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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
RULES, ETHICS & ELECTIONS
ANALYSIS**

BILL #: 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
- (3)
- (4)
- (5)

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I. SUMMARY:

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

- expands the time from more than 90 days to more than 180 days before the next general election for which certification of ballot position must be completed;
- reduces the time from 4 years to 11 months following the date that a signature is made that a petition signature is valid;
- requires the sponsor of an amendment to submit the text of the amendment to the Office of Legislative Services for review. The review includes making any changes necessary to comply with judicial standards for drafting of constitutional amendments and a determination of the estimated fiscal impact on state and local revenues and expenditures. The fiscal impact statement will be attached to the text of the amendment when it is circulated for signatures.

The House Committee on Rules, Ethics & Elections adopted a strike-all amendment traveling with the bill which restores the 90-day time for certification of ballot position, provides for an 18-month time for validity of petition signatures, and sets out procedures for submission of petition signatures. See Section VI of the Bill Analysis.

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"/> |

HB 909 requires the Office of Legislative Services to conduct a review of constitutional amendments proposed by initiative before petitions are gathered.

B. PRESENT SITUATION:

Article XI of the Florida Constitution governs amendments to the Constitution. A proposed amendment is presented to the voters pursuant to 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, 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 amendment with the form on which signatures will be obtained; the form must be approved by the Secretary before signatures are obtained;
- the Secretary of State must determine the total number of valid signatures and the distribution from congressional districts.⁷; 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 be amended to provide:

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.

Pursuant to Art. XI, s. 5, Fla. Const., a proposed amendment shall 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:

HB 909 amends several provisions of s. 100.371, F.S. The bill changes the time for which certification of ballot position must be completed from more than 90 days to more than 180 days before the next general election. [Note: See section on Constitutional Issues.]. Next, it reduces the amount of time that a petition signature remains valid from 4 years to 11 months following the date that the signature is made. Finally, it requires that the sponsor of

⁷ Art. XI, s. 3, requires that signatures be obtained in at least 1/2 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)

any initiate amendment submit the text of the amendment to the Office of Legislative Services for review.

The Office of Legislative Review is directed to make any changes necessary to “comply with judicial standards for drafting of constitutional amendments.” The Florida Supreme Court’s review of proposed amendments is generally limited to a “single subject” analysis⁹ and a review of the ballot title and summary for compliance with s. 101.16(1), F.S. Section 101.16(1), F.S., provides, in pertinent part:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot. . . [T]he substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

Finally, HB 909 requires that the Office of Legislative Services 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:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

⁹ Art. XI, s. 3, Fla. Const., provides in part, that proposed amendments “shall embrace but one subject and matter directly connected therewith.”

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Art. XI, s. 5, of the Florida Constitution, provides:

A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors *at the next general election held more than ninety days* after the joint resolution, initiative petition or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the secretary of state...

(Emphasis added.)

The provision of HB 909 that amends s. 100.371(1) from 90 days to 180 days (the time between certification and the next general election) raises constitutional concerns in light of this provision.

[Note: The amendment discussed below addresses these concerns.]

B. RULE-MAKING AUTHORITY:

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:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Rules, Ethics & Elections adopted a "strike-all" amendment on January 29, 2002, which amends several provisions of s. 100.371, F.S. The amendment 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. Next, it 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 HB 909. The 18-month period runs from the time the petition forms are certified by the supervisor of elections to the Secretary of State.

There are additional submission deadlines included in the amendment. First, the sponsor of an amendment must submit a signed petition form within 60 days of the date of the signature to a supervisor of elections. Currently there is no time limit for submitting signatures to a supervisor other than the requirement that certification of ballot position be completed by the Secretary of State at least 91 days before the next general election. The amendment will require a supervisor of elections to submit verified petitions to the Secretary of State within 90 days of their receipt from the amendment sponsor. Currently there is no time limit for submitting verified petitions to the Secretary of State.

Finally, the amendment requires that the Revenue Estimating Conference conduct a review of the amendment to determine the estimated impact on state and local revenues and expenditures. HB 909 originally 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:

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