

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 7096

INTRODUCER: Judiciary Committee

SUBJECT: Constitutional Amendments

DATE: April 3, 2019

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Stallard</u>	<u>Cibula</u>	_____	<b>JU Submitted as Comm. Bill/Fav</b>

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## I. Summary:

SB 7096 revises the regulations 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 Florida resident for at least 29 days before registering;
- 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 gatherers; or
  - A petition gatherer or entity who is compensated on a per-signature basis;
- Prohibits compensation to petition-gatherers on a per-signature basis; and
- Requires the ballot for an initiative amendment to include:
  - 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.
  - 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.

## II. Present Situation:

### Overview

A citizen initiative is one of the five sources from which a constitutional amendment may originate.<sup>1</sup> 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. 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

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

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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> For instance, 766,200 signatures were required to place an initiative amendment on the 2018 General Election ballot.<sup>5</sup>

### **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' county of residence.<sup>6</sup> The supervisor must check several things regarding each signature, including that it is the "original signature" of a qualified and registered voter of that county.<sup>7</sup> 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.<sup>8</sup>

### **Submission to the Secretary of State**

Then, the supervisor must submit each qualifying signature to the Secretary of State.<sup>9</sup> 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).<sup>10</sup>

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<sup>2</sup> Section 100.371(2), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> 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*, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf>.

<sup>5</sup> Florida Dept. of State, *2018 Initiative Petition Handbook*, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf>.

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

<sup>7</sup> 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.

<sup>8</sup> *Citizens for Tax Relief v. Firestone*, 386 So. 2d 561, 566-67 (Fla. 1990); *see also Floridian Against Expanded Gambling v. Floridians for a Level Playing Field*, 945 So. 2d 553, 557 (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.).

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

<sup>10</sup> Section 15.21, 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 (Appendix B: Congressional District Requirements)*, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf>.

### **Financial Review by the FIEC**

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

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.”<sup>13</sup> The FIEC must submit the financial impact statement to the Attorney General and Secretary of State.<sup>14</sup>

### **Certification of Ballot Position**

If the Secretary of State determines that it has received, by February 21 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.<sup>15</sup>

### **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.<sup>16</sup> The Supreme Court applies a deferential standard of review of the initiative amendments which is limited to the legal sufficiency of the proposals.<sup>17</sup> 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.<sup>18</sup>

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.”<sup>19</sup> The Supreme Court’s review does, however, include the legal validity of the financial impact statement.<sup>20</sup> Nonetheless, even if the financial impact statement it is deficient, it

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<sup>11</sup> Section 100.371(5)(a), F.S.

<sup>12</sup> See s. 100.371(5)(e)4.-5., F.S.

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

<sup>14</sup> *Id.*

<sup>15</sup> Section 100.371(1), F.S.

<sup>16</sup> FLA. CONST. art IV, s. 10.

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

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

<sup>19</sup> *Id.*

<sup>20</sup> See, e.g., *id.* at 833-34.

can be cured, time permitting.<sup>21</sup> Even if it cannot be cured, the initiative amendment may still proceed to the ballot.<sup>22</sup>

### **III. Effect of Proposed Changes:**

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

#### **Regulation of Petition Gatherers**

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, as well as his or her “attestation that he or she is a Florida resident.”

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

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. 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**

The bill requires the Financial Impact Estimating Conference (FIEC) to include in its analysis an additional estimation: 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.

#### **Initiative Amendment Ballots that are More Informative**

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, or political committees.
- If the amendment will cost money or have an indeterminate fiscal impact, a statement in bold print describing the impact of the initiative on the state and local economies.

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<sup>21</sup> See s. 100.571(5)(c), F.S.

<sup>22</sup> See s. 100.571(5)(c)3., F.S.

### **Publication Requirements**

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.

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

- The FIEC's financial information summaries in the publication or mailing for sample ballots; and
- The proposed amendment text in each voting booth.

### **Effective Date and Application**

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's effective date.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

This bill may require supervisors of elections to spend additional funds but the expenditures are likely de minimis.

### **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.

At least two courts, including a federal appellate court, have upheld in-state residency requirements for petition gatherers.<sup>23</sup> However, at least four federal appellate courts have held that these prohibitions violated citizens' First Amendment free speech rights.<sup>24</sup>

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.<sup>25</sup> However, two federal trial courts have struck down these bans as violations, again, of First Amendment free speech rights.<sup>26</sup>

### **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. 2016), 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."<sup>27</sup>

It is not clear that any of the bill's measures are expressly authorized in article XI, sections 3 or 5 of the Florida Constitution. However, they might be implicitly contemplated by these provisions. Article XI, section 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.

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<sup>23</sup> See *Initiative & Referendum Inst. v. Jaeger*, 241 F. 3d 614 (8th Cir. 2001) (holding that North Dakota's proscription against nonresident petition gatherers "does not unduly restrict speech"); *Hart v. Sec'y of State*, 715 A. 2d 165 (Maine 1998).

<sup>24</sup> 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).

<sup>25</sup> See *Prete v. Bradbury*, 438 F. 3d 949 (9th Cir. 2006).

<sup>26</sup> 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).

<sup>27</sup> *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1057-58 (Fla. 2016) (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:**

None.

**C. Government Sector Impact:**

The bill may have a negative fiscal impact on state and local government for the following reasons. The bill requires the Secretary of State to post position statements on proposed initiative amendments and to create a registry of petition-gatherers. It also requires the FIEC and the Florida Supreme Court to perform more analyses than under current law. Additionally, the bill also requires supervisors of elections to include a financial information summary for each initiative amendment on their websites. Finally, the bill creates a new crime, which could increase the jail population.

**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 the following section 104.186 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.