

STORAGE NAME: h0909s1b.prc.doc
DATE: February 25, 2002

HOUSE OF REPRESENTATIVES
PROCEDURAL & REDISTRICTING COUNCIL
ANALYSIS

BILL #: CS/HB 909
RELATING TO: Constitutional Amendments Proposed by Initiative
SPONSOR(S): Representative(s) Kendrick & Goodlette
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) RULES, ETHICS & ELECTIONS (PRC) YEAS 12 NAYS 0
- (2) PROCEDURAL & REDISTRICTING COUNCIL YEAS 16 NAYS 0
- (3)
- (4)
- (5)

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I. SUMMARY:

CS/HB 909 amends several provisions of s. 100.371, F.S., relating to constitutional amendments by citizen initiative. Specifically, it does the following:

- Reduces the time from 4 years to 18 months following the date that a signature is made that a petition signature is valid;
- Requires that the sponsor of the amendment indicate on the form if a person is or will be paid to gather signatures;
- Establishes two new submission deadlines; and
- Requires that the Revenue Estimating Conference conduct a review of the amendment prior to the sponsor obtaining any signatures to determine the estimated impact on state and local revenues and expenditures. The fiscal impact statement must be attached to the text of the amendment when it is circulated for signatures in a form prescribed by the Secretary of State.

The bill does not appear to have a fiscal impact on local governments. In addition, according to the Office of Economic and Demographic Research, requiring the Revenue Estimating Conference to review each amendment will have no foreseeable impact on state expenditures.

The bill is effective July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

CS/HB 909 requires the Revenue Estimating Conference to conduct a review of the proposed amendment to determine the estimated impact on state and local revenues and expenditures.

B. PRESENT SITUATION:

Article XI of the Florida Constitution governs amendments to the Constitution. An amendment is presented to the voters by one of the following methods¹:

- Joint resolution passed by 3/5 vote of each house of the Legislature;
- Initiative petition;
- Proposal by the Constitution Revision Commission;
- Proposal by the Taxation and Budget Reform Commission; or
- Proposal by a constitutional convention.

Prior to the 1968 revision of the Florida Constitution, constitutional amendments could be proposed only by constitutional convention or through resolutions adopted by the Legislature. Florida adopted the citizen initiative process in 1968.² The first initiative appeared on Florida's ballot in 1976 and was adopted by the voters.³ From 1976-1998, there have been 94 proposed constitutional amendments on the ballot, 15 of which were by initiative.⁴ Ten of the 15 initiative amendments were approved by Florida's electors.⁵ During the past six years, there has been an increase in citizen initiatives. In 1996, 37 initiatives were circulated, three of which made the ballot, and in 1998, 27 initiatives were circulated, none of which made the ballot.⁶

¹ Art. XI, s. 1, Fla. Const. (legislature); Art. XI, s. 2, Fla. Const. (Revision Commission); Art. XI, s. 3, Fla. Const. (citizen initiative); Art. XI, s. 4, Fla. Const. (constitutional convention); Art. XI, s. 6, Fla. Const. (Taxation and Budget Reform Commission).

² Art. XI, s. 3, Fla. Const.

³ Amendment #1; Art. II, s. 8, Fla. Const. (The so-called "Sunshine Amendment." Votes For - 1,765,626; Votes Against - 461,940).

⁴ According to statistics provided by the Department of State, Division of Elections.

⁵ *Id.*

⁶ *Id.* While there were no citizen initiatives on the ballot in 1998, there were four amendments proposed by legislative resolution and nine amendments proposed by the Constitutional Revision Convention.

The procedure for placing an amendment on the ballot by citizen initiative is provided in s. 100.371, F.S. To obtain ballot position:

- The sponsor of an amendment must register as a political committee pursuant to s. 106.03, F.S., submit the text of the proposed amendment with the form on which signatures will be obtained; the form must be approved by the Secretary of State before signatures are obtained;
- The Secretary of State must determine the total number of valid signatures and the distribution from congressional districts⁷; signatures are valid for four years from the date when made; and
- The certification of ballot position must be completed at least 90 days before the next general election.

In 2000, 435,329 signatures were required for ballot certification. In 2002, 488,722 signatures will be required. As of January 25, 2002, there are 30 initiatives in circulation.

There is currently no requirement in s. 100.371, F.S. that an economic impact statement be provided to the public prior to a vote on a proposed constitutional amendment. Therefore, constitutional amendments may be submitted to the electorate without information on the cost of implementing the amendment.

In the 2001 Legislative session, however, HJR 571 was adopted, which will be placed on the ballot at the 2002 General Election. If approved, Art. XI, s. 5 will additionally state that:

The legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to Section 3.

Under Art. XI, s. 5, Fla. Const., a proposed constitutional amendment must be submitted to the voters at the next general election occurring ninety days after the amendment's submission to the Secretary of State.

The use of paid petition circulators is permitted under current law. Efforts to prohibit the payment of circulators have been unsuccessful. In 1988, the United States Supreme Court in *Meyer v. Grant* held that a prohibition against paying petition circulators violated the First Amendment and was therefore unconstitutional.⁸

C. EFFECT OF PROPOSED CHANGES:

CS/HB 909 amends several provisions of s. 100.371, F.S. The bill reduces the amount of time that a petition signature remains valid from 4 years to 18 months following the date that the signature is made. In addition, the bill requires that the sponsor of the amendment indicate on the form if a person is or will be paid to gather signatures.

Two new submission deadlines are also established:

⁷ Art. XI, s. 3, requires that signatures be obtained in at least ½ of the state's congressional districts, and, of the state as a whole, equal to eight percent of the voters casting ballots in the last Presidential election.

⁸ 486 U.S. 414 (1988)

- The sponsor must submit signed and dated forms to the appropriate supervisor of elections for verification within 60 days after the date of signing, and
- The supervisor of elections then must, within 90 days after the receipt of the signature forms, transmit the certificate to the Secretary of State.

Last, CS/HB 909 requires that the Revenue Estimating Conference conduct a review of the amendment to determine the estimated impact on state and local revenues and expenditures. The fiscal impact statement must be attached to the text of the amendment when it is circulated for signatures in a form prescribed by the Secretary of State.

D. SECTION-BY-SECTION ANALYSIS:

Not required.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have an impact on state revenues.

2. Expenditures:

According to the Office of Economic and Demographic Research, requiring the Revenue Estimating Conference to review each initiative amendment will have a negligible impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have an impact on local revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

Please see above.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action that requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties and municipalities have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill does not appear to violate any constitutional provisions.⁹

B. RULE-MAKING AUTHORITY:

CS/HB 909 provides additional rulemaking authority to the Secretary of State to prescribe the contents of the fiscal impact statement. Rulemaking authority is maintained in s. 100.371(3), (6), F.S.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 14, 2002, the Procedural & Redistricting Council adopted an amendment to the traveling amendment by the Committee on Rules, Ethics & Elections, and passed the bill as a council substitute. The amendment adopted by the Council added a requirement that the sponsor of the proposed constitutional amendment indicate on the form whether a person is or will be paid for collecting signatures.

The council substitute is substantively different from the original bill in several areas. The council substitute returns the time for which certification of ballot position must be completed to more than 90 days before the next general election, so that it is consistent with Art. XI, s. 5, of the Florida Constitution. It also reduces the amount of time that a petition signature remains valid from 4 years to 18 months, rather than 11 months as originally provided in the original bill. The 18-month period runs from the time the petition forms are certified by the supervisor of elections to the Secretary of State.

The council substitute also establishes new submission deadlines. The sponsor of a proposed constitutional amendment must submit a signed petition form within 60 days of the date of the signature to a supervisor of elections. The council substitute will additionally require a supervisor of elections to submit verified petitions to the Secretary of State within 90 days of their receipt from the amendment sponsor. Under current law, there is neither a time limit for submitting verified petitions to the Secretary of State, nor a time limit for submitting signatures to a supervisor of elections, other than the requirement that the certification of ballot position be completed by the Secretary of State at least 91 days before the next general election.

⁹ See *State v. Firestone*, 386 So.2d 561, 566 (Fla. 1980), for a discussion of when a statute or rule is “unduly burdensome” of a constitutional right.

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Last, the council substitute requires that the Revenue Estimating Conference conduct a review of the proposed constitutional amendment to determine the estimated impact on state and local revenues and expenditures. The original bill provided that the Office of Legislative Services conduct the review. The fiscal impact statement must be attached to the text of the amendment when it is circulated for signatures in a form prescribed by the Secretary of State.

VII. SIGNATURES:

COMMITTEE ON RULES, ETHICS & ELECTIONS:

Prepared by:

Staff Director:

Emmett Mitchell, IV

Richard Hixson

AS REVISED BY THE PROCEDURAL & REDISTRICTING COUNCIL:

Prepared by:

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