

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7111      PCB JDC 19-01      Constitutional Amendments  
**SPONSOR(S):** State Affairs Committee; Judiciary Committee; Grant, J.  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 7096

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	12 Y, 6 N	Jones	Poche
1) State Affairs Committee	15 Y, 8 N, As CS	Toliver	Williamson

### SUMMARY ANALYSIS

The Florida Constitution is the charter of the liberties of Floridians. It may be amended only if the voters approve an amendment originating from the Legislature, the Constitution Revision Commission, the Taxation and Budget Reform Commission, a constitutional convention, or a citizen initiative. For an amendment proposed by citizen initiative to be placed in the constitution:

- A sponsor must register as a Florida political committee and gather a sufficient number of signatures from Florida voters;
- The Supreme Court must review the proposed amendment to ensure legal compliance;
- The Financial Impact Estimating Conference (FIEC) must analyze the amendment's fiscal impact; and
- At least 60 percent of the voters voting on the amendment must vote yes.

The bill changes the process for amending the constitution by:

- Requiring the sponsor of a citizen initiative to register with the Secretary of State (Secretary) prior to obtaining signatures, and requiring the sponsor to provide the name, date of birth, and address of each petition circulator that was used.
- Prohibiting the payment of a petition circulator based on the number of petitions gathered.
- Requiring the Secretary to publish on the Department of State's website position statements received from interested persons on amendments proposed by citizen initiative.
- Directing the FIEC to:
  - Estimate the amendment's impact on the state and local economy; and
  - Complete its analysis and financial impact statement for the ballot within 60 days after receipt of a proposed amendment instead of 45 days, unless the Legislature is in session in which case, the time period is tolled.
- Requiring each 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.
- Requiring the ballot for citizen initiatives to include the percentage of contributions received by the sponsor from certain in-state persons and a statement as to whether any out-of-state petition circulators were used to collect any petitions.
- Requiring the ballot to include a fiscal impact projection for amendments proposed by any method if it is estimated to result in increased costs, decreased revenues, or have an indeterminate fiscal impact.
- Requiring the ballot for an amendment proposed by citizen initiative or by the Legislature to include a determination by the Florida Supreme Court as to whether the proposed policy can be implemented by the Legislature without the need for a constitutional amendment.
- Directing the Attorney General, when seeking Florida Supreme Court review of an amendment, to ask the Court to address whether the proposed policy can be implemented by the Legislature without the need for a constitutional amendment, whether the amendment raises any constitutional infirmities, and identifying any undefined terms in the amendment that will have a substantive impact.

The bill may have an indeterminate negative impact on state and local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Florida Constitution is the charter of the liberties of Floridians.<sup>1</sup> It may be amended only if the voters approve an amendment originating from the Legislature, the Constitution Revision Commission, the Taxation and Budget Reform Commission, a constitutional convention, or a citizen initiative.<sup>2</sup> Any citizen initiative must embrace only one subject,<sup>3</sup> unless it concerns the limiting the power of government to raise revenue, but proposals originating from the other sources are not so limited.<sup>4</sup>

The Florida Constitution requires the sponsor of an amendment proposed by citizen initiative to obtain a specified number of signatures on a petition to place the proposal on the ballot.<sup>5</sup> The petition must contain the signatures of a number of voters equal to eight percent of the votes cast in the state in the preceding presidential election as well as eight percent of the vote cast in that election in each of at least half of the congressional districts of the state.<sup>6</sup> The number of signatures required for placement on the 2018 ballot was 766,200 with a specified number of that total required to come from at least 14 of the state's congressional districts.<sup>7</sup>

Prior to gathering signatures for an amendment proposed by citizen initiative, the sponsor of the proposed amendment must first register as a Florida political committee.<sup>8</sup> The sponsor then must gather the required number of signatures and after obtaining the signatures, present each signature to the appropriate supervisor of elections (supervisor) where the signee resides.<sup>9</sup> The supervisor must check<sup>10</sup> each signature to ensure the:

- Elector's original signature is recorded.
- Date is correctly recorded.
- Elector is a qualified and registered Florida voter.
- Form on which the signature is recorded contains the elector's name, address, city, county, and voter registration number or date of birth.<sup>11</sup>

The supervisors then submit their total numbers of valid signatures to the Secretary of State (Secretary).<sup>12</sup> Once a sponsor obtains verified signatures equal to 10 percent of the statewide requirement in at least 25 percent of Florida's congressional districts,<sup>13</sup> the Secretary sends the petition to the:

- Financial Impact Estimating Conference (FIEC)<sup>14</sup> to complete an analysis on the proposed amendment's fiscal impact within 45 days.

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<sup>1</sup> *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1064 (Fla. 2010) (internal citations omitted).

<sup>2</sup> Art. XI, Fla. Const.

<sup>3</sup> Art. XI, s. 3, Fla. Const.

<sup>4</sup> Art. XI, ss. 1, 2, 4, 6, Fla. Const.

<sup>5</sup> Art. XI, s. 3, Fla. Const.

<sup>6</sup> *Id.*

<sup>7</sup> FLORIDA DEPARTMENT OF STATE, 2018 Initiative Petition Handbook, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> (last visited Apr. 11, 2019).

<sup>8</sup> Ss. 100.371(2) and 106.03, F.S.

<sup>9</sup> S. 100.371(3), F.S.

<sup>10</sup> The sponsor is required to pay the supervisor the sum of 10 cents per signature checked or the actual cost of checking the signatures, whichever is less. S. 99.097(4), F.S.

<sup>11</sup> *Id.*

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

<sup>13</sup> For the 2018 and 2020 elections, the number is 76,632 and must come from at least seven congressional districts. FLORIDA DEPARTMENT OF STATE, 2018 Initiative Petition Handbook, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> (last visited Apr. 11, 2019).

<sup>14</sup> The Florida Constitution provides that the legislature must provide by general law for the provision of a statement to public regarding the probable financial impact of any amendment proposed by initiative. Art. XI, s. 5(c), Fla. Const. The legislature created the FIEC to review, analyze, and estimate the fiscal impact of constitutional amendments proposed by citizen initiative. It consists of four persons:

- Attorney General, who in turn petitions the Florida Supreme Court for an advisory opinion as to whether the proposed amendment complies with the single-subject requirement and other legal requirements.<sup>15</sup>

The FIEC is tasked with completing two documents: a financial impact statement and an initiative financial information statement.<sup>16</sup> The financial impact statement is placed on the ballot to inform voters whether the proposed amendment will increase or decrease costs or revenues, and if so, to what extent.<sup>17</sup> The lengthier initiative financial information statement is available on the websites of the Secretary and the Office of Economic and Demographic Research.<sup>18</sup> Each supervisor must include in the publication and mailing of sample ballots the internet addresses where the FIEC's full information statements can be viewed.<sup>19</sup> A summary of the information statements is also available at each polling place, at the main office of the supervisor, upon request, and on the supervisor's website.<sup>20</sup>

If the Secretary determines that the sponsor has collected the required number of verified signatures by February 1 of the election year,<sup>21</sup> he or she assigns an amendment number and certifies the proposed amendment's ballot position.<sup>22</sup> When the amendment is printed on the ballot, the ballot must also include:

- A ballot summary of up to 75 words summarizing the amendment's purpose.
- A ballot title including a caption of up to 15 words describing the amendment.
- The financial impact statement prepared by the FIEC.<sup>23</sup>

At the general election, if at least 60 percent of the voters voting on the amendment vote yes,<sup>24</sup> the proposed amendment is incorporated into the Florida Constitution.<sup>25</sup> The amendment becomes effective on the first Tuesday after the first Monday in January following the election or on a different date if specified in the amendment.<sup>26</sup>

## Effect of Proposed Changes

### Initiative Sponsors and Petition Circulators

The bill requires the sponsor of an amendment proposed through the citizen initiative process to register with the Secretary before collecting signatures. The sponsor must provide to the Secretary his or her name or if the sponsor is an organization, the names of the organization's officers, its address, and the organization's registered agent in the state. When a sponsor registers with the Secretary, he or she must also provide the name, date of birth, permanent address, and temporary address of every petition circulator<sup>27</sup> used to collect signatures. In addition, the sponsor must provide a sworn statement from each petition circulator stating he or she will obey all applicable state laws and rules. Any petition

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one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research or a designee; one professional Senate staffer; and one professional House staffer. S. 100.371(5)(c)1., F.S.

<sup>15</sup> S. 16.061, F.S.; FLORIDA DEPARTMENT OF STATE, 2018 Initiative Petition Handbook, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> (last visited Apr. 11, 2019); art. IV, s. 10, Fla. Const.; art. XI, s. 3, Fla. Const.; *Advisory Opinion to the Attorney General re Rights of Electricity Consumers Regarding Solar Energy Choice*, 188 So. 3d 822 (Fla. 2016) (outlining the scope of the Supreme Court's analysis when determining whether to approve a constitutional amendment for placement on the ballot).

<sup>16</sup> S. 100.371(5), F.S.

<sup>17</sup> Ss. 100.371(5)(c) and 101.161(1), F.S.

<sup>18</sup> S. 100.371(5)(e)5., F.S.

<sup>19</sup> Ss. 100.371(5)(e)5. and 101.20, F.S.

<sup>20</sup> S. 100.371(5)(e), F.S.

<sup>21</sup> Art. XI, s. 5(b), Fla. Const.

<sup>22</sup> Ss. 100.371(4) and 101.161, F.S.

<sup>23</sup> S. 101.161(1), F.S.

<sup>24</sup> Art. XI, s. 5(e), Fla. Const.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> The bill defines the term "petition circulator" to mean an entity or individual who collects a signature for the purpose of qualifying a proposed constitutional amendment for ballot placement.

collected by a petition circulator is invalid if the sponsor was not registered with the Secretary prior to collection.

The bill requires petition forms to be submitted to the supervisor within 10 days of having been signed. The sponsor will incur a fine of \$50 for each petition form submitted to the supervisor more than 10 days after the elector has signed the petition. The sponsor will incur a fine of \$500 for each petition form not submitted to the supervisor at all. If the sponsor acted willfully, the fines are raised to \$250 and \$1,000 per petition respectively. The maximum fine that may be assessed against a sponsor in a calendar year is \$1,000. Any petition delivered after the 10-day window is invalid. However, a supervisor must immediately notify an elector if his or her signature was invalidated because it was delivered late or because the sponsor was not registered with the Secretary. The elector can then cure his or her invalidated signature by submitting a new petition form directly to the supervisor. The bill requires the Division of Elections to promulgate a complaint form for any elector whose signature is forged or misrepresented, or whose petition form was not delivered to the supervisor.

At the same time that a sponsor submits a petition to the supervisor for verification, he or she must disclose whether an out-of-state petition circulator was used to collect signatures. If a sponsor willfully submits false information or fails to disclose this information, the bill provides that he or she commits a felony of the third degree.

The bill makes it a first-degree misdemeanor to compensate an initiative petition circulator based on the number of petitions gathered.

#### Financial Impact Estimating Conference (FIEC)

The bill allows the FIEC an extra 15 days to complete its analysis after receiving a proposed amendment. The time period is tolled during any period in which the Legislature is in session. The FIEC must include in its analysis an estimation of the proposed amendment's impact on the state and local economy.

The bill increases the number of words the FIEC is allotted for its financial impact statement from 75 to 100. The bill requires the Coordinator of the Office of Economic and Demographic Research, upon receipt of a proposed revision or amendment, to contact the sponsor to request an official list of all persons authorized to speak on their behalf to the FIEC.

#### Ballot Requirements

The bill requires the Attorney General, upon petitioning the Florida Supreme Court to review the legality of a proposed amendment, to ask the Court to:

- Determine whether the proposed policy to be implemented by the amendment could be implemented by the Legislature without amending the constitution;
- Identify any undefined terms in the amendment that will have a substantive impact; and
- Address whether the proposed amendment raises any potential constitutional infirmities or inconsistencies

In addition to the ballot summary, the bill requires the ballot to include the following information, if applicable:

- The percentage of contributions received by the sponsor from in-state persons,<sup>28</sup> excluding political parties, affiliated party committees, or political committees.
- A statement indicating whether an out-of-state petition circulator was used to collect any petitions.

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<sup>28</sup> For purposes of the bill, "person" includes an individual, corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity. *Cf. s.* 106.011(14), F.S.

- If the fiscal impact projection<sup>29</sup> of the amendment estimates that the amendment will cost money or have an indeterminate fiscal impact, a statement in bold capital letters that passage of the amendment may result in higher taxes or reduced funding for programs.
- The Florida Supreme Court's determination, rendered as a "yes" or a "no," as to whether the amendment's proposed policy can be implemented by the Legislature without the need for a constitutional amendment
- The Florida Supreme Court's determination, rendered as a "yes" or a "no," as to whether the proposed policy raises any constitutional infirmities or inconsistencies.

### Publication Requirements

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

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

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

### Severability Clause

The bill provides that if any provision contained within the bill is found to be invalid, the remaining portion of the bill is severed from that provision and is to be given full legal effect.

### Effective Date

The bill is effective upon becoming a law, and its changes apply to all initiative amendments proposed for the 2020 ballot. However, nothing in the bill affects the validity of a petition gathered before the bill's effective date.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 97.021, F.S., relating to definitions.

**Section 2:** Amends s. 100.371, F.S., relating to initiatives; procedure for placement on ballot.

**Section 3:** Amends s. 101.161, F.S., relating to referenda; ballots.

**Section 4:** Amends s. 101.171, F.S., relating to copy of constitutional amendment to be available at voting locations.

**Section 5:** Creates s. 104.186, F.S., relating to initiative petitions; prohibition on compensation based on the number of petitions gathered.

**Section 6:** Creates an unnumbered section of law providing that if any provision contained within the bill is found to be invalid, the remaining portion of the bill is severed from that provision.

**Section 7:** Creates an unnumbered section clarifying that the bill applies to all revisions or amendments by initiative proposed for the 2020 election ballot, but that nothing in the bill affects the validity of any petition gathered prior to the bill's effective date.

**Section 8:** Provides an effective date upon becoming a law.

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<sup>29</sup> The bill defines the term "fiscal impact projection" to mean the estimated financial impact of a proposed constitutional amendment, as embodied in a financial impact statement prepared by the FIEC (for amendments proposed by citizen initiative), an estimate provided in the constitution revision commission proposal (for revisions proposed by the constitution revision commission), an estimate provided in the taxation and budget reform commission proposal (for amendments proposed by the taxation and budget reform commission), an estimate provided by the proposed revision filed with the records custodian (for amendments proposed by constitutional convention), and the financial impact included in the staff analysis of a joint resolution (for amendments proposed by the Legislature).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None.
2. Expenditures:  
The bill requires the:
  - Secretary to accept position statements on constitutional amendments from interested persons for publication on the Department of State's website.
  - FIEC to include in its estimations the economic impact of a proposed amendment on the state and local economy.
  - Florida Supreme Court to review additional factors for each citizen initiative.

These requirements may have an indeterminate negative fiscal impact on state government.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.
2. Expenditures:  
The bill requires supervisors to include a copy of each financial information summary on its website. This will likely have an insignificant negative fiscal impact. The bill also requires each supervisor to include additional text on each ballot summary for initiative measures and to include a copy of the financial summary in any publication or mailing of sample ballots, which may have an indeterminate negative fiscal impact. The bill also creates a new first-degree misdemeanor for compensating petition circulators based on the number of petitions gathered, which could require extra jail beds.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:  
The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill places additional requirements on supervisors with respect to ballots and publication of information relating to proposed constitutional amendments; however, an exemption applies under Art. VII, s. 18(d), because the bill relates to election laws.
2. Other:  
The U.S. Supreme Court has held that states have a substantial interest in regulating the ballot-initiative process.<sup>30</sup> However, certain restrictions are unconstitutional under the First or Fourteenth Amendments to the U.S. Constitution, including:
  - Requiring a petition circulator to be a registered voter.<sup>31</sup>
  - Prohibiting a petition circulator from receiving any compensation whatsoever.<sup>32</sup>

<sup>30</sup> *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 204-05 (1999).

<sup>31</sup> *Id.* at 194-197.

<sup>32</sup> *Meyer v. Grant*, 486 U.S. 414, 416 (1988).

The constitutionality of regulating the ballot-initiative process by other methods is currently unresolved by the U.S. Supreme Court. As to whether a state may prohibit compensating petition circulators based on the number of signatures obtained, the Ninth Circuit Court of Appeals has held that such prohibition is constitutional.<sup>33</sup>

**B. RULE-MAKING AUTHORITY:**

The bill grants sufficient rule-making authority to the Department of State to implement the bill's provisions.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 28, 2019, the Judiciary Committee adopted one amendment and reported the bill favorably as amended. The amendment:

- Removed the requirement that the sponsor's name appear on the ballot.
- Made a technical change removing unnecessary language.

On April 18, 2019, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Defined petition circulator and fiscal impact projection;
- Removed the requirement that a petition circulator be a Florida resident;
- Required disclosure of whether an out-of-state petition circulator gathered signatures and required that information be printed on the ballot;
- Required a sponsor of a citizen initiative to register with the Secretary and submit certain information about each petition circulator;
- Required collected petition forms to be submitted to the supervisor within 10 days of obtaining the signature;
- Required fines be levied on sponsors of citizen initiatives if they return petitions later than 10 days after the signature was obtained or if they fail to return the petitions all together;
- Allowed an elector whose petition was rejected to cure his or her petition;
- Required the sponsor of the citizen initiative to submit a list of persons authorized to speak to the FIEC about the amendment;
- Required certain language to appear on the ballot for amendments;
- Required the Attorney General to ask the Florida Supreme Court whether a proposed amendment raises any constitutional infirmities or inconsistencies and for that information to be printed on the ballot; and
- Added a severability clause.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.

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<sup>33</sup> *Prete v. Bradbury*, 438 F.3d 949 (9th Cir. 2006) (Oregon provision prohibiting compensating petition circulators on the basis of the number of signatures obtained was constitutional as an exercise of the state's "important regulatory interest in preventing fraud and its appearances in its electoral processes"); *but see Citizens for Tax Reform v. Deters*, 518 F.3d 375 (6th Cir. 2008) (Ohio provision requiring that petition circulators be paid only on the basis of time worked violated the First Amendment).