

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 773 CS

Petition Process

**SPONSOR(S):** Goodlette

**TIED BILLS:**

**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>13 Y, 3 N, w/CS</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:

- Clarifies that the supervisors of elections are verifying signatures and not simply checking names.
- Requires that petitions be verified one at a time and not by random sample.
- Prohibits a petition sponsor from providing compensation to any paid petition circulator if the sponsor has filed an oath of undue burden.
- 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.
- 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 a petition is a political advertisement and must comply with all requirements of ch. 106, F.S.
- Provides the requirements for a supervisor of elections to validate a petition.
- Creates a process for revocation of a signature on a petition form.
- Defines "petition circulator" and requires a paid circulator to wear badge identifying himself or herself as a "PAID PETITION CIRCULATOR."
- Provides protections for property owners.
- Changes a deadline for the Florida Supreme Court to complete its review of financial impact statements submitted by the Financial Impact Estimating Conference to April 1 of the year in which a general election is held.
- 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.
- 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.
- Provides that the Secretary of State shall determine the total number of verified signatures using the number recorded in the statewide voter registration system.

HB 733 has no fiscal impact on the State. Except as otherwise expressly provided, the bill is effective August 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0773c.TEDA.doc

**DATE:** 4/4/2006

# 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.

### 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.** Amends s. 99.097, F.S., regarding the verification of signatures on petitions. The section:

- Clarifies that the supervisors of elections are verifying signatures and not simply 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 does not affect candidate qualifying petitions).
- Prohibits a petition sponsor from providing compensation to any paid petition circulator if the sponsor has filed an oath of undue burden. If a sponsor, after filing the undue burden oath decides to pay signature gatherers, the sponsor must first pay all supervisors for each signature checked, or reimburse the General Revenue Fund for such costs.
- 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. Such a challenge must be filed no later than 90 days after the Secretary of State issues a certificate of ballot position for the issue. Improperly verified signatures will not be counted toward the required number of signatures.

**Section 2.** Amends s. 100.371, F.S., regarding initiatives and procedures for placement on the ballot. The section:

- 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 a petition is a political advertisement and must comply with all requirements of ch. 106, F.S. (including requirements for political disclaimers). Political advertisements are defined in s. 106.011(17), F.S.
- Provides the requirements for a supervisor of elections to validate a petition are:
  - original signature and date signed by the elector;
  - name, address, and the voter registration number or date of birth of the elector;
  - must be a registered voter in the county in which the signature will be submitted;
  - must be submitted to the supervisor within 35 days after signature.
- Provides Supervisors of Elections are required to verify the petition forms within 30 days.
- Provides if a person is presented with a petition form for their signature, the person must record this fact on the form and the name and address of the petition circulator must legibly appear on the form before the signature may be verified.

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

- Creates a process for revocation of a signature on a petition form. 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). The revocation process is identical to the process for submitting a petition to be verified.
- Defines “petition circulator” as “any person who, in the context of direct face-to-face conversation, presents to another person for his or her possible signature a petition form regarding ballot placement for an initiative” and “paid petition circulator” as a “petition circulator who receives any compensation as a direct or indirect consequence of these activities.”
- Requires a paid circulator to wear badge identifying himself or herself as a “PAID PETITION CIRCULATOR.”
- Provides protections for property owners, who may:
  - Prohibit all activity which supports or opposes initiatives; or
  - Permit or prohibit activity which supports or opposes particular initiatives; or
  - Permit activity which supports or opposes initiatives, subject to uniform time, place, or manner restrictions.
- Changes a deadline for the Florida Supreme Court to complete its review of financial impact statements submitted by the Financial Impact Estimating Conference to April 1 of the year in which a general election is held.

**Section 3.** Repeals section 28 of ch. 2005-278, Laws of Fla. which was scheduled to take effect January 1, 2007. Section 28 contemplated use of the statewide voter registration system for signature verification, but the system did not become operational until January 2006, just weeks prior to the February 1 petition verification deadline. Thus, the section was given an effective date of January 1, 2007. In Section 4 below, the bill reenacts many of the changes proposed in section 28 of ch. 2005-278, with additional changes outlined below.

**Section 4.** 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), F.S., to s. 100.371(7), F.S. Subsection 100.371(2), F.S., 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 was not used to verify petition signatures for the 2006 election cycle.

**Section 5.** Amends s. 101.161, F.S., to correct a cross reference.

**Section 6.** Repeals section 33 of chapter 2005-278, Laws of Fla., which was scheduled to take effect January 1, 2007. Section 7 of this bill reinstates the provisions of the repeal and corrects a cross reference.

**Section 7.** Amends s. 101.161, F.S., regarding referenda and ballots, effective January 1, 2007.

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

**Section 8.** Applies the changes in the bill only to petitions collected and submitted for verification after the effective date of the act (August 1, 2006).

**Section 9.** Provides a severability clause.

**Section 10.** 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 does not grant any rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

At the April 4, 2006 meeting, the Transportation and Economic Development Appropriations Committee approved HB 773 with one strike-all amendment. The amendment:

- Clarifies that the supervisors of elections are verifying signatures and not simply checking names.
- Requires that petitions be verified one at a time and not by random sample.
- Prohibits a petition sponsor from providing compensation to any paid petition circulator if the sponsor has filed an oath of undue burden.
- 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.
- 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 a petition is a political advertisement and must comply with all requirements of ch. 106, F.S.
- Provides the requirements for a supervisor of elections to validate a petition.
- Creates a process for revocation of a signature on a petition form.
- Defines "petition circulator" and requires a paid circulator to wear badge identifying himself or herself as a "PAID PETITION CIRCULATOR."
- Provides protections for property owners.
- Changes a deadline for the Florida Supreme Court to complete its review of financial impact statements submitted by the Financial Impact Estimating Conference to April 1 of the year in which a general election is held.
- 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.
- 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.
- Provides that the Secretary of State shall determine the total number of verified signatures using the number recorded in the statewide voter registration system.