

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Ethics and Elections Committee

BILL: SB 2340

INTRODUCER: Senator Posey

SUBJECT: Initiative Petitions; Paid Signature Gatherers

DATE: March 24, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	Favorable
2.			JU	
3.			TA	
4.				
5.				
6.				

I. Summary:

Senate Bill 2340 seeks to regulate the paid petition signature gathering process for citizen initiatives. The bill provides that paid petition gatherers satisfy certain requirements and that they register with the Department of State.

The bill is effective August 1, 2008.

This bill creates section 100.372 of the Florida Statutes.

II. Present Situation:

Florida does not specifically regulate paid initiative-petition signature gatherers.

Some groups have alleged, and some courts in other states have found, that paid petition signature gatherers have used fraudulent, illegal, or unethical practices, including: false claims of residency by “mercenary petition gatherers”; false attestations that the gatherer was present when the petitions were signed; misrepresentations and lies to voters as to the effect of petitions; and, “bait-and-switch” and other deceptive tactics to get voters to sign a petition that was not properly explained to them.¹ The extent to which these practices are going on in

¹ See e.g., *Yes on Term Limits, Inc. v. Savage*, WL 2670178 (W.D. Okla. 2007) (slip copy); *Montanans for Justice v. State ex rel. McGrath*, 146 P.3d 759 (Mont. 2006) (holding that paid initiative petition signature gathering process was permeated by pervasive pattern of fraud and non-procedural compliance); see generally, Ballot Initiative Strategy Center, Abusing Direct Democracy: Bad Actors in the Signature Gathering Process (November 2007).

Florida is a matter of some debate, although anecdotal evidence and some reports suggest that Florida may not be immune.²

Some of the changes proposed in SB 2340 resemble recommendations put forth by the Ballot Initiative Strategy Center (“BISC”), a non-profit organization based in Washington, D.C., that serves as “a resource for grassroots advocates and uses the ballot measure process as a tool for achieving progressive policy goals and political gains.”³ Two notable BISC recommendations are:

➤ **Circulators should be required to register with the Secretary of State.**⁴

Because of the nature of the paid signature gathering industry, the field will likely always be fraught with mercenary or traveling petitioners. By requiring all signature gatherers to register with the Secretary of State, initiative watch dogs will be able to do multi-state research on petitioners. BISC recommends that, in addition to the information required in this bill, the Department should require disclosure of any arrests or convictions for sexual assaults or identity theft. These crimes are particularly sensitive to an unsuspecting public. It would be a service to voters to know that they are not providing that personal information to dangerous criminals or identity thieves.

➤ **Prevent people who have been convicted of certain crimes from circulating- convictions such as identity theft, sex offenses, other fraud.**⁵

Even California prohibits felons who are currently on parole from circulating petitions. In Florida, all felons, including those guilty of sex offenses, identity theft, and fraud convictions are permitted to collect. At the least, those offenses certainly are germane to whether a person should be permitted to gather voters’ personal information. It is only possible to prevent these people from circulating if there is some form of registration in the state, so that officials are aware of who is petitioning. BISC recommends that states should establish a system of registering

² Ballot Initiative Strategy Center, *Abusing Direct Democracy: Bad Actors in the Signature Gathering Process* at 5 (November 2007) (alleging that paid signature gatherers submitted fraudulent petitions and petitions with the signatures of dead voters, and illegally registered over 4,000 college students as Republicans in connection with several 2004 initiative drives).

³ <http://www.ballot.org/>. One of BISC’s acknowledged primary objectives, however, is to prevent the enactment of “cleverly crafted conservative and ultra-libertarian” ballot initiatives that it views as dividing the progressive coalition. See <http://www.newprogressivecoalition.com/node/4487>. “In 2006, BISC launched the Ballot Integrity Project, an ongoing program to expose the motivations of donors, activists, and organizations that use the ballot measure process to hide their political spending, attempt to fraudulently qualify ballot measures, and buy state laws with their big checkbooks instead of creating thoughtful policies based on good ideas.” See http://www.stopballotfraud.org/content/about_us. The Project has developed a number of general recommendations for reforming the process of initiative petition signature gathering. See http://www.stopballotfraud.org/content/biscs_signature_reform_guidelines. Given its partisan agenda and admitted “defensive posture” toward most initiatives, however, it is unclear whether the recommendations are targeted toward redressing the fraud problem or simply making it more difficult for most initiatives to obtain ballot position.

⁴ See http://www.stopballotfraud.org/content/circulators_should_be_required_to_register_with_secretary_of_state.

⁵ See http://www.stopballotfraud.org/content/people_convicted_of_certain_crimes_cant_circulate_id_theft_sex_offenses_oth

each petitioner with the Secretary of State, and collecting the information necessary to run criminal background checks.

III. Effect of Proposed Changes:

Prohibited Acts

Senate Bill 2340 does the following:

- Prohibits a paid petition circulator from collecting petitions in Florida without first registering with the Department of State.
- Prohibits anyone from paying a petition circulator who is not registered with the Department.
- Prohibits registrants from circulating petition forms until the forms have been registered with the Department.

The bill's provisions would presumably be enforced by county supervisors of elections who would have to determine if a petition circulator had registered with the Department and satisfied all the requirements. It appears that some type of database would have to be developed by the Department to register and track paid petition circulators. This information would then have to be made available to supervisors.

Registration Requirements for Paid Petition Gatherers

A person cannot be registered with the Department as a paid petition gatherer unless the person satisfies three requirements:

- A citizen of the United States for purposes of s. 97.041(1)(a)2., F.S.;
- A legal resident of this state for purposes of s. 97.041(1)(a)3., F.S.; and
- Not a convicted felon ineligible to register to vote or vote pursuant to s. 97.041(2)(b), F.S.

The bill provides that if a person no longer satisfies one or more of the above requirements, the registration is immediately rendered invalid by operation of law, the person is required to immediately notify the Department, and the person is required to immediately cease all petition gathering activities.

It is unclear in the bill whether or how the Department might verify a person's registration information. The Department could simply treat verification as a ministerial duty and accept each person's registration information as being true and accurate. Alternatively, the Department might conduct a background check of each applicant, thereby slowing the deployment of paid petition gatherers.

The bill imposes a number of registration requirements on paid petition circulators. A person is required to provide to the Department:

- His or her full legal name;
- The street address at which the person legally resides;
- The person's telephone number;
- The person's date of birth;
- A copy of a valid government-issued, photo identification card;
- The name, street address, and telephone number of the person or entity from which the person will receive compensation as a direct or indirect consequence of his or her activities;
- Identification of the petition forms or petition-revocation forms that the person will be circulating;
- Any other information required by Department rule; and
- As a condition of registration, the registrant would be required to notify the Department of any change in the information submitted pursuant to this subsection within one business day after the change.

The bill gives authority to the Department to require, "...any other information required by Department rule" as a condition of registration.

Petition Form

The bill requires that the petition form that is circulated by the registrant:

- Be registered with the Department.
- Include the paid petition circulator's registration number.

Verification Requirements

The bill provides that petitions may not be verified by the supervisor, and may not be counted toward the number of valid signatures required for ballot placement, if such signature was not gathered in full compliance with new s. 100.372, F.S.

Any signature gathered on a previously approved initiative-petition form or petition-revocation form that is submitted for verification before August 1, 2008, may be verified and counted if otherwise valid. However, any initiative-petition form or petition-revocation form that is submitted for verification on or after August 1, 2008, may be verified and counted only if it complies with new s. 100.372, F.S.

The bill is effective August 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires that a fee be charged to paid petition gatherers for registration with the Department. At this time, the amount of that fee is undetermined.

C. Government Sector Impact:

1. Revenues

The bill provides for the creation of a fee by administrative rule to be charged to those registering as paid petition circulators, to offset the cost of registration and regulation.

2. Expenditures

a. Non-Recurring

The Department estimates a nonrecurring cost of \$100,000 to create a database to permit the registration of paid petition gatherers.

b. Recurring

The Department would likely have a minimal recurring cost to maintain the database. In addition, local supervisors of elections would be required to verify that paid petition circulators met the requirements of the law before verifying each petition. These recurring costs are indeterminate at this time, and will vary with the extent and number of initiative petitions and signature submitted.

VI. Technical Deficiencies:

The bill specifically authorizes the Department to designate by rule additional registration information required of paid petition signature gatherers. This open-ended mandate should be constrained by some standard(s) or guideline(s) so as not to constitute an unlawful delegation of legislative authority.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.