General Revenue fund for such costs. If a sponsor that has filed for undue burden pays circulators before paying for verification, all signatures collected prior to that date are invalid.
- Creates the ability to file a court challenge by a political committee or elector, alleging improper verification, and requires proof by a preponderance of the evidence. Improperly verified signatures will not be counted. Such a challenge must be filed no later than 90 days after an issue obtains ballot position.
- Removes from the ballot or invalidates vote if sponsor uses petition fraud to get on the ballot.

**Section 3. Amends s. 100.371, F.S., regarding initiatives and procedures for placement on the ballot.**

- Implements the new February 1 deadline for filing initiative petitions with the Secretary of State that is contained in Art. XI, sec 5., Fla. Const.
- Clarifies that it must be the voter, not the amendment sponsor, who inserts a date on an initiative petition.

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<sup>18</sup> “FDLE Investigates Statewide Voter Fraud,” press release, Florida Department of Law Enforcement, October 21, 2004.

- Provides that a petition form contain only the information required by statute or Division of Elections rules.
- Clarifies that a petition is a political advertisement and must comply with all requirements of ch. 106, F.S. (including requirements for political disclaimers).
- The requirements for a valid petition include:
  - An original signature, date, name, address, and voter registration number or date of birth;
  - the petition signer must be a registered voter;
  - the petition must be received by the appropriate supervisor within 30 days of signature;
  - the petition signer must note if she was presented the petition by a petition circulator; and
  - compliance by all petition circulators with the regulations in s. 100.372.
- Allows a voter to submit a signed petition form to the petition sponsor by mail or otherwise to an address listed on the form.
- Requires the inclusion on the form in 16 point font or larger, notices regarding a voter's ability to take a petition form with them and return it to the following address and the fact that the proposed amendment has not been officially reviewed by any court or state agency.
- Creates a process for revocation of one's signature on an initiative petition. A petition revocation form must be adopted by rule by the Division of Elections. A revocation form must be filed by an elector no later than February 1 immediately preceding the general election (or by Feb. 1 of the next successive general election, if the initiative has not received ballot position).
- Requires the supervisors of elections to retain all petition and revocation forms for one year after the election in which the issue appeared on the ballot.
- Requires that the ballot contain a statement (prescribed by rule of the Department of State) that a financial impact statement is constitutionally required and is not an endorsement by the state.
- Changes a deadline to April 1 of the year in which a general election is held for the Florida Supreme Court to complete its review of financial impact statements submitted by the Financial Impact Estimating Conference.

**Section 4. Repeals section 28 of ch. 2005-278, Laws of Fla. which was scheduled to take affect January 1, 2007.** Section 28 contemplated use of the statewide voter registration system for signature verification, but the system was not scheduled to become operational until January 2006, just prior to the February 1 petition verification deadline. Thus, the section was given a later effective date of January 1, 2007. In Section 5 below, the bill reenacts many of the changes proposed in section 28 of ch. 2005-278, with additional changes outlined below.

**Section 5. Further amends s. 100.371, F.S., as amended in section 3 of the bill, effective January 1, 2007.** This section incorporates the changes made in section 3 of the bill and adds the following:

- Petitions are deemed to be filed with the Secretary of State when the secretary determines that a sufficient number of valid and verified petitions have been signed by the number of electors required by the constitution, subject to one's right to revoke a petition signature.
- Moves the requirements for petition signatures from s. 100.371(2) to s. 100.371(7). Subsection 100.371(2) is deleted.
- Requires supervisors of elections to record the date a petition is received and the date the signature is verified in the statewide voter registration system.
- Re-enacts the provision that petition signatures are valid for 4 years from the date made.
- Provides that the Secretary of State shall determine the total number of verified signatures using the number recorded in the statewide voter registration system. This system became operational in January 2006 and is not being used for the current election cycle to verify petition signatures.

**Section 6. Creates s. 100.372, F.S., regarding regulation of initiative petition circulators.**

- Regulates petition circulators by defining "petition circulator", and "paid petition circulator"; requires petition circulators to be at least 18 years old and eligible to register to vote in this or any other state in the U.S.; and provides that circulators cannot be convicted felons who are ineligible to vote.
- Requires paid circulators to wear a badge identifying themselves as paid circulators.
- Provides protections for property owners, who may:
  - Prohibit activity which supports or opposes initiatives;
  - permit or prohibit activity which supports or opposes initiatives; or
  - permit activity which supports or opposes initiatives, subject to uniform time, place, or manner restrictions.
- Requires a valid petition form to include:
  - The name of the organization;
  - the website of the organization;
  - an indication of whether the circulator is paid or unpaid; and
  - the amount of compensation, if the circulator is a paid employee.
- Paid circulators must attach to their petitions a signed and dated declaration under penalty of perjury. Such declaration must include: 1) the circulator's name, address, date of birth, voter registration number or similar government-issued identification number, and 2) be signed and dated by circulator.
- The declaration must state that the paid circulator:
  - has read and understands the law;
  - is at least 18 years old;
  - is eligible to register to vote;
  - collected the enclosed forms;
  - believes the signature is the actual voter's signature;
  - believes that a signer was a registered voter; and
  - has not been paid by the signature.

- Petitions without a declaration are invalid.
- Paid petition circulators must provide the initiative sponsor a copy of a government-issued photo ID that reflects the circulator's proper residence. The sponsor must maintain these cards for inspection, and if not on file with the sponsor, petitions are invalid.

**Section 7. Amends s. 101.161, F.S., regarding referenda and ballots.**

- Technical change to correct a reference to s. 100.371(10), F.S.

**Section 8. Technical, conforming change.**

- This section repeals section 33 of chapter 2005-278, Laws of Fla. The bill sponsor intends to amend this statutory section affected by this repeal and make it effective January 1, 2007, as the chapter law did. The change is necessary to accommodate the new statewide voter registration system which went on-line January 1, 2006.

**Section 9. Technical, conforming change.**

- The changes which must be effective January 1, 2007, to accommodate the new statewide voter registration system, as described above are contained in this section, effective January 1, 2007.

**Section 10. Amends s. 104.012, F.S., regarding consideration for registration and interference with registration.**

- Makes the failure to submit a voter registration to the appropriate supervisor of elections within 10 days a third degree felony. (This tracks existing criminal sanctions in the election code).

**Section 11. Amends s. 104.185, F.S., regarding violations involving petitions.**

- For all of the following infractions, a first offense is a first-degree misdemeanor, and subsequent offenses are third-degree felonies:
  - Signing someone else's name to a petition.
  - Swearing a false oath or affirmation in connection with a petition.
  - Submitting false information on a petition or petition revocation form.
  - Providing something of value for signing a petition.
  - Bribing or threatening a person in order to obtain a signature.
  - Paying for signatures by the number of signatures.
  - Altering a signed petition without the signor's knowledge or consent.
  - Fraud or attempting to defraud while gathering signatures.
- Creates a civil penalty not to exceed \$1,000-per-violation for any paid petition circulator who violates any of the above provisions.

**Section 12. Amends s. 104.42, F.S., regarding unlawful registrations, petitions and voting.**

- Authorizes supervisors of elections to investigate alleged petition fraud.
- Requires supervisors of elections to document and report fraud to the Florida Elections Commission within 10 days.

**Section 13.** Applies changes in the bill only to petitions collected and submitted for verification after the effective date of the act (August 1, 2006).

**Section 14.** Provides a severability clause.

**Section 15.** Provides an effective date of August 1, 2006, unless otherwise expressly provided.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

HB 773 contains four new grants of rulemaking authority to the Division of Elections that govern the petition gathering process: The Division is required to adopt a rule:

- Providing for a form for revoking one's signature on a petition (petition-revocation form)(s. 100.371(7), F.S.; p. 8.);



- governing the financial impact statement that appears on the ballot and that inclusion of such statement on the ballot is not an endorsement by the state of the proposed amendment or revision. (s. 100.371(10), F.S.; p. 10);
- prescribing certain information for inclusion on petition and petition-revocation forms (new s. 100.372(5), F.S.; p. 24); and
- prescribing certain information for inclusion on the signed and dated declaration submitted by a paid petition circulator (new s. 100.371(6)(a), F.S.; p. 25).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**