

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Judiciary Committee

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BILL: CS/CS/SB 1996

SPONSOR: Judiciary Committee, Criminal Justice Committee, and Senator Alexander

SUBJECT: Petition Fraud/Voter Protection Act

DATE: April 28, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Babington</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	<u>Chinn</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
4.	_____	_____	<u>GE</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 1996 imposes a series of safeguards on the initiative petition process. The committee substitute attempts to closely regulate the petition verification process, to require that additional information be provided to a voter who signs a petition, and to regulate petition circulators, in particular paid circulators, primarily by requiring greater disclosure on the part of the circulators. The committee substitute also authorizes additional criminal sanctions against people who abuse the petition process, either through fraud and misrepresentation, or through the misuse of signed petitions or voter registrations.

The committee substitute amends the following sections of the Florida Statutes: 99.097, 100.371, 101.161, 101.62, 104.012, 104.185, and 104.42 and creates section 100.372, Florida Statutes.

## II. Present Situation:

The Constitution of the State of Florida provides for constitutional amendment by initiative. The constitution states that this power may be invoked by “filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.”<sup>1</sup>

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<sup>1</sup> art. XI, s. 3, Florida Constitution.

Currently, under Florida law, constitutional initiative petitions are verified by supervisors of elections on a name-by-name, signature-by-signature basis, pursuant to an opinion of the First District Court of Appeal in 1978.<sup>2</sup> Supervisors are paid in advance the sum of 10 cents for each signature checked or the actual cost of checking such signatures, whichever is less. The person or organization collecting the petitions is responsible for paying this fee.<sup>3</sup>

Initiative sponsors are required to register as political committees, and are required to receive approval from the Secretary of State for the petition form used to obtain initiative signatures. Constitutional amendments proposed by initiative are placed on the ballot for the general election occurring in excess of 90 days from the certification of ballot position by the Secretary of State. The Secretary issues a certification after receiving sufficient verification certificates from the supervisors of elections. The supervisors are required to promptly verify signatures submitted by sponsors, and upon completion of verification of the signatures, the supervisors are required to execute a verification certificate indicating the total number of signatures checked, the number valid, and the distribution by congressional district.<sup>4</sup>

Certain criminal sanctions exist with regard to the voter registration and petition process. Paying a person to register to vote, paying someone to solicit voter registrations based upon the number of registrations obtained, and altering a voter registration application are all third degree felonies.<sup>5</sup> Signing a petition for a particular issue more than once, or signing another person's name, or a fictitious name, to a petition, is a first degree misdemeanor.<sup>6</sup> Supervisors of elections are currently authorized to investigate fraudulent registrations and illegal voting, and may report their findings to the state attorney or the Florida Elections Commission.<sup>7</sup>

During the 2004 election cycle, numerous stories appeared in newspapers throughout the state of Florida concerning alleged petition fraud. Two petition gatherers were arrested in Santa Rosa County for over 40 counts each of uttering a forged document.<sup>8</sup> Several other elections supervisors found petitions signed with the names of dead voters.<sup>9</sup>

The Florida Department of Law Enforcement (FDLE) issued a press release in October of 2004 indicating that it had received numerous complaints relating to voting irregularities, and had initiated several investigations. Specifically, the FDLE created regional elections task forces to address the issue of voter fraud in a statewide manner. While the FDLE did not reveal details of the investigations, it noted that the investigations focused on the following conduct:

“In some cases, persons who believed they were signing petitions later found out that their signatures or possible forged signatures were used to complete a fraudulent voter registration. In other instances, it appears that workers hired to obtain legitimate voter registrations filled in the information on the registration

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<sup>2</sup> See, *Let's Help Florida v. Smathers*, 360 So.2d 494 (Fla. 1st DCA 1978).

<sup>3</sup> s. 99.097, F.S.

<sup>4</sup> s. 100.371, F.S.

<sup>5</sup> s. 104.012, F.S.

<sup>6</sup> s. 104.185, F.S.

<sup>7</sup> s. 104.42, F.S.

<sup>8</sup> See, “Two Pace residents accused in voter scam,” Derek Pivnick, Pensacola News Journal, p. 1A, July 2, 2004.

<sup>9</sup> See, “Names of the dead found on petitions,” Joni James and Lucy Morgan, St. Petersburg Times, September 28, 2004.

forms that should have been completed by the registrants. On several occasions, workers appear to have signed multiple voter registrations themselves using information obtained during the registration drive. In many of the situations complained about, the workers were being paid on the basis of each registration form submitted.”<sup>10</sup>

### **III. Effect of Proposed Changes:**

Committee Substitute for Committee Substitute for Senate Bill 1996 imposes a series of safeguards on the initiative petition process. The committee substitute attempts to closely regulate the petition verification process, to require that additional information be provided to a voter who signs a petition, and to regulate petition circulators, in particular paid circulators, primarily by requiring greater disclosure on the part of the circulators. The committee substitute also authorizes additional criminal sanctions against people who abuse the petition process, either through fraud and misrepresentation, or through the misuse of signed petitions or voter registrations.

#### **Section 1**

This section provides that the name of the act is the “Petition Fraud and Voter Protection Act.”

#### **Section 2 – Verification of Signatures on Petitions**

This section codifies the current requirement that petitions to secure ballot placement for an issue, and newly created petition revocations, must be verified by a name-by-name, signature-by-signature check of the number of valid signatures on the petitions. The committee substitute prohibits supervisors of elections from counting signatures on petitions which do not satisfy all relevant provisions of the election code.

The committee substitute prohibits a person or organization that submits petitions to secure ballot placement for an issue and that files a certification of undue burden from providing compensation to any paid petition circulator before paying all supervisors for checking signatures or before reimbursing the General Revenue Fund for such costs.<sup>11</sup> If a person or organization provides compensation to a paid petition circulator before the date on which the person or organization pays all supervisors or reimburses the General Revenue Fund, then all signatures collected by the petition circulator who received payment will be invalid and not counted toward the number of signatures required for ballot placement.

The proposed language provides a political committee or any elector the opportunity to contest the proper verification of a signature on a petition, i.e., whether the supervisor of elections performed a name-by-name, signature-by-signature check of the number of valid signatures on the petitions, in circuit court. Any contest of the verification of signatures must be filed within 30 days after the date the verified signature was certified to the Secretary of State. The contestant

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<sup>10</sup> “FDLE Investigates Statewide Voter Fraud,” press release, Florida Department of Law Enforcement, October 21, 2004.

<sup>11</sup> Current s. 99.097, F.S., requires a fee of 10 cents to be paid by the sponsor, in advance, for each signature that is verified on an initiative petition; a certificate of undue burden is filed to defer the cost of verification when the cost would pose an undue burden on financial resources of the sponsor.

must demonstrate that one or more petitions were improperly verified; any signatures shown to be improperly verified may not be counted toward the number of valid signatures required for ballot placement. If the contestant demonstrates by a preponderance of the evidence that, due to improper verification, there was an insufficient number of valid signatures to qualify an issue for ballot placement and the Secretary of State has already issued a certificate of ballot position, then the issue shall be removed from the ballot. If it is impractical to remove the issue from the ballot, then any votes cast for or against the issue may not be counted and shall be invalid. The committee substitute provides a 90-day window (from the date the Secretary of State issued a certificate of ballot position) for bringing an action under the new subsection.

### **Section 3 – Initiatives; procedure for placement on ballot.**

This section requires that an initiative petition must be filed with the Secretary of State no later than February 1 of the year in which the general election is to be held and that the Secretary of State must issue the certification of ballot position upon receipt of verification certificates for the requisite number of signatures for placement. The requirements of s. 100.371, F.S., relating to initiative petitions are amended to:

- Provide that every signature on a petition must be dated by the elector when made;
- Require that the contents of a petition form be limited to those items required by statute or rule;
- Provide that a petition form is a political advertisement and is therefore subject to the requirements of ch. 106, F.S.;
- Require supervisors of elections to record the date each petition form was received by the supervisor and the date the signature on the form was verified; and
- Provide that an elector has the right to submit his or her signed form to the sponsor of the initiative amendment, by mail or otherwise, at an address listed on the form for this purpose.

Further, s. 100.371, F.S., is amended to provide requirements for a signature on a petition form to be valid. For a signature on a form to be valid, it must include:

- The original signature and date of birth of the purported elector;
- The date on which the purported elector signed the form;
- The name, street address, and county of the purported elector;
- The purported elector must be a duly qualified and registered elector authorized to vote in the county in which the signature is submitted;
- The elector must have signed the form no more than 30 days from the date the form was received by the supervisor of elections; and
- The petition form must comply with the provisions of section 4, discussed below.

For a petition form to be valid, the form must have the title “Constitutional Amendment Petition Form” at the top of the form and contain the following notices in bold type and in a 16-point or larger font:

- RIGHT TO MAIL IN.-- You have the right to take this petition home and study the issue before signing. If you choose to sign the petition, you may return it to the sponsors of the amendment at the following address: \_\_\_\_\_.
- NATURE OF AMENDMENT.-- The merits of the proposed change to the Florida Constitution appearing below have not been officially reviewed by any court or agency of state government.

The committee substitute provides that an elector may revoke his or her signature by submitting to the supervisor of elections a signed petition revocation form. The form is subject to the same requirements as the petition form under the elections code. A revocation form must be submitted with the appropriate supervisor of elections no later than January 1 of the year of the general election in which the initiative amendment is certified for ballot position. The supervisor of elections is required to promptly verify the signature on the revocation form and process the revocation. The supervisor of elections must execute a certificate indicating the signatures that are validly revoked, and transmit the certificate to the Secretary of State.

The committee substitute requires the Financial Impact Estimating Conference to complete an analysis for the ballot of the estimated financial impact of the initiative on the private and public sectors of the state. The ballot must also include a statement to the effect that the financial impact statement is required by law and should not be construed as an endorsement; this statement shall be prescribed through rule by the Department of State. Also, the Financial Impact Estimating Conference must draft an initiative financial information statement to describe any projected financial impact of the initiative on the private and public sectors of the state and submit the statement to the Attorney General and the Secretary of State.

#### **Section 4 – Regulation of initiative petition circulators**

The committee substitute creates s. 100.372, F.S., relating to the regulation of petition circulators. The proposed language defines “petition circulator” as any person who, in the context of a direct face-to-face conversation, presents to another person for possible signature a petition form or petition revocation form regarding ballot placement for an initiative. “Paid petition circulator” is defined to be a petition circulator who receives any compensation as either a direct or indirect consequence of the activities described under the definition of “petition circulator.” A petition circulator must be at least 18 years of age, eligible to register to vote in this or any other state or territory of the United States, and not be a convicted felon, ineligible to vote. Additionally, a paid petition circulator, when circulating petitions, must wear a prominent badge identifying him or her as a “PAID PETITION CIRCULATOR.”

The committee substitute authorizes an owner, lessee, or other person lawfully exercising control over private property to uniformly prohibit or permit petition circulators from operating on one’s property or engaging in activities that support or oppose an initiative.

A petition form or petition revocation form, prior to being presented to a possible elector for signature, must provide certain information in a format and manner prescribed by rule. Information required under this section includes:

- The name of any organization or entity with which the petition circulator is affiliated and on behalf of which the circulator is presenting forms for signature;
- The name of the sponsor of the initiative if different from the entity with which the petition circulator is affiliated.
- A statement directing those seeking information about the initiative sponsors and their contributors to the internet address of the appropriate division website; and
- A statement as to whether the petition circulator is paid, and if so, the amount or rate of compensation.

If a signature was obtained by a petition circulator, each signed petition form or revocation form must include the following information to appear on the form when submitted to a supervisor of elections for verification:

- The name of the petition circulator;
- The street address at which the petition circulator resides, including county;
- The petition circulator's date of birth; and
- The petition circulator's Florida voter registration number and county of registration, if applicable.

The following requirements must be met when a paid petition circulator submits any signed petition form or group of forms, or any revocation form or group of forms, to a supervisor of elections:

- A signed declaration under penalty of perjury must be executed by the paid petition circulator and attached to submitted forms. The declaration must include the paid circulator's printed name; street address at which he or she resides, including county; and the date he or she signed the declaration;
- If submitting a group of forms, the forms must be consecutively numbered and referred to in the declaration by number; and
- The declaration shall attest that the petition circulator complied with all applicable laws in obtaining the signatures.

The declaration must be attached to all petition forms or revocation forms for a supervisor to verify the forms. Any forms that do not have the declaration attached will be invalid.

Requires paid petition circulators to provide to initiative sponsors a copy of their valid and current government-issued photo identification that indicates the circulator's current residence. The sponsor must maintain the copies in its files, and is required to make the copies available for inspection by the Division of Elections, a supervisor of elections, or any law enforcement agency. If a sponsor fails to maintain the required copies, all petitions obtained by the paid petition circulators for whom the sponsor does not have copies are invalid and may not be verified by a supervisor of elections. If a sponsor subsequently produces a copy of an identification card after the time a copy is requested for inspection, all petitions obtained by the paid petition circulator prior to the time the copy is produced are invalid.

**Section 5 – Referenda; ballots**

The committee substitute amends a cross reference.

**Section 6. Request for absentee ballots**

The committee substitute amends a cross reference.

**Section 7. Consideration for registration; interference with registration; soliciting registrations for compensation; alteration of registration application; failing to submit registration application**

The committee substitute prohibits a person from obtaining an executed voter registration application from another person and from willfully failing to submit the application to the appropriate supervisor of election within 10 days. This conduct constitutes a felony of the third degree.

**Section 8 – Violations involving petitions**

This section revises the current statute relating to violations involving initiative petitions. The proposed language:

- Prohibits a person from willfully swearing falsely to any oath, or willfully procuring another person to swear falsely to an oath, in connection with the petition process. This conduct constitutes a first-degree misdemeanor. A subsequent violation is a felony of the third degree;
- Prohibits a person from willfully submitting any false information on a petition. This conduct constitutes a first-degree misdemeanor. A subsequent violation is a felony of the third degree;
- Prohibits a person from directly or indirectly giving or promising anything of value to any other person to induce that person to sign a petition. This conduct constitutes a first-degree misdemeanor. A subsequent violation is felony of the third degree;
- Prohibits a person from, by corrupt means, influencing or attempting to influence, any person's free exercise of that person's right to sign a petition or revocation. This conduct constitutes a first-degree misdemeanor. A subsequent violation is felony of the third degree;
- Prohibits a person from providing or receiving compensation based, directly or indirectly, upon the number of signatures obtained on petitions or revocations. This conduct constitutes a first-degree misdemeanor. A subsequent violation is felony of the third degree;
- Prohibits a person from altering a petition or revocation form signed by another person without the other person's knowledge and consent. This conduct constitutes a first-degree misdemeanor. A subsequent violation is felony of the third degree;
- Prohibits a person from perpetrating, attempting, or aiding in the perpetration of, any fraud in connection with obtaining the signature of electors on petition or revocation forms. This conduct constitutes a first-degree misdemeanor. A subsequent violation is felony of the third degree; and

- Imposes civil penalties upon any paid circulator that violates any provision of ch. 104, F.S. The fine is not to exceed \$1,000 per violation.

### **Section 9 – Unlawful registrations, petitions, and voting; investigation**

This section allows a supervisor of elections to report findings of unlawful registrations, petitions, and voting to the Florida Department of Law Enforcement; the law already provides that these findings may be reported to a state attorney and the Florida Elections Commission. The proposed language requires a supervisor of elections to document and report suspected unlawful registrations, petitions, and voting to the Florida Elections Commission within 10 days.

### **Section 10 – Petitions subject to this act**

The committee substitute allows signatures gathered and submitted for verification prior to the effective date of this act to be verified and counted. All petitions submitted after the effective date are subject to the provisions of this act. Invalidates all petition forms approved by the Secretary of State prior to the effective date of this act, and requires a sponsor to submit a new petition form to the Secretary for approval in accordance the requirements of this act.

### **Section 11 – Severability**

This section provides a severability clause that permits any provision of this act that is found to be invalid to be severed from the valid portions of the act.

### **Section 12 – Effective Date**

This section provides an effective date of August 1, 2005.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. Other Constitutional Issues:**

In *Buckley v. American Constitutional Law Foundation, Inc.*, the United States Supreme Court approved the requirement that petition circulators submit affidavits attesting to certain personal contact information.

The Court appeared to endorse the practice of requiring a “large, plain-English notice alerting potential signers of petitions to the law’s requirements,”<sup>12</sup> as well as criminalizing petition signature forgery, and requiring that a petition is “void if a circulator has violated any provision of the laws governing circulation.”<sup>13</sup>

The Court did not reach the question of whether it was unconstitutional to require circulators to be residents of the state because the residency requirement was not challenged by the opponents of the legislation. The Court did, however, allude to the possibility that a residency requirement would be upheld as a “needful integrity-policing measure.”<sup>14</sup> The Court held that requiring circulators to be registered to vote limits the number of voices that could convey the initiative proponents’ message, and therefore reduces the size of the audience that could be reached; dicta in the court’s decision suggests requiring that a circulator be “merely voter eligible” would be less burdensome.<sup>15</sup>

The Court specifically did not address whether a requirement to wear badges that indicate whether the circulator is paid or a volunteer “would pass constitutional muster standing alone.”<sup>16</sup> The Court opined, however, that requiring a badge that included personal identification information at the precise moment when the circulator’s interest in anonymity is greatest is injurious to free speech.

The Court has not encountered, nor addressed, the issue of requiring a paid petition circulator to reveal, on an individual basis, his or her rate of compensation. In its decision in *Buckley*, however, the court held that the public listing of a petition circulator’s income from the circulation of petitions fails exacting scrutiny and this requirement was stricken.<sup>17</sup>

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

None.

<sup>12</sup> *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 205 (1999).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, at 197. In *Initiative & Referendum Institute v. Jaeger*, 241 F. 3d 614, 616 (8th Cir. 2001), the Eighth Circuit Court of Appeals opined that the Supreme Court in *Buckley* “assumed” that a residency requirement would serve the state’s goals better, and in a less restrictive way, because a residency requirement would allow the state to locate and subpoena circulators. The Eighth Circuit went on to hold that a residency requirement for circulators of initiative petitions did not violate the First Amendment.

<sup>15</sup> *Id.* at 194-195.

<sup>16</sup> *Id.* at 200. In its opinion, the Court reiterated several times that the arguments raised by the challengers to the statutory requirements only addressed the personal identification aspect of the badge—not the paid/volunteer status—and therefore the opinion was limited to the personal identification requirement, only.

<sup>17</sup> *Id.* at 204.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On page 16, line 2, of the committee substitute, the word “notarized” appears to modify the declaration under penalty of perjury that a petition circulator must attach to a signed petition form or group of forms to be submitted to a supervisor of elections for verification under proposed s. 100.372(6)(a), F.S. A “declaration under penalty of perjury” is defined in *Black’s Law Dictionary* to be “[a] formal, written statement — resembling an affidavit but not notarized or sworn to — that attests, under penalty of perjury, to facts known by the declarant.”<sup>18</sup> The Legislature may wish to remove the reference to the statement being “notarized” if the intent of the proposed legislation is to require a statement that fulfills the requirements proposed in the committee substitute in the form of a declaration under penalty of perjury.

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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<sup>18</sup> *Black’s Law Dictionary*, Seventh Edition, p. 415, “declaration,” no. 8.

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## **VIII. Summary of Amendments:**

None.

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