

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 Committee on Judiciary

BILL: CS/CS/SB 1794

INTRODUCER: Judiciary Committee; Ethics and Elections Committee; and Senator Hutson

SUBJECT: Constitutional Amendments Proposed by Initiative

DATE: February 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	Fav/CS
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1794 modifies the process for amending the State Constitution. Most of the bill's changes apply only to citizen initiative amendments, including where the bill:

- Expands the scope of Florida Supreme Court review to include facial validity of the proposal under the U.S. Constitution.
- Narrows the role of the Financial Impact Estimating Conference (FIEC) to estimating the proposal's financial impact on state and local governments and the state budget (removing impacts to the local governments and *economies*).
- Statutorily authorizes the Senate President and House Speaker to direct legislative staff to analyze any other impacts of the proposal.
- Increases the number of petition signatures that must be verified before the Secretary of State refers the proposal to the Attorney General and the FIEC.
- Creates a cause of action for citizens to challenge a petition circulator's registration.
- Provides that petition signatures are valid until the next February 1 of an even-numbered year, which prevents signatures from being held over for a subsequent election.
- Requires a supervisor of elections to charge the actual cost for verifying a petition signature in lieu of the current rule of the lesser of 10 cents/signature or the actual cost, and requiring the Department of State to determine the cost (which may not exceed \$1/signature) annually by rule.
- Providing that a signature obtained illegally, including by an unregistered paid petition circulator, is invalid.

- Allowing the Division of Elections or a supervisor of elections to provide a petition form in PDF format, with printing costs to be borne by the sponsor.
- Requiring the ballot for a citizen initiative include a bold-font statement that the FIEC:
 - Estimates a positive financial impact;
 - Estimates an indeterminate financial impact;
 - Estimates a net negative impact on the state budget or cannot reach a consensus, along with indicating the *possible* negative tax and government services impacts.

Additionally, the bill requires every proposed constitutional amendment—not just one originating as a citizen initiative—to be reviewed by the FIEC and requires the ballot for every amendment to include a financial impact statement.

The bill is effective upon becoming a law and, by its express terms, applies to 2020 ballot initiatives, though it *does not* “affect the validity of any petition form gathered before the effective date of this act or any contract entered into before the effective date of this act.”

II. Present Situation:

The Florida Constitution 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.¹ A citizen initiative must embrace only one subject (unless it concerns limiting the power of government to raise revenue),² but proposals originating from the other sources are not so limited.³

Citizen Initiative Process

The 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.⁴ 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.⁵ The number of signatures required for placement on the 2018 or 2020 ballot is 766,200, with a specified number of that total required to come from at least 14 of the state’s congressional districts.⁶

Before gathering signatures for an amendment proposed by citizen initiative, the sponsor of the proposed amendment must register as a Florida political committee.⁷ The sponsor must then gather the required number of signatures. The sponsor must present each signature to the appropriate supervisor of elections (supervisor) where the signee resides within 30 days after gathering the signature for validation.⁸

¹ FLA. CONST. art. XI.

² FLA. CONST. art. XI.

³ FLA. CONST. art. XI, ss. 1, 2, 4, 6.

⁴ FLA. CONST. art. XI, s. 3.

⁵ *Id.*

⁶ Florida Dep’t of State, *2018 Initiative Petition Handbook*, <https://dos.myflorida.com/media/697659/initiative-petitionhandbook-2018-election-cycle-eng.pdf> (last visited Feb. 6, 2020) [hereinafter DOS, *Initiative Petition Handbook*].

⁷ Sections 100.371(2) and 106.03, F.S.

⁸ Section 100.371(7), F.S.

If the sponsor uses a paid petition circulator to gather signatures, the circulator must register with the Secretary before collecting signatures.⁹ Failure of a paid petition circulator to register before collecting petition forms is a second degree misdemeanor.¹⁰ The paid petition circulator must provide to the Secretary:

- His or her name, permanent address, temporary address, and date of birth.
- A Florida address where the circulator will accept service of process.
- A statement that the circulator consents to the jurisdiction of Florida courts.
- Any information required by the Secretary to verify the circulator's identity or address.¹¹

In addition, a paid petition circulator must provide an affidavit with each petition form gathered. The affidavit must include the circulator's name and permanent address and a signed statement verifying, under penalties of perjury, that the petition was signed in the circulator's presence.¹²

The date when the elector signs the petition is presumed to be the date of collection.¹³ The sponsor incurs a fine of \$50 for each petition form submitted to the supervisor more than 30 days after the elector signed the petition. The sponsor incurs 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.¹⁴ The sponsor can avoid fines if it shows that failure to deliver the petitions was due to *force majeure*¹⁵ or impossibility of performance.¹⁶ If the Secretary believes these provisions have been violated, the Secretary may refer the matter to the Attorney General for enforcement.¹⁷

The supervisor of elections or the Division of Elections (division) within the Department of State must provide printed petition forms to registered paid petition circulators.¹⁸ The forms must contain information identifying the paid petition circulator.¹⁹ The division must maintain a database of registered paid petition circulators and petition forms assigned to each, updating the database daily with respect to petition forms.²⁰ The supervisor must provide to the division information relating to petition forms assigned to and received from paid petition circulators.²¹ When a sponsor delivers the collected signatures to the supervisor, the supervisor must check²² each signature to ensure that the:

- Elector's original signature is recorded.

⁹ Section 100.371(3), F.S.

¹⁰ Section 104.187, F.S. *See also* s. 104.186, F.S. (making it a first-degree misdemeanor to compensate a petition circulator based on the number of petitions gathered).

¹¹ Section 100.371(4), F.S.

¹² Section 100.371(5), F.S.

¹³ Section 100.371(10), F.S.

¹⁴ Section 100.371(7)(a), F.S.

¹⁵ "*Force majeure*" refers to circumstances that cannot be foreseen or controlled, which prevent a person from completing a legal obligation. *See Black's Law Dictionary* 673 (8th ed. 2004).

¹⁶ Section 100.371(7)(b), F.S.

¹⁷ Section 100.371(8), F.S.

¹⁸ Section 100.371(6), F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² 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. Section 99.097(4), F.S.

- Elector accurately recorded the date on which he or she signed the form.
- 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.²³

A petition form is invalid if any of these requirements is not met.²⁴ The supervisors submit their total numbers of valid signatures to the Secretary of State (Secretary).²⁵ Once a sponsor obtains verified signatures equal to 10 percent of the statewide requirement in at least 25 percent of Florida's congressional districts,²⁶ the Secretary must send the petition to the:

- Financial Impact Estimating Conference²⁷ to complete an analysis on the proposed amendment's fiscal impact within 75 days.²⁸
- 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
 - The ballot title and summary are clear, unambiguous, and otherwise comply with s. 101.161, F.S.²⁹

Fiscal Impact Estimating Conference (FIEC)

After it receives a proposed citizen initiative amendment from the Secretary, the FIEC estimates the proposal's projected impacts on the costs and revenues of state and local governments, the state and local economies, and the state budget. The FIEC must complete two documents: a financial impact statement and an initiative financial information statement.³⁰

The financial impact statement is placed on the ballot to inform voters of the financial impacts the proposed amendment will have.³¹ The supervisor must include a copy of the FIEC's financial information summaries in the publication or mailing for sample ballots.

In addition, if the financial impact statement estimates that the proposal will cause increased costs, decreased revenues, a negative impact on the economy, or an indeterminate fiscal impact, the ballot must include a statement indicating such effect in **bold font**.³²

²³ Section 100.371(11), F.S.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Section 15.21(3), F.S. For the 2018 and 2020 elections, the number is 76,632 and must come from at least seven congressional districts. DOS, *Initiative Petition Handbook*.

²⁷ The Florida Constitution provides that the Legislature must provide by general law for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative. FLA. CONST. art. XI, s. 5(c). 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:

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. Section 100.371(13)(c)1., F.S.

²⁸ See s. 100.371(13), F.S. (providing for the 75-day timeframe, which is tolled when the Legislature is in session).

²⁹ *Advisory Opinion to the Attorney General Re: Citizenship Requirements to Vote in Florida Elections*, 2020 WL 238555 (Fla. 2020).

³⁰ Section 100.371(13), F.S.

³¹ Section 100.371(13)(a), F.S.

³² Section 100.371(13)(d), F.S.

The Secretary of State and the Office of Economic and Demographic Research must place the lengthier initiative financial information statement on their respective websites.³³ 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 and a summary of the statements.³⁴ The supervisors also must place a summary of the information statements at each polling place, at the main office of the supervisor, upon request, and on the supervisor's website.³⁵

Ballot Placement and Passage

If the Secretary determines that the sponsor has collected the required number of verified signatures by February 1 of the election year,³⁶ he or she assigns an amendment number and certifies the proposed amendment's ballot position.³⁷ When the proposal is printed on the ballot, the ballot must also include:

- A ballot summary not exceeding 75 words summarizing the proposal's purpose.
- A ballot title having a caption that does not exceed 15 words describing the proposal.
- The financial impact statement prepared by the FIEC.³⁸

At the general election, if at least 60 percent of the voters voting on the proposed amendment vote yes,³⁹ the proposed amendment is incorporated into the Florida Constitution.⁴⁰ 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.⁴¹

III. Effect of Proposed Changes:

Regarding proposed citizen initiative amendments, the bill changes the deadline for gathering signatures, the Fiscal Impact Estimating Conference (FIEC) analysis process, the ballot language requirements, and the requirements for supervisors of elections. The bill also subjects every proposed amendment—not just those originating as citizen initiatives—to review by the FIEC.

Petition Circulators and Petition Form Signatures

The bill creates a cause of action in circuit court for citizens to challenge a petition circulator's registration, and requires the court to enjoin a respondent not in compliance from collecting signatures or initiative petitions for compensation until such person is lawfully registered. Further, the bill invalidates any illegally-obtained signature, including ones that are collected by paid petition circulators who were not validly registered at the time they collected the signature.

³³ Section 100.371(13)(e)5., F.S.

³⁴ Sections 100.371(13)(e)5. and 101.20, F.S.

³⁵ Section 100.371(13)(e), F.S.

³⁶ FLA. CONST. art. XI, s. 5(b).

³⁷ Sections 100.371(12) and 101.161, F.S.

³⁸ Section 101.161(1), F.S.

³⁹ FLA. CONST. art. XI, s. 5(e).

⁴⁰ *Id.*

⁴¹ *Id.*

The bill also provides that a signature on a petition form is valid only until February 1 of the next even-numbered year instead of for two years from the date signed. This change ties the current two-year signature validity period to the Secretary's ballot designation deadline.

Analysis of the Projected Impacts of Proposed Amendments

The bill changes the process for the Secretary of State to refer a proposed citizen initiative amendment for further analysis by increasing the number of verified signatures required to trigger the referral of a citizen initiative. Current law requires that the verified signatures equal 10 percent of the signatures required to place an initiative on the ballot. Moreover, the signatures must be comprised of at least 10 percent of the electors⁴² in each of one-eighth of the congressional districts. The bill requires that the verified signatures equal 33 percent of the signatures required to place an initiative on the ballot. The bill also requires that this threshold be met in each of at least one-third of the state's congressional districts.

Once the threshold for referral is met, the bill requires the Secretary to refer the proposed citizen initiative amendment to the Senate President and House Speaker in addition to the Attorney General and the FIEC.

The Senate President and House Speaker are authorized by the bill to direct legislative staff to conduct an analysis of a citizen initiative proposal, which may include, but is not limited to, whether the proposal:

- Has undefined terms;
- Conflicts with an existing provision of the Florida Constitution; or,
- Will cause unintended consequences or economic impacts.

Finally, the bill requires the Attorney General, upon petitioning the Florida Supreme Court to review the legality of a proposed citizen initiative amendment, to ask the Court whether it is facially invalid under the United States Constitution.

All Amendments Subjected to (Modified) FIEC Review

The bill subjects *all* proposed amendments⁴³—not just those originating as citizen initiatives—to FIEC analysis, which the bill modifies. Particularly, the FIEC is no longer required to estimate the proposal's projected impacts on the state and local economies. The FIEC must still produce a financial impact statement estimating the proposal's:

- Effect on increasing or decreasing revenues or costs to state or local governments; and,
- Overall impact to the state budget.

⁴² For this purpose, the number of electors is the number that voted in the last presidential election.

⁴³ The other sources from which an amendment may originate are the Legislature, the Constitution Revision Commission, the Taxation and Budget Reform Commission, and a constitutional convention.

Ballot Requirements – Financial Impact Estimation

As the bill subjects all proposed amendments to FIEC review, it also requires the ballot for any amendment to include a financial impact statement. Additionally, the ballot for any amendment must include a statement in bold capital font indicating that the FIEC:

- Estimates that the proposal will have a net negative impact on the state budget;
- Cannot determine the proposal’s financial impact due to ambiguities and uncertainties surrounding the amendment’s impact;
- Is unable to reach a consensus on the proposal’s financial impact; or
- Estimates that the proposal will have a positive impact on the state budget which may result in generating additional revenue.

If the first or third statement is included on the ballot, the statement must declare that the amendment “may result in higher taxes or a loss of government services in order to maintain a balanced State budget as required by the constitution.”

Supervisors of Elections

The bill requires a supervisor of elections to:

- Verify signatures within 60 days after receipt of the petition forms and the required fees, instead of within 30 days as under current law.
- Provide a copy of the proposed amendment text in each in a designated area of each polling location as determined by the supervisor. The Department of State is required to print and furnish each supervisor with a sufficient number of copies of the amendment in either poster or booklet form.
- Charge the actual cost for checking a petition form, as opposed to charging the lesser of the actual cost or 10 cents per signature. But the Department of State must determine the actual per-signature cost (which may not exceed \$1), promulgate the cost by rule in the Florida Administrative Code, and update the cost determination annually.

Severability Clause and Effective Date

The bill provides that if any provision contained within the bill is held invalid, the remaining portion of the bill, “to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

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 form gathered before the effective date.
- Contract entered into before the effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Initiative Petition Sponsors/Paid-Petition Gatherers

Allowing a supervisor to provide petition forms to initiative sponsors in PDF format instead of providing printed forms will likely increase a sponsor's printing costs. The costs are indeterminate at this time, and will vary from election-to-election and by county, based on the county's size and the number of initiatives/petitions involved.

Further, requiring initiative sponsors to remit to supervisors the *actual* cost of signature verification (in lieu of the current rule: the lesser of the actual cost or 10 cents per signature) may result in additional costs or additional savings to sponsors, depending on how efficient each county is at performing this task and the approach of the Department of State rule determining the actual costs.

C. Government Sector Impact:

State***Recurring Costs***

Additionally, the court system is anticipated to incur additional costs for proceedings challenging a petition circulator's registration status and Supreme Court proceedings to determine whether a proposed amendment facially invalid under the U.S. Constitution.⁴⁴ As the bill requires the FIEC to review of all proposed constitutional amendments, the costs associated with the reviews might increase.

⁴⁴ See Office of the State Courts Administrator, *2020 Judicial Impact Statement for SB 1794*, Jan. 26, 2020 (analyzing the original version of the bill).

Recurring Savings

The bill provides an indeterminate positive impact on state government by: limiting the FIEC's role in analyzing a proposed amendment and delaying formal review of the proposed initiative until the collection of additional verified signatures.

*Local**Recurring Savings*

Allowing county supervisor of elections the option to provide petition forms to initiative sponsors in PDF format instead of requiring that the supervisor print the forms could reduce a supervisors printing costs. The cost savings is indeterminate at this time, and will vary from election-to-election and by county.

Recurring Costs

The additional ballot statements that the bill mandates with respect to proposed amendments could lengthen the ballot, resulting in greater printing costs. As this situation will vary from county-to-county, the cost is indeterminate at this time.

Recurring Savings/Costs

Requiring initiative petition sponsors to remit to supervisors the actual cost of signature verification (in lieu of the current rule: the lesser of the actual cost or 10 cents per signature) may result in additional costs or additional savings, depending on how efficient each county is at performing this task and the approach of the Department of State rule governing the actual costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 15.21, 16.061, 100.371, 101.161, 101.171, and 106.07.

The bill creates section 101.162 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.)

CS by Judiciary on February 11, 2020:

The committee substitute changes the underlying bill by:

- Decreasing the overall number of signatures that a citizen initiative must receive to trigger a review by the Supreme Court and the FIEC, but requiring that more congressional districts each meet a certain threshold in order to trigger the review;
- Capping the fee that can be charged to verify a citizen initiative petition at \$1;
- Requiring the ballot to state, when applicable, that the FIEC expects an amendment to have a positive net impact on the state budget;
- Removing the requirement that a copy of a proposed constitutional amendment be placed in each voting booth;
- Removing the requirement that a political committee supporting a citizen initiative report the percentage of its total contributions from in-state persons;
- Removing the requirement that a ballot include the name of a citizen initiative's sponsor, the percentage of contributions received from in-state persons, and whether out-of-state petition circulators were used;
- Subjecting all proposed amendments to the same FIEC review that is required of only citizen initiative amendments in the underlying bill; and
- Requiring the ballot on which any amendment appears to include the financial impact statement currently required for citizen initiative amendments.

CS by Ethics and Elections on January 27, 2020:

The CS adopts verbatim HB 7037, *sans* some technical changes. Substantively, the CS is very similar to the original bill with the following major differences:

- Restores current law requiring the Florida Impact Estimating Conference (FIEC) to consider impacts on *local* governments when drafting the financial impact statement, as opposed to *State-only* impacts.
- Pares back the additional Supreme Court review authority that the original SB granted, expanding current law to include *only* an additional facial *federal* constitutional review.

B. Amendments:

None.