

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 7037 PCB JDC 20-01 Constitutional Amendments
SPONSOR(S): Judiciary Committee and State Affairs Committee, Grant, J. and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 1794

FINAL HOUSE FLOOR ACTION: 73 Y's 45 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 7037 passed the House on March 11, 2020, as CS/CS/CS/SB 1794.

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 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; and
- At least 60 percent of the voters voting on the proposed amendment must vote yes.

The bill changes the process for amending the Florida Constitution by citizen initiative by:

- Increasing the required number of petitions and the number of districts in which they must be gathered before the Secretary of State refers a proposal to the Attorney General and FIEC.
- Requiring the Attorney General to ask the Supreme Court to determine whether the proposal violates the U.S. Constitution.
- Recognizing a cause of action to challenge a paid petition circulator's failure to register.
- Allowing the Division of Elections or a supervisor to provide a petition form in PDF format, with printing costs to be borne by the sponsor.
- Providing that a petition 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.
- Allowing a supervisor of elections an extra 30 days to verify a petition form submitted at least 60 days before February 1 of an even-numbered year.
- Providing that a petition signature obtained illegally is invalid.
- Requiring a supervisor to charge the actual cost for verifying a petition signature.
- Requiring the supervisors and the Division of Elections to:
 - post the cost of signature verification and petition form statistics on their websites; and
 - review available technology to reduce signature verification costs.
- Revising the role of FIEC to require FIEC to estimate the proposal's financial impact on state and local governments and the state budget.
- Requiring the ballot to include a statement as to the projected financial impact as determined by FIEC, or a statement indicating FIEC could not agree on the financial impact.
- Requiring the text of a proposed constitutional amendment at each polling location.

The bill does not affect the validity of a petition form gathered or a contract entered into before the bill's effective date. A petition form is governed by the laws existing at the time it was gathered.

The bill may have an indeterminate fiscal impact on state government and on local governments.

The bill was approved by the Governor on April 8, 2020, ch.2020-15, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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 8 percent of the votes cast in the state in the preceding presidential election as well as 8 percent of the votes 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 (Secretary) are responsible for ensuring ballot integrity and a valid election process.⁸ To this end, the Legislature may pass laws 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.⁹

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.¹⁰ After registering, the sponsor must gather the required number of petition 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

If the sponsor uses a paid petition circulator to gather signatures, the circulator must register with the Secretary before collecting signatures.¹² Failure of a paid petition circulator to register before collecting

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 Florida Department of State, 2018 Initiative Petition Handbook, <https://dos.myflorida.com/media/697659/initiative-petition-handbook-2018-election-cycle-eng.pdf> (last visited Mar. 13, 2020).

⁸ *Browning*, 29 So. 3d at 1057-58.

⁹ *Id.*

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

¹¹ S. 100.371(7), F.S.

¹² S. 100.371(3), F.S.

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; and
- 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; and
- 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

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 numbers 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 Florida's congressional districts,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 and
- 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

Financial Impact Estimating Conference

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 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.³⁷

The initiative financial information statement is a lengthier, more in-depth analysis of the amendment's fiscal effects. The initiative financial information statement is available on the websites of the Secretary and the Office of Economic and Demographic Research.³⁸ 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.³⁹ 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.⁴⁰

³⁰ See *id.*; s. 100.371(12), F.S.

³¹ 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 Mar. 13, 2020).

³² 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. 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 Mar. 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)(d), F.S.

³⁸ S. 100.371(13)(e)5., F.S.

³⁹ Ss. 100.371(13)(e)5. and 101.20, F.S.

⁴⁰ S. 100.371(13)(e), F.S.

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,⁴¹ he or she assigns an amendment number and certifies the proposed amendment's ballot position.⁴² 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; and
- The financial impact statement prepared by FIEC.⁴³

At the general election, if at least 60 percent of the voters voting on the proposed amendment vote yes,⁴⁴ the proposed amendment is incorporated into the Florida Constitution.⁴⁵ 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.⁴⁶

Effect of 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. Specifically, the bill changes petition signature gathering requirements, the Supreme Court review process, the FIEC analysis process, the ballot language requirements, and the requirements for supervisors.

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, or the signature is otherwise not obtained legally, the 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 DOS 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 petition 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 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 25 percent; and
- Requiring that the signature threshold be met in half of the congressional districts of the state.

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.

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.

⁴¹ Art. XI, s. 5(b), Fla. Const.

⁴² Ss. 100.371(12) and 101.161, F.S.

⁴³ S. 101.161(1), F.S.

⁴⁴ Art. XI, s. 5(e), Fla. Const.

⁴⁵ *Id.*

⁴⁶ *Id.*

Ballot Requirements

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 a statement in bold capital letters indicating if FIEC:

- Determines the proposal will have a negative financial impact on the state budget;
- Determines the proposal will have a positive financial impact on the state budget; or
- Cannot determine the proposal's financial impact or is unable to reach a consensus on the proposal's financial impact.

If FIEC determines the proposal's projected impact is negative or positive, the ballot statement must also include language indicating whether such impact may affect revenues, taxes, or government services.

Supervisors of Elections

The bill increases the amount of time for a supervisor to verify a petition signature, from 30 days to 60 days. However, if a supervisor receives a petition form less than 60 days before February 1 of an even-numbered year, the supervisor must verify the petition signature within 30 days. This should help ensure that a sponsor can meet the February 1 deadline to submit the petition forms to the Secretary, as long as the petition form is submitted to the supervisor at least 30 days before February 1.

The bill requires a supervisor to charge the actual cost for verifying a signature on a petition form. The supervisor may increase the cost, as necessary, on February 2 of each even-numbered year. The supervisors and the Division must:

- Post the cost of signature verification on their websites;
- Periodically post specified petition form statistics on their websites; and
- Biennially review available technology to reduce petition signature verification costs.

The bill also gives a supervisor the option to provide petition forms to a sponsor in PDF format instead of requiring that the supervisor print the forms. If the supervisor opts to provide the petition forms by PDF, the printing costs for petition forms would be borne by the sponsor instead of the supervisor.

A copy of the text of a proposed constitutional amendment to be voted upon by the electorate must be provided in a designated area of each polling location. This requirement applies regardless of whether the constitutional amendment is proposed by the citizen initiative process, a joint resolution by the Legislature, or another method.

Severability Clause and Effective Date

The bill provides that if any provision of 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 or a contract entered into before the bill's effective date. Moreover, the bill states that a petition form gathered before the bill's effective date must be governed by the laws in effect when such petition form was gathered. FIEC is not required to amend or revise a financial impact statement that was submitted to the Secretary before the bill's effective date.

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, FIEC, or the Florida Supreme Court to review the proposed amendment until the sponsor has collected a greater number of signatures in a greater number of congressional districts, which may result in a reduced workload for state government; and
- Eliminating certain requirements for FIEC analysis.

The bill also requires DOS to post petition form data on its website, which may have an insignificant negative impact on DOS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill requires 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 on local government revenues.

2. Expenditures:

The bill requires supervisors, when an initiative is submitted to the electors, to include extra language on the ballot. The bill also requires the supervisors to post petition form data on their websites. However, the bill also allows each supervisor to provide a petition form to a sponsor in PDF format, which will likely save the supervisor printing costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative fiscal impact on sponsors of constitutional amendments. The bill requires supervisors to charge the sponsor of an amendment the actual cost of verifying petition signatures, which is likely higher than the current rate allowed, and could result in political committees being charged more to verify signatures. In addition, the bill allows each supervisor to provide a petition form to a sponsor in PDF format, which will likely result in the sponsor bearing the printing costs for petition forms.

D. FISCAL COMMENTS:

None.