

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7037 PCB JDC 20-01 Constitutional Amendments Proposed By Initiative

SPONSOR(S): Judiciary Committee, Grant, J.

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1794

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	12 Y, 6 N	Jones	Luczynski
1) Appropriations Committee	20 Y, 10 N	Cobb	Pridgeon
2) State Affairs Committee			

SUMMARY ANALYSIS

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. For a 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 proposal's financial impacts; and
- At least 60 percent of the voters voting on the proposed amendment must vote yes.

HB 7037 changes the process for amending the State Constitution by citizen initiative by:

- Revising the role of FIEC to estimating the proposal's financial impact on state and local governments and the state budget.
- Requiring the Attorney General to ask the Supreme Court to determine whether the proposal violates the U.S. Constitution.
- Providing that the Senate President and House Speaker may direct legislative staff to analyze any other impacts of the proposal.
- Increasing—from 10 percent of the number of statewide electors required to place an amendment on the ballot to 50 percent—the petitions that must be gathered before the Secretary of State refers the proposal to the Attorney General and FIEC.
- Creating a cause of action to challenge a petition circulator's failure to register.
- Providing that a signature is valid until the next February 1 of an even-numbered year, which prevents a signature from being held over for a subsequent election.
- Requiring a supervisor of elections to charge the actual cost for verifying a petition signature and requiring the Department of State to determine the actual cost amount annually.
- Providing that a signature obtained illegally or 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 to include statements indicating:
 - The name of the sponsor.
 - The percentage of in-state contributions received for the proposal.
 - Whether the sponsor used out-of-state petition circulators.
 - Notice, when applicable, that FIEC estimates a negative or indeterminate fiscal impact or cannot reach a consensus.
- Requiring a copy of the proposal in each voting booth.
- Requiring a political committee sponsoring a proposal to disclose the percentage of in-state contributions.

The bill may have an indeterminate fiscal impact on state government and on local governments. The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Constitution is the charter of the liberties of Floridians.¹ 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.² A citizen initiative must embrace only one subject,³ unless it concerns limiting the power of government to raise revenue, but proposals originating from the other sources are not so limited.⁴

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.⁵ 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.⁶ 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.⁷

According to the Florida Supreme Court, the Legislature and the Secretary of State are responsible for ensuring ballot integrity and a valid election process. To this end, the Legislature may pass statutes regulating the initiative process, which must be either:

- Neutral, nondiscriminatory regulations of petition-circulation and voting procedure explicitly or implicitly contemplated by the constitution; or
- Necessary for ballot integrity.⁸

Citizen Initiative Process

Before gathering signatures for an amendment proposed by citizen initiative, the sponsor of the proposed amendment must register as a Florida political committee.⁹ The sponsor then must 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 of gathering the signature.¹⁰

If the sponsor uses a paid petition circulator to gather signatures, the circulator must register with the Secretary before collecting signatures.¹¹ Failure of a paid petition circulator to register before collecting petition forms is a second-degree misdemeanor.¹² 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.¹³

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

² Art. XI, Fla. Const.

³ Art. XI, s. 3, Fla. Const.

⁴ Art. XI, ss. 1, 2, 4, 6, Fla. Const.

⁵ Art. XI, s. 3, Fla. Const.

⁶ *Id.*

⁷ FLORIDA DEPARTMENT OF STATE, 2018 Initiative Petition Handbook, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> (last visited Jan. 14, 2020).

⁸ See *Browning*, 29 So. 3d at 1057-58.

⁹ Ss. 100.371(2) and 106.03, F.S.

¹⁰ S. 100.371(7), F.S.

¹¹ S. 100.371(3), F.S.

¹² S. 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).

¹³ S. 100.371(4), F.S.

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.¹⁴

The date when the elector signs the petition is presumed to be the date of collection.¹⁵ 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.¹⁶ The sponsor can avoid fines if it shows that failure to deliver the petitions was due to force majeure¹⁷ or impossibility of performance.¹⁸ If the Secretary believes these provisions have been violated, she may refer the matter to the Attorney General for enforcement.¹⁹

The Division of Elections (division) within the Department of State or the supervisor must provide petition forms to registered paid petition circulators that contain information identifying the paid petition circulator. 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. The supervisor must provide to the division information relating to petition forms assigned to and received from paid petition circulators.²⁰

When a sponsor delivers the collected signatures to the supervisor, the supervisor must check²¹ each signature to ensure the:

- Elector's original signature is recorded.
- 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.²²

A petition form is invalid if any of these requirements is not met.²³ The supervisors submit their total numbers of valid signatures to the Secretary of State (Secretary).²⁴ Once a sponsor obtains verified signatures equal to 10 percent of the statewide requirement to place an amendment on the ballot in at least 25 percent of Florida's congressional districts,²⁵ the Secretary sends the petition to the:

- Financial Impact Estimating Conference (FIEC)²⁶ to complete an analysis on the proposed amendment's fiscal impact within 75 days.²⁷
- 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.²⁸

¹⁴ S. 100.371(5), F.S.

¹⁵ S. 100.371(10), F.S.

¹⁶ S. 100.371(7)(a), F.S.

¹⁷ "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).

¹⁸ S. 100.371(7)(b), F.S.

¹⁹ S. 100.371(8), F.S.

²⁰ S. 100.371(6), F.S.

²¹ 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.

²² S. 100.371(11), F.S.

²³ *Id.*

²⁴ *Id.*

²⁵ S. 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.

FLORIDA DEPARTMENT OF STATE, 2018 Initiative Petition Handbook, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> (last visited Jan. 14, 2020).

²⁶ 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 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. S. 100.371(13)(c)1., F.S.

²⁷ See s. 100.371(13), F.S. (providing for the 75-day timeframe, which is tolled when the Legislature is in session).

Fiscal Impact Estimating Conference (FIEC)

After it receives a proposed amendment from the Secretary, 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. FIEC must complete two documents: a financial impact statement and an initiative financial information statement.²⁹

The financial impact statement is placed on the ballot to inform voters to what financial impacts the proposed amendment will have.³⁰ 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.³¹

The lengthier initiative financial information statement is available on the websites of the Secretary and the Office of Economic and Demographic Research.³² Each supervisor must include in the publication and mailing of sample ballots the internet addresses where FIEC's full information statements can be viewed and a summary of the statements.³³ 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.³⁴

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,³⁵ he or she assigns an amendment number and certifies the proposed amendment's ballot position.³⁶ When the proposal is printed on the ballot, the ballot must also include:

- A ballot summary of up to 75 words summarizing the proposal's purpose.
- A ballot title including a caption of up to 15 words describing the proposal.
- The financial impact statement prepared by FIEC.³⁷

At the general election, if at least 60 percent of the voters voting on the proposed amendment vote yes,³⁸ the proposed amendment is incorporated into the Florida Constitution.³⁹ 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.⁴⁰

²⁸ 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 Jan. 14, 2020); 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).

²⁹ S. 100.371(13), F.S.

³⁰ S. 100.371(13)(a), F.S.

³¹ S. 100.371(13)(d), F.S.

³² S. 100.371(13)(e)5., F.S.

³³ Ss. 100.371(13)(e)5. and 101.20, F.S.

³⁴ S. 100.371(13)(e), F.S.

³⁵ Art. XI, s. 5(b), Fla. Const.

³⁶ Ss. 100.371(12) and 101.161, F.S.

³⁷ S. 101.161(1), F.S.

³⁸ Art. XI, s. 5(e), Fla. Const.

³⁹ *Id.*

⁴⁰ *Id.*

Effect of Proposed Changes

The bill modifies several aspects of the citizen initiative process to increase transparency, strengthen the integrity of the ballot, and reduce costs for the supervisors of elections. Specifically, 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.

Petition Circulators and Petition Form Signatures

The bill provides that if a paid petition circulator collects a petition form but is not registered pursuant to law, that petition form is invalid. Moreover, a paid petition circulator's registration may be challenged in court. If a court finds that a petition circulator is not properly registered with the Department of State pursuant to law, the court may enjoin the circulator from collecting signatures or initiative petitions for compensation until he or she is lawfully registered.

The bill also provides that a signature on a form is valid only until February 1 of the next even-numbered year. This means that a sponsor may begin gathering signatures for a proposed amendment in February of an even-numbered year for the election to occur two years later, giving a sponsor almost two years to collect signatures. This also prohibits a sponsor from collecting a signature for a particular election and then using the signature for a subsequent election instead.

Analysis of the Proposed Amendment's Projected Impacts

The bill changes the process for the Secretary of State to refer a proposed amendment for further analysis by:

- Changing the percentage of signatures required to trigger referral from 10 percent of the number of statewide electors required to place an amendment on the ballot to 50 percent; and
- Requiring the Secretary to refer the proposed amendment to the Senate President and House Speaker in addition to the Attorney General and FIEC.

Under the bill, FIEC is no longer required to estimate the proposal's projected impacts on the state and local economies. The bill revises FIEC's role, requiring it to estimate the proposal's:

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

Instead, the bill leaves to the discretion of the Senate President and House Speaker whether to direct legislative staff to conduct a broader analysis of the proposal, which may include, but is not limited to, whether the proposal:

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

The bill also requires the Attorney General, upon petitioning the Florida Supreme Court to review the legality of a proposed amendment, to ask the Court whether it violates the United States Constitution.

Political Committee Disclosure and Ballot Requirements

The bill requires a political committee sponsoring a proposed amendment to disclose, in its regular campaign finance reports, the percentage of contributions received from in-state persons,⁴¹ excluding political parties, affiliated party committees, or political committees. This ensures that the public is aware of the origination of the funds that support the amendment. Otherwise, a political committee or other entity might receive out-of-state money and then spend it on advertisements for a proposed amendment, leaving voters potentially unaware that out-of-state sources are funding the proposal.

⁴¹ 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.

In addition to the ballot summary and the financial impact statement already required to appear on the ballot, the bill requires the ballot to include the following information:

- The name of the sponsor.
- The percentage of contributions received by the sponsor from in-state persons, 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.
- A statement in bold capital letters indicating if FIEC:
 - Determines the proposal will have a net negative financial impact on the state budget.
 - Cannot determine the proposal's financial impact.
 - Is unable to reach a consensus on the proposal's financial impact.

Supervisors of Elections

The bill requires a supervisor of elections to:

- Include a copy of the proposed amendment text in each voting booth.
- Charge the actual cost for checking a petition form, with the cost to be calculated by Department of State rulemaking and updated annually.

The bill also gives a supervisor of elections the option to provide petition forms to a sponsor in PDF format instead of requiring that the supervisor print the forms. This places the printing costs for petition forms on the sponsor instead of the supervisor.

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 is severed from that provision and should be given full legal effect. 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 bill's effective date.
- Contract entered into before the bill's effective date.

B. SECTION DIRECTORY:

Section 1: Amends s. 15.21, F.S., relating to initiative petitions; s. 3, Art. XI, State Constitution.

Section 2: Amends s. 16.061, F.S., relating to initiative petitions.

Section 3: Amends s. 100.371, F.S., relating to initiatives; procedure for placement on ballot.

Section 4: Amends s. 101.161, F.S., relating to referenda; ballots.

Section 5: Amends s. 101.171, F.S., relating to copy of constitutional amendment to be available at voting locations.

Section 6: Amends s. 106.07, F.S., relating to reports; certification and filing.

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: 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 9: Provides an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on state government by not requiring the Attorney General to review the proposed amendment until the sponsor has collected 50 percent of the number of signatures required, instead of 10 percent, which may result in a reduced workload. The bill may also have a negative fiscal impact relating to the workload for the requirement that the Department of State calculate the actual cost of verifying a petition form; however, it is unlikely that this provision will require additional resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill allows supervisors to charge the actual cost for verifying petition signatures, which is likely higher than the current rate allowed and may, in turn, have an indeterminate positive fiscal impact.

2. Expenditures:

The bill requires supervisors, when an initiative is submitted to the electors, to include extra language on the ballot and to place a copy of each proposed amendment in each voting booth, which may have an indeterminate negative fiscal impact on local governments. However, the bill may have a positive indeterminate impact on local governments by allowing each supervisor to provide a petition form to a sponsor in PDF format, saving the supervisor printing costs.

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 requires each supervisor of elections to provide a copy of the proposed constitutional text in each voting booth; however, an exemption likely 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.⁴² Likewise, the Florida Supreme Court has stated that the Legislature and the Secretary of State are responsible for ensuring ballot integrity and a valid election process. Statutes regulating the initiative process must be either:

- Neutral, nondiscriminatory regulations of petition-circulation and voting procedure explicitly or implicitly contemplated by the constitution; or
- Necessary for ballot integrity.⁴³

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

⁴² *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 204-05 (1999).

⁴³ *See Browning v. Fla. Hometown Democracy, Inc. PAC*, 29 So. 3d 1053, 1057-58 (Fla. 2010).