

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 7093 PCB JDC 20-07 Petition Threshold Requirements for Citizen Initiatives
SPONSOR(S): Judiciary Committee, Rommel
TIED BILLS: **IDEN./SIM. BILLS:** SJR 7062

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	11 Y, 6 N	Jones	Luczynski

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:

- To place the initiative language on the ballot, a sponsor must register as a Florida political committee and gather a sufficient number of signatures from Florida voters equal to:
 - At least 8 percent of the total number of persons voting statewide in the last presidential election; and
 - In at least half of Florida's 27 congressional districts, at least 8 percent of the number of persons voting in the district in the last presidential election.
- The Florida Supreme Court must review the proposed amendment to ensure legal compliance.
- The Financial Impact Estimating Conference (FIEC) must analyze the proposal's financial impacts.
- At least 60 percent of the voters voting on the proposed amendment must vote yes.

PCB JDC 20-07 is a joint resolution, which, if approved by the voters at the next general election, would require the sponsor of a citizen initiative, to place the initiative on the ballot, to gather sufficient petition signatures to meet the 8-percent threshold in all 27 of Florida's congressional districts, rather than only half of the districts.

The joint resolution has a nonrecurring fiscal impact on the Department of State for the publication of the proposed constitutional amendment in newspapers of general circulation in each county and for publication of booklets or posters with the amendment language for the supervisors of elections.

The joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 3, 2020. If adopted at the 2020 general election, the resolution would take effect January 5, 2021.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature to appear on the next general election ballot. If placed on the ballot, the Constitution requires at least 60 percent voter approval for passage.

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

Citizen Initiative Process

Petition Threshold Requirements

The Florida Constitution requires the sponsor of an amendment proposed by citizen initiative to obtain a specified number of petition signatures to place the proposal on the ballot.⁵ Specifically, the sponsor must collect the signatures of a number of voters equal to at least 8 percent of the votes cast:

- In the state as a whole, in the preceding presidential election; and
- In each of at least half of the congressional districts of the state, in the preceding presidential election.⁶

The Florida Attorney General has stated that the purpose of this second threshold requirement is to require a diverse cross-section of electors within the state to approve a citizen initiative, as follows:

The requirement that the electors who sign the petition must be spread around among at least one half of the congressional districts in this state is obviously for the purpose of obtaining a cross-section of the electors of the state in support of the proposed amendment [T]he framers of the constitutional provision in question intended initiative petitions to reflect the interest and the concurrence of electors equal to at least 8 percent of the voters who cast their ballots in each of one half of the state's congressional districts, respectively, in the immediately preceding general election held in a presidential election year and that the total number of signatures on all of the initiative petitions must equal at least 8 percent of the total number of voters of the state as a whole⁷

The total number of signatures required for placement on the 2020 ballot is 766,200, which is the same number that was required for the 2018 ballot. In addition, a specified number of that total must come from at least half of the state's 27 congressional districts.⁸

¹ *Browning v. Fla. 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 Op. Att'y Gen. Fla. 72-314 (1972).

⁸ FLORIDA DEPARTMENT OF STATE, 2018 Initiative Petition Handbook, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> (last visited Feb. 13, 2020).

In its Initiative Petition Handbook, the Division of Elections includes a table showing the required number of signatures a sponsor must obtain to meet the 8 percent threshold requirement in each Congressional district, as follows:⁹

Congressional District	Votes Cast in 2016 Presidential Election	8% Threshold* (for Ballot Position)	10% of 8% Threshold* (for Judicial and Economic Review)
First	386,504	30,921	3,093
Second	360,098	28,808	2,881
Third	356,715	28,538	2,854
Fourth	428,190	34,256	3,426
Fifth	316,115	25,290	2,529
Sixth	385,918	30,874	3,088
Seventh	370,466	29,638	2,964
Eighth	409,569	32,766	3,277
Ninth	362,593	29,008	2,901
Tenth	320,548	25,644	2,565
Eleventh	417,253	33,381	3,339
Twelfth	386,775	30,942	3,095
Thirteenth	367,818	29,426	2,943
Fourteenth	336,289	26,904	2,691
Fifteenth	340,331	27,227	2,723
Sixteenth	403,805	32,305	3,231
Seventeenth	360,061	28,805	2,881
Eighteenth	388,772	31,102	3,111
Nineteenth	389,415	31,154	3,116
Twentieth	291,984	23,359	2,336
Twenty-First	355,842	28,468	2,847
Twenty-Second	361,305	28,905	2,891
Twenty-Third	342,784	27,423	2,743
Twenty-Fourth	269,446	21,556	2,156
Twenty-Fifth	269,983	21,599	2,160
Twenty-Sixth	294,742	23,580	2,358
Twenty-Seventh	304,012	24,321	2,433
Total	9,577,333	766,200	76,632

Therefore, for the 2020 election, a sponsor must obtain 766,200 signatures statewide; and the sponsor must also meet the 8 percent threshold requirement in at least 14 of the State's 27 Congressional districts.

Process for Obtaining Signatures

Before gathering signatures for an amendment proposed by citizen initiative, the sponsor of the proposed amendment must register as a Florida political committee.¹⁰ After registering, the sponsor 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.¹¹

⁹ *Id.*

¹⁰ Ss. 100.371(2) and 106.03(1)(a), F.S.

¹¹ S. 100.371(7), F.S.

If the sponsor uses a paid petition circulator to gather signatures, the circulator must register with the Secretary of State (Secretary) before collecting signatures.¹² Failure of a paid petition circulator to register before collecting petition forms is a second-degree misdemeanor.¹³ 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.¹⁴

In addition, a paid petition circulator must provide an affidavit with each petition form gathered.¹⁵ 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.¹⁶

The date when the elector signs the petition is presumed to be the date of collection.¹⁷ 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.¹⁸ The sponsor incurs a fine of \$500 for each petition form not submitted to the supervisor.¹⁹ If the sponsor acted willfully, the fines are raised to \$250 and \$1,000 per petition, respectively.²⁰ The sponsor can avoid fines if it shows that failure to deliver the petitions was due to force majeure²¹ or impossibility of performance.²² If the Secretary believes these provisions have been violated, she may refer the matter to the Attorney General for enforcement.²³

The Division of Elections (Division) within the Department of State (DOS) or the supervisor must provide petition forms to registered paid petition circulators that contain information identifying the paid petition circulator.²⁴ 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.²⁵ The supervisor must provide the division information relating to petition forms assigned to and received from paid petition circulators.²⁶

The sponsor must pay the supervisor, in advance, 10 cents for each signature checked or the actual cost of checking the signature, whichever is less.²⁷ When a sponsor delivers the collected signatures to the supervisor, the supervisor must check 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.²⁸

A petition form is invalid if any of the above requirements are not met.²⁹

¹² S. 100.371(3), F.S.

¹³ 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).

¹⁴ S. 100.371(4), F.S.

¹⁵ S. 100.371(5), F.S.

¹⁶ *Id.*

¹⁷ S. 100.371(10), F.S.

¹⁸ S. 100.371(7)(a)1., F.S.

¹⁹ S. 100.371(7)(a)2., F.S.

²⁰ S. 100.371(7)(a), F.S.

²¹ "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).

²² S. 100.371(7)(b), F.S.

²³ S. 100.371(8), F.S.

²⁴ S. 100.371(6), F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ S. 99.097, F.S.

²⁸ S. 100.371(11), F.S.

²⁹ *Id.*

Each supervisor must submit his or her total number of valid signatures to the Secretary.³⁰ 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 the congressional districts required by the Constitution,³¹ the Secretary sends the petition to the:

- Financial Impact Estimating Conference (FIEC)³² to complete an analysis on the proposed amendment's fiscal impact within 75 days.³³
- 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.³⁴

Fiscal Impact Estimating Conference (FIEC)

After FIEC 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.³⁵ The financial impact statement is placed on the ballot to inform voters of the potential financial impact of the proposed amendment.³⁶ The supervisor must include a copy of FIEC's financial information summaries in the publication or mailing for sample ballots.³⁷

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,³⁸ he or she assigns an amendment number and certifies the proposed amendment's ballot position.³⁹ 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.⁴⁰

At the general election, if at least 60 percent of the voters voting on the proposed amendment vote yes,⁴¹ the proposed amendment is incorporated into the Florida Constitution.⁴² 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.⁴³

³⁰ *Id.*

³¹ S. 15.21(3), F.S.

³² 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.

³³ See s. 100.371(13), F.S. (providing for the 75-day timeframe, which is tolled when the Legislature is in session).

³⁴ 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 Feb. 13, 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).

³⁵ S. 100.371(13), F.S.

³⁶ S. 100.371(13)(a), F.S.

³⁷ S. 100.371(13)(e)5., F.S.; see also s. 101.20, F.S.

³⁸ Art. XI, s. 5(b), Fla. Const.

³⁹ Ss. 100.371(12) and 101.161, F.S.

⁴⁰ S. 101.161(1), F.S.

⁴¹ Art. XI, s. 5(e), Fla. Const.

⁴² *Id.*

⁴³ *Id.*

Effect of Proposed Changes

PCB JDC 20-07 is a joint resolution, which, if approved by the voters at the next general election, would require the sponsor of a citizen initiative to gather sufficient petition signatures to meet the 8-percent threshold in all 27 of Florida's congressional districts, rather than only half of the districts, to place the initiative on the ballot.

The joint resolution must pass each chamber with a three-fifths vote before it may be placed on the ballot. Thereafter, it must be approved by at least 60 percent of the electors voting on the measure. If approved by the voters, the joint resolution will take effect January 5, 2021.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES