

**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 Criminal Justice Committee

BILL: CS/SB 1504

INTRODUCER: Rules Committee and Senator Simmons

SUBJECT: Initiative Petitions

DATE: April 7, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	EE	<b>Favorable</b>
2.	Seay	Phelps	RC	<b>Fav/CS</b>
3.	Cellon	Cannon	CJ	<b>Pre-Meeting</b>
4.			BC	
5.				
6.				

<b>Please see Section VIII. for Additional Information:</b>	
A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/> Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/> Technical amendments were recommended
	<input type="checkbox"/> Amendments were recommended
	<input type="checkbox"/> Significant amendments were recommended

**I. Summary:**

Committee Substitute for Senate Bill 1504 seeks to limit the validity of a signed initiative petition to a period of 30 months. The bill provides that paid petition circulators must meet certain qualifications and that the political committee sponsoring the initiative must have paid petition circulators sign and complete an affidavit. The bill adds criminal penalties if a paid petition circulator or sponsoring committee violates specified restrictions or requirements; and if a person alters a signed initiative petition form without knowledge or consent of the person who signed the form. The bill specifies the time period to initiate a judicial challenge to an amendment to the State Constitution by legislative joint resolution. The bill requires the Attorney General to prepare a revised ballot title and ballot summary proposed by joint resolution of the Legislature if a court determines the original ballot title and ballot summary to be deficient. The bill allows a reviewing court to retain continuing jurisdiction to correct any revisions by the Attorney General that allegedly remain confusing, misleading, or deficient. The bill provides that if the court's decision is not reversed, the Department of State is required to place the amendment with the revised ballot title and ballot summary on the ballot.

The bill provides an effective date of July 1, 2011.

This bill substantially amends ss. 15.21, 16.061, 100.371, 101.161, 104.185, and 1011.73 and creates s. 101.161 of the Florida Statutes.

## II. Present Situation:

### *Constitutional Amendments by Initiative Petitions*

Article XI of the Florida Constitution allows voters to approve constitutional amendments proposed through the following methods:

- Proposed by joint resolution passed by a three-fifths vote of each house of the Legislature;
- Proposal by the Constitution Revision Commission;
- Proposal by the Taxation and Budget Reform Commission; or
- Proposal by the citizen initiative petition.

Petitions signed by the requisite number of voters may be used to place an issue<sup>1</sup> before voters and for several other purposes. Most notably, petitions are used to secure ballot position for constitutional amendments proposed by citizen initiatives. Florida adopted the citizen initiative process in 1968.<sup>2</sup> Section 3, Art. XI, of the Florida Constitution, 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 eight percent of the votes cast in the last presidential election must be gathered to place a citizen initiative amendment on the ballot. For the 2012 general election ballot, 676,811 signatures are required.<sup>3</sup>

### *Initiative Petition Process*

When an individual or group is seeking to place a constitutional amendment on the ballot, they must register as a political committee with the Division of Elections (Division).<sup>4</sup> The political

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<sup>1</sup> Under s. 106.011(7), F.S., an 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>2</sup> Section 3, Art. XI, FLA CONST.

<sup>3</sup> Florida Department of State: Division of Elections, Congressional District Requirements, *available at* <http://election.dos.state.fl.us/constitutional-amendments/cong-dist-require.shtml>.

<sup>4</sup> Pursuant to s. 106.03, F.S. *See also* s. 100.371(2), F.S.

committee sponsoring the initiative petition is required to submit the proposed initiative amendment form to the Division prior to being circulated for signatures.<sup>5</sup>

Once the form is approved by the Division, the petition may then be circulated for signature by electors. An elector's signature on the petition form must be dated – and the signature is valid for a period of four years following the date.<sup>6</sup> When a committee has obtained signatures from ten percent of the electors required from at least 25 percent of the state's congressional districts, the Secretary of State is required to submit an initiative petition to the Attorney General and the Financial Impact Estimating Conference.<sup>7</sup> Within 30 days of receipt, the Attorney General must petition the Florida Supreme Court requesting an advisory opinion regarding compliance of the text of the proposed amendment and compliance of the proposed ballot title and summary.<sup>8</sup>

As petition signatures are received, the appropriate supervisor of elections must verify the validity of each signature.<sup>9</sup> In addition, the political committee sponsoring the initiative petition must pay a fee to the appropriate supervisor of elections for the verification of signatures on petitions.<sup>10</sup> Supervisors of elections must certify the total number of valid signatures with the Secretary of State by February 1 of the year of the election.<sup>11</sup> After the filing date, the Secretary of State determines if the requirements for the total number of verified valid signatures and the distribution of the signatures among the state's congressional districts have been met.<sup>12</sup> If the threshold has been met, the Secretary of State issues a certificate of ballot position for the proposed amendment along with a designating number.<sup>13</sup>

### ***Regulation of Petition Circulators***

Currently, Florida does not regulate initiative petition circulators. Of the 24 states that currently allow citizen initiatives, more than half of the states require that petition circulators are eligible to vote in the state.<sup>14</sup> Age and residency requirements are among the most common regulations

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<sup>5</sup> The Department of State has adopted rules that set out the style and requirements of the initiative amendment form. *See* s. 100.371(2), F.S.; Rule 1S-2.009(2), FLA. ADMIN. CODE.

<sup>6</sup> Section 100.371(3), F.S.

<sup>7</sup> The Secretary of State only submits the initiative petition to the Attorney General and Financial Impact Estimating Conference if three conditions have been met: the initiative sponsor has registered as a political committee; the sponsor has submitted the ballot title, substance, and text of the proposed revision or amendment to the Secretary of State; and the Secretary has received a letter from the Division of Elections confirming the veracity of the electors' signatures. Section 15.21, F.S. *See also* s. 3, Art. XI, FLA. CONST.

<sup>8</sup> Section 16.061, F.S. The text of the proposed amendment is required by the State Constitution to be limited to one subject. Sec. 3, Art. XI, FLA. CONST. The wording of the ballot title and summary "shall be printed in clear and unambiguous language on the ballot." *Florida Dept. of State v. Florida State Conference of NAACP Branches*, 43 So.3d 662, 665 (Fla. 2010); *see also* section 101.161(1), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> *See* section 99.097, F.S.

<sup>11</sup> Initiative petitions for constitutional amendments are only placed on the ballot at general elections; therefore, the deadline for that specific class of initiative petitions would be February 1 of the year of the general election. Section 100.371(1), F.S. The verification fee charged to the sponsoring political committee is 10 cents per signature or the actual cost of verification, whichever is less. Section 100.371(6)(e), F.S.

<sup>12</sup> Section 100.371(4), F.S.

<sup>13</sup> Section 100.371(4); s. 101.161, F.S.

<sup>14</sup> National Conference of State Legislatures, *Laws Governing Petition Circulators*, last updated May 8, 2009, <http://www.ncsl.org/default.aspx?tabid=16535>.

governing petition circulators.<sup>15</sup> Some states have also enacted pay-per-signature bans as it has been argued that a circulator's desire to earn more money may motivate fraudulent behavior in gathering additional signatures. There is currently a conflict among federal courts regarding the validity of pay-per-signature bans.<sup>16</sup>

Some groups have used fraudulent, illegal, or unethical practices among petition circulators, 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.<sup>17</sup> The extent to which these practices are occurring in Florida is a matter of some debate, although some reports suggest that Florida may not be immune.<sup>18</sup> There have been some reforms to the initiative petition process in Florida in recent years; with fraudulent activity being one of the concerns.<sup>19</sup>

### ***Challenge of Constitutional Amendments***

Amendments can be removed from the ballot if the ballot title and summary fail to inform the voter, in clear and unambiguous language, of the chief purpose of the amendment.<sup>20</sup> This has been referred to by the courts as the "accuracy requirement."<sup>21</sup> All constitutional amendments are subject to this requirement; including amendments proposed by the Legislature.<sup>22</sup> In recent years, numerous constitutional amendments proposed by the Legislature have been removed from the ballot by Florida courts for failing to be in "clear and unambiguous language." For example, the Florida Supreme Court removed three amendments adopted through legislative resolution from the 2010 general election ballot.<sup>23</sup>

If a court rules to remove an amendment from the ballot, there is no opportunity for the Legislature to correct a deficiency in the ballot title and ballot summary absent calling a special session.

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<sup>15</sup> Residency requirements have been challenged in courts with mixed results. *See Initiative & Referendum Institute v. Jaeger*, 241 F.3d 614 (8th Cir. 2001) (upheld North Dakota's residency requirement for circulators); *but see Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th Cir. 2008) (Oklahoma's residency requirement for circulators violated First Amendment). In a similar case, the U.S. Supreme Court ruled that a Colorado law requiring petition circulators to be *registered voters* was unconstitutional. *See Buckley v. American Constitutional Law Foundation*, 119 S.Ct. 636 (1999).

<sup>16</sup> *See Initiative & Referendum Institute v. Jaeger*, 241 F.3d 614 (8th Cir. 2001) (upheld North Dakota's pay-per-signature ban); *but see Independence Institute v. Buescher*, 718 F. Supp. 2d. 1257 (D. Colo. 2010) (preliminary injunction granted against enforcement of Colorado's pay-per-signature ban).

<sup>17</sup> *See generally* Ballot Initiative Strategy Center, *Ballot Integrity: A Broken System in Need of Solutions* (July 2010).

<sup>18</sup> For example, supervisors of elections found names of dead electors signed on petitions to get proposed constitutional amendments on the 2004 general election ballot. *See e.g.*, Joni James and Lucy Morgan, *Names of the dead found on petitions*, ST. PETERSBURG TIMES, Sept. 28, 2004, at 1B.

<sup>19</sup> The statutory mechanism to revoke one's signature from an initiative petition was adopted by the 2007 Legislature after concerns about fraud; but the signature-revocation mechanism has since been ruled unconstitutional by the Florida Supreme Court. *See Browning v. Florida Hometown Democracy*, 29 So.3d 1053 (Fla. 2010).

<sup>20</sup> *Roberts v. Doyle*, 43 So.3d 654 (Fla. 2010).

<sup>21</sup> *Armstrong v. Harris*, 773 So.2d 7, 11-12 (Fla. 2000); *see also* §101.161(1), F.S.

<sup>22</sup> *Id.* at 13.

<sup>23</sup> *Roberts v. Doyle*, 43 So.3d 654 (Fla. 2010); *Fla. Dept. of State v. Mangat*, 43 So.3d 642 (Fla. 2010); *Fla. Dept. of State v. Fla. State Conference of NAACP Branches*, 43 So.3d 662 (Fla. 2010).

### III. Effect of Proposed Changes:

**Section 1** amends s. 100.371(3), F.S., to change the validity of signatures on initiative petitions for a period of 4 years following the date of the signature to a period of 30 months following the date.

**Section 2** creates s. 100.372, F.S., to create definitions for “initiative sponsor,” “petition circulator,” and “paid petition circulator.”

This section establishes specific qualifications for paid petition circulators, including: a paid petition circulator must be at least 18 years of age and eligible to vote in Florida; a person is prohibited from acting as a paid petition circulator for 5 years following a conviction or a no contest plea to a criminal offense involving fraud, forgery, or identity theft in any jurisdiction; and a person is required to carry identification while acting as a paid petition circulator.

This section requires that a paid petition circulator may not be paid, directly or indirectly, based on the number of signatures that they receive on an initiative petition.

This section establishes that each initiative petition form presented by a paid petition circulator for another person’s signature must legibly identify the name of the paid petition circulator.

This section requires political committees sponsoring an initiative petition to only employ an individual as a paid petition circulator unless the individual has signed an affidavit attesting that they have not been convicted or have entered into a no contest plea to a criminal offense involving fraud, forgery, or identity theft in any jurisdiction. This section specifies that the sponsoring political committee must maintain records of the names, addresses, and affidavits of paid petition circulators for a minimum of four years. Additionally, the section prohibits the political committee sponsoring the initiative from compensating paid petition circulators based on the amount of initiative petition signatures obtained.

Any person who violates the provisions of this section commits a misdemeanor of the first degree. Additionally, the bill authorizes the Department of State to adopt rules to administer this section.

**Section 3** amends s. 101.161, F.S., to add clarifying language relating to the definitions of ballot summary and ballot title of constitutional amendments or other public measures placed on the ballot.

This section provides that any action for a judicial determination that a ballot title or summary is misleading or otherwise deficient in a constitutional amendment adopted by joint resolution of the Legislature must commence within 30 days after the joint resolution is filed with the Secretary of State or at least 150 days before the election that the amendment is to appear on the ballot, whichever date is later. Courts are directed to accord priority to a case challenging a joint resolution. This section provides that the Attorney General shall revise the ballot title and ballot summary to correct the deficiency, if appeals are declined, abandoned, or exhausted. If the judicial decision is not reversed, the revised ballot title and ballot summary for the amendment shall be placed on the ballot. This section allows for the court to retain continuing jurisdiction to

correct any revisions by the Attorney General that allegedly remain confusing, misleading, or deficient. This section provides that if a court determines that a constitutional amendment proposed by joint resolution of the Legislature has a deficient ballot title and ballot summary, it is not grounds for removal of the amendment from the ballot.

**Section 4** amends s. 104.185, F.S., to provide that an individual who alters an initiative petition form that has been signed by another person, without the other person's knowledge or consent, has committed a misdemeanor of the first degree.

**Sections 5, 6, and 7** amend ss. 15.21(2), 16.061(1), and 1011.73(b)(4), F.S., respectively, to replace references to "substance" with "ballot summary," to conform to the amendments incorporated in s. 101.161, F.S.

**Section 8** provides that if any provision of this act or its application is later held invalid; the invalid provision or application is severable and does not affect other provisions or applications of the act that may be executed independently of the invalid provision or application.

**Section 9** provides an effective date of July 1, 2011.

#### **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 may impose additional administrative costs on a political committee sponsoring a citizen initiative in the screening of paid petition circulators, which is indeterminate at this time.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**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.)

**CS by Rules on March 29, 2011:**

The CS differs from the original bill in that it:

- Specifies the time period to initiate a judicial challenge to an amendment to the State Constitution by legislative joint resolution.
- Requires reviewing courts to accord priority to cases challenging constitutional amendments adopted through legislative joint resolution.
- Requires the Attorney General to prepare a revised ballot title and ballot summary to correct a deficiency in the original ballot title and ballot summary, instead of the Secretary of State.
- Allows a reviewing court to retain continuing jurisdiction to correct any revisions by the Attorney General that allegedly remain confusing, misleading, or deficient.

**B. Amendments:**

None.