

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 Appropriations Subcommittee on Transportation, Tourism, and Economic Development

BILL: PCS/SB 7096 (318826)

INTRODUCER: Appropriations Subcommittee on Transportation, Tourism, and Economic Development; and Judiciary Committee

SUBJECT: Constitutional Amendments

DATE: April 11, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Stallard</u>	<u>Cibula</u>		JU Submitted as Committee Bill
1.	<u>Wells</u>	<u>Hrdlicka</u>	<u>ATD</u>	Recommend: Fav/CS
2.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7096 revises the requirements governing the process in which a constitutional amendment is proposed by a citizen initiative. More particularly, the bill:

- Requires a compensated “petition gatherer” to register with the Secretary of State, attesting that he or she has been a Florida resident for at least 29 days before registering and has not been convicted or found guilty of a felony of a crime involving fraud, dishonesty, or deceit.
- Disqualifies petitions from counting toward the number of petitions required for an initiative amendment to appear on the ballot if they are collected by:
 - An unregistered petition gatherer; or
 - A petition gatherer or entity who is compensated on a per-signature basis.
- Prohibits compensation to petition-gatherers on a per-signature basis by creating a first degree misdemeanor.
- Requires the Department of State to post position statements by any interested person on a ballot initiative online.
- Requires the Financial Impact Estimating Conference to determine the financial impact of the initiative on state and local economies.
- Requires the ballot for an initiative amendment to include:
 - The name of the amendment’s sponsor and the percentage of contributions received by the sponsor from in-state persons, excluding political parties, affiliated party committees, or political committees.

- A bold-print statement describing the financial impact of the initiative on both the state and local economies if the Financial Impact Estimating Conference determines that the measure will increase costs, decrease revenue, or have an indeterminate fiscal impact.
- Requires the supervisors of elections and the Department of State to furnish additional information on initiatives to electors.

The bill will increase state and local expenditures.

The bill is effective upon becoming law and applies to all initiative amendments proposed for the 2020 ballot and thereafter. However, nothing in the bill affects the validity of a petition gathered before or within 40 days after the bill becomes law.

II. Present Situation:

Overview

A citizen initiative is one of the five sources from which a constitutional amendment may originate.¹ Like any proposed amendment, an amendment that begins as a citizen initiative becomes effective when it is approved by at least 60 percent of the votes cast on the measure at a general election.² However, prior to appearing on a ballot, the law prescribes a multi-step process that must be completed in order for an amendment to qualify for the ballot. Many of these steps are designed to ensure the integrity of the ballot and to inform voters of the effect of the proposals.

Registration of the Sponsor and the Beginning of the Process

First, the sponsor must register as a political committee and submit the text of the proposed amendment to the Secretary of State. The sponsor must also submit the petition form on which the sponsor will collect signatures of the Florida voters who want the amendment placed on the ballot.³ Under the Florida Constitution, the number of signatures required for placement on the ballot is 8 percent of the number of people who voted in the last presidential election.⁴ For instance, 766,200 signatures were required to place an initiative amendment on the 2018 General Election ballot.⁵

Submission to the Supervisor of Elections

After obtaining the required number of signatures, the sponsor must present each signed form to the supervisor of elections in the signors' counties of residence.⁶ The supervisor of elections must check several things regarding each signature, including that it is the "original signature" of

¹ FLA. CONST. art. XI, s. 3. The other four sources are the Taxation and Budget Reform Commission, the Legislature, the Constitution Revision Commission, and a constitutional convention.

² FLA. CONST. art. XI, s. 5.

³ Sections 100.371(2) and 15.21(1), F.S.

⁴ However, the number must come from at least 14 of this state's 27 congressional districts. FLA. CONST. art. XI s. 3; Florida Dept. of State, *2018 Initiative Petition Handbook*, last updated March 16, 2017, p. 1, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> (last visited April 4, 2019).

⁵ Florida Dept. of State, *2018 Initiative Petition Handbook*, at p. 1.

⁶ Section 100.371(3), F.S.

a qualified and registered voter of that county.⁷ The Florida Supreme Court has recognized that the Legislature has a duty and obligation to ensure ballot integrity and that the verification of signatures on initiative petitions is an element of ballot integrity.⁸

Submission to the Secretary of State

The supervisor of elections must submit each qualifying signature to the Secretary of State.⁹ When the Secretary of State receives a certain number of qualifying signatures (roughly 10 percent what is required for placement on the ballot) he or she must submit the initiative amendment to the Attorney General and to the Financial Impact Estimating Conference (FIEC).¹⁰

Financial Review by the FIEC

The FIEC, within 45 days after receiving an initiative amendment, must complete an analysis and “financial impact statement.”¹¹ The FIEC must also complete a more-detailed “initiative financial information statement,” which the Department of State must distribute to supervisors of elections and must make available on the Internet.¹²

The financial impact statement, which is to be placed on the ballot, is a statement of 75 words or less as to “the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative.”¹³ The FIEC must immediately submit the financial impact statement to the Attorney General.¹⁴

Certification of Ballot Position

If the Secretary of State determines that it has received, by February 1 of the year of a general election year, valid and verified petition forms signed by the constitutionally required number of voters, he or she must assign the amendment a number and certify its ballot position.¹⁵

⁷ Section 100.371(3), F.S. This provision also requires the supervisor of elections to ensure, as to each signature, that the form contains the voter’s name, address, city, county, and voter registration number or date of birth.

⁸ *Citizens Proposition for Tax Relief v. Firestone*, 386 So. 2d 561, 566-567 (Fla. 1980); see also *Floridians Against Expanded Gambling v. Floridians for a Level Playing Field*, 945 So. 2d 553, 558 (Fla. 1st DCA 2006) (In this case, challengers to an initiative alleged that paid petition gatherers were paid up to \$6.50 per petition and that these individuals forged signatures on a large number of petitions.)

⁹ Section 100.371(4), F.S.

¹⁰ Section 15.21(3), F.S. The precise threshold is 10 percent of 8 percent of the people who voted in the previous presidential election in 7 of this state’s congressional districts. For district-by district breakdown of these numbers, see Florida Dept. of State, *2018 Initiative Petition Handbook*, at p. 8 (Appendix B: Congressional District Requirements).

¹¹ Section 100.371(5)(a), F.S.

¹² See s. 100.371(5)(e)3.-5., F.S.

¹³ Section 100.371(5)(c)2. and (d), F.S.

¹⁴ Section 100.371(5)(c)2., F.S.

¹⁵ Section 100.371(1) and (4), F.S.

Review by the Florida Supreme Court

The Attorney General must petition the Florida Supreme Court for an advisory opinion on the validity of the amendment.¹⁶ The Supreme Court applies a deferential standard of review of the initiative amendments which is limited to the legal sufficiency of the proposals.¹⁷ This review includes an examination of the ballot title and ballot summary for compliance with the requirement that they provide accurate information to voters. The Supreme Court has explained that

the gist of the constitutional accuracy requirement is simple: A ballot title and summary cannot either “fly under false colors” or “hide the ball” as to the amendment’s true effect.¹⁸

The Court, therefore, does not address the “merits or wisdom” of the amendment and has repeatedly stated that it has a duty to uphold a proposal unless it is “clearly and conclusively defective.”¹⁹ The Supreme Court’s review does, however, include the legal validity of the financial impact statement.²⁰ Nonetheless, even if the financial impact statement is deficient, it can be cured, time permitting.²¹ Even if it cannot be cured, the initiative amendment may still proceed to the ballot.²²

III. Effect of Proposed Changes:

The bill makes several changes to statutes regulating the citizen initiative process.

Regulation of Petition Gatherers (Section 1, amending s. 100.371, F.S.; Section 4, creating s. 104.186, F.S.)

Currently, the Florida Statutes do not appear to directly regulate “petition gatherers.” Under the bill, a petition gatherer is a person who works toward obtaining the required number of signatures for an initiative amendment to be placed on the general election ballot. If a person gathers petitions for compensation, he or she must be a resident of this state and must register with the Secretary of State before gathering signatures. When a compensated petition gatherer registers with the Secretary of State, he or she must provide:

- His or her name, date of birth, residential address;
- An attestation that he or she:
 - Has been a Florida resident for at least the preceeding 29 days; and
 - Has not been convicted or found guilty, regardless of adjudication, a felony in this state, any other state, or the U.S. of a crime involving fraud, dishonesty, or deceit.

Any signature collected by an unregistered compensated petition gatherer is invalid and does not count toward the number of required signatures to place an initiative amendment on the ballot.

¹⁶ FLA. CONST. art IV, s. 10.

¹⁷ *Advisory Opinion to the Attorney General re Rights of Electricity Consumers Regarding Solar Energy Choice*, 188 So. 3d 822, 827 (Fla. 2016) (internal citations omitted).

¹⁸ *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000).

¹⁹ *Armstrong*, 773 So. 2d. at 11.

²⁰ *See, e.g., Advisory Opinion*, 188 So. 3d at 833-34.

²¹ *See* s. 100.371(5)(c)2., F.S.

²² *See* s. 100.371(5)(c)3., F.S.

The Secretary of State must maintain a searchable database of registered petition gatherers.

The bill further prohibits a person from compensating a petition gatherer on a per-signature basis. A person who compensates a petition gatherer in this manner commits a first degree misdemeanor.²³ Moreover, a petition gathered in violation of this provision is void. The ban on per-signature compensation takes effect 41 days after the bill becomes law.

Required Estimate of an Initiative Amendment's Impact on the State and Local Economy (Section 1, amending s. 100.371, F.S.)

The bill requires the Financial Impact Estimating Conference (FIEC) to include in its analysis an additional estimation of the proposed amendment's impact on the state and local economies. Accordingly, the bill increases the FIEC's timeframe for completing its analysis from 45 days to 60 days after receiving an initiative amendment.

Initiative Amendment Ballots that are More Informative (Section 2, amending s. 101.161, F.S.)

In addition to the information required under current law, the bill requires the ballot for an initiative amendment to include:

- The name of the amendment's sponsor.
- The percentage of contributions received by the sponsor from in-state persons, excluding political parties, affiliated party committees, and political committees.²⁴
- A statement in bold print describing the fiscal impact of the initiative on the state and local economies (applies if the FIEC estimates that the amendment will increase costs or decrease revenues, a range of such costs or revenues, or an indeterminate fiscal impact).

Publication Requirements (Section 1, amending s. 100.371, F.S.; Section 3, amending s. 101.171, F.S.)

The bill provides that once the Secretary of State certifies a proposed amendment for ballot placement, an interested person may file a position statement not exceeding 50 words with the Secretary to be published on the Department of State's website page for constitutional amendments.

The bill also requires each county supervisor of elections to include a copy of:

- The FIEC's financial information summary in the publication or mailing of sample ballots;²⁵ and

²³ A first degree misdemeanor is punishable by up to 1 year of jail time and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

²⁴ Section 106.011(14), F.S., defines "person" as means an individual or a corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity. The term includes a political party, affiliated party committee, or political committee.

²⁵ Section 101.20, F.S., requires the supervisor of elections to publish a sample ballot in a newspaper of general circulation in the county. The supervisor *may* send a sample ballot to each registered elector by email, if opted by the elector, or by mail to each elector or household where there is an elector at least seven days before the election.

- The proposed amendment text in each voting booth.²⁶

Effective Date and Application (Sections 5 and 6)

The bill is effective upon becoming a law. Its changes apply to all initiative amendments proposed for the 2020 ballot and thereafter. However, nothing in the bill affects the validity of a petition gathered before or within 40 days after the bill becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenue.

Subsection (a) of Art. VII, s. 18 of the Florida Constitution provides that no county or municipality is bound by and general law requiring the expenditure of funds, unless the Legislature has determined that the law fulfills an important state interest and meets one additional factor, including approval of the law by each house of the Legislature by two-thirds vote of its membership.

However, these requirements do not apply to election laws.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Constitutionality of Pay-Per-Signature Ban and Petition Gatherer Residency Requirements

Two of the bill's key provisions have been upheld as constitutional by some courts, yet found unconstitutional by others.

²⁶ Section 101.171, F.S., requires the Department of State to provide each supervisor of elections a sufficient number of copies of any amendment to the constitution, either in poster or booklet form.

At least two courts, including a federal appellate court, have upheld in-state residency requirements for petition gatherers.²⁷ However, at least four federal appellate courts have held that these prohibitions violated citizens' First Amendment free speech rights.²⁸

Bans on compensating petition gatherers on a per-signature basis have had similarly mixed reviews by the courts. One federal appellate court has upheld a ban.²⁹ However, two federal trial courts have struck down these bans as violations, again, of First Amendment free speech rights.³⁰

Florida Case Law on Regulation of the Citizen Initiative Process in General

The Florida Supreme Court's opinion in *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1058 (Fla. 2010), declared a statutory scheme allowing a person to revoke a signature on an initiative petition was unconstitutional. In reaching its conclusion, the Court provided the following rule for assessing the constitutionality of a law regulating citizen initiative amendments:

[L]egislative and executive measures affecting the initiative process that are neither expressly authorized in article XI, sections 3 and 5, nor implicitly contemplated by these constitutional provisions, must be necessary for ballot integrity.

Nonetheless, the Court acknowledged that "the Legislature and Secretary of State have an obligation to ensure ballot integrity and a valid election," yet have only "*limited authority* to adopt regulations that affect the initiative process."³¹

It is not clear that any of the bill's measures are expressly authorized in Art. XI, ss. 3 or 5 of the Florida Constitution. However, they might be implicitly contemplated by these provisions. Article XI, s. 3 of the Florida Constitution reserves the power to propose amendments by initiative to the "people." This bill might be implicitly contemplated by that reservation of power as it appears intended to inform voters of the extent to which a proposed amendment is supported by people in this state and to supply additional information about the potential fiscal impact of constitutional amendments on state residents.

²⁷ See *Initiative & Referendum Inst. v. Jaeger*, 241 F. 3d 614 (8th Cir. 2001) (holding that North Dakota's prohibition against nonresident petition gatherers "does not unduly restrict speech"); *Hart v. Sec'y of State*, 715 A. 2d 165 (Maine 1998).

²⁸ See *Libertarian Party of Virginia v. Judd*, 718 F. 3d 308 (4th Cir. 2013); *Yes on Term Limits, Inc. v. Savage*, 550 F. 3d 1023 (10th Cir. 2008); *Nader v. Blackwell*, 545 F. 3d 459 (6th Cir. 2008); *Nader v. Brewer*, 531 F. 3d 1028 (9th Cir. 2008).

²⁹ See *Prete v. Bradbury*, 438 F. 3d 949 (9th Cir. 2006).

³⁰ See *Limit v. Maleng*, 874 F. Supp. 1138 (W.D. Wa. 1994); *Idaho Coalition United for Bears v. Cenarrusa*, 234 F. Supp. 2d 1159 (D. Idaho 2001).

³¹ *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1057-58 (Fla. 2010) (quoting *Smith v. Coalition to Reduce Class Size*, 827 So. 2d 959, 962 (Fla. 2002)).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Initiative petition gatherers will be required to register with the Department of State and will not be permitted to be paid based a upon per-signature compensation structure.

C. Government Sector Impact:

The bill will result in increased costs to state and local governments.

The bill requires the Secretary of State to post position statements on proposed initiative amendments on its website and to create a registry of compensated petition-gatherers that is searchable and includes specific information. The bill also requires the FIEC and the Florida Supreme Court to perform more analyses than under current law.

The bill requires the Department of State to provide each supervisor of elections a sufficient number of copies of any amendment to the constitution, either in poster or booklet form, to be posed or available at each voting booth. The cost to the department to furnish the sufficient number of copies is indeterminate and would be based upon the number of voting booths each supervisor of elections may set up for the election.

The bill requires each supervisor of elections to include a copy of the financial information summary in the publication of the sample ballot in the newspaper of general circulation in the county or in the mailing of the sample ballots to electors, should supervisors of elections choose to make such mailings. This will increase costs to the supervisors of elections, dependent on whether the supervisor decides to include the summary in the publication in the newspaper or in the mailing of sample ballots or both.

The bill creates a new first degree misdemeanor, which could increase local jail populations or increase fines collected. The fiscal impact of this new criminal penalty is expected to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 100.371, 101.161, and 101.171.

This bill creates section 104.186 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on April 9, 2019:

The committee substitute requires a petition gatherer to attest that he or she has not been convicted or found guilty of a felony for fraud, dishonesty, or deceit.

- B. **Amendments:**

None.