

CHAPTER 2019-64

Committee Substitute for Committee Substitute for House Bill No. 5

An act relating to ballot measures; amending s. 212.055, F.S.; providing that a referendum to adopt or amend a local discretionary sales surtax must be held at a general election; requiring a petition sponsor of an initiative to adopt a charter county and regional transportation system surtax to comply with specified requirements within a specified timeframe before the proposed referendum; requiring a county to make the proposed referendum and a specified legal opinion available on its official website; requiring the Office of Program Policy Analysis and Government Accountability, upon receiving a certain notice, to procure a certified public accountant for a performance audit; requiring a supervisor of elections to verify petition signatures and retain signature forms in a specified manner; providing that an initiative sponsor's failure to comply with the specified requirements renders any referendum held void; revising requirements and procedures for counties, school districts, and the office relating to performance audits; providing that the failure to comply with certain requirements renders any referendum held to adopt a discretionary sales surtax void; amending s. 97.021, F.S.; providing definitions; amending s. 100.371, F.S.; requiring a paid petition circulator to register with the Secretary of State and provide certain information; requiring petition forms to be made available to sponsors; requiring the secretary to maintain a specified database; requiring supervisors of elections to provide specified information to the division of elections; requiring the division of elections to keep specified information in a database; providing requirements for gathering petition forms; providing for the imposition of fines for failure to deliver petition forms within a specified time period; providing for defenses; allowing the Secretary of State to refer petition form violations to the Attorney General for enforcement; requiring the division to adopt rules; providing that the date the elector signs a petition form is presumed to be the date the sponsor collected the form; revising the timeframe for and the information that must be included in a Financial Impact Estimating Conference analysis and financial impact statement; revising information that the Financial Impact Estimating Conference should include in an initiative financial information statement; requiring the Office of Economic and Demographic Research to request a list of persons authorized to speak on behalf of a sponsor; expanding the word limit for a financial impact statement; requiring certain language to appear on the ballot in specified situations; requiring each supervisor to include certain summaries in certain publications or mailings; conforming a provision; creating s. 104.186, F.S.; prohibiting compensation for initiative petition circulators based on the number of petition forms gathered; providing penalties; creating s. 104.187, F.S.; providing penalties for failure to register as a petition circulator; providing applicability; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Effective January 1, 2020, present subsection (10) of section 212.055, Florida Statutes, is redesignated as subsection (11) and amended, a new subsection (10) is added to that section, and paragraph (c) of subsection (1), paragraph (b) of subsection (5), and paragraph (b) of subsection (8) are amended, to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM SURTAX.—

(c)1. The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance with law and must be approved in a referendum held at a general election in accordance with subsection (10) at a time to be set at the discretion of the governing body.

2. If the proposal to adopt a surtax is by initiative, the petition sponsor must, at least 180 days before the proposed referendum, comply with all of the following:

a. Provide a copy of the final resolution or ordinance to the Office of Program Policy Analysis and Government Accountability. The Office of Program Policy Analysis and Government Accountability shall procure a certified public accountant in accordance with subsection (11) for the performance audit.

b. File the initiative petition and its required valid signatures with the supervisor of elections. The supervisor of elections shall verify signatures and retain signature forms in the same manner as required for initiatives under s. 100.371(11).

3. The failure of an initiative sponsor to comply with the requirements of subparagraph 2. renders any referendum held void.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by a majority vote of the

electors of the county voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, “county public general hospital” means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(b) If the ordinance is conditioned on a referendum, the proposal to adopt the county public hospital surtax shall be placed on the ballot in accordance with ~~subsection (10) law at a time to be set at the discretion of the governing body.~~ The referendum question on the ballot shall include a brief general description of the health care services to be funded by the surtax.

(8) EMERGENCY FIRE RESCUE SERVICES AND FACILITIES SUR-TAX.—

(b) Upon the adoption of the ordinance, the levy of the surtax must be placed on the ballot by the governing authority of the county enacting the ordinance. The ordinance will take effect if approved by a majority of the electors of the county voting in a referendum held for such purpose. The referendum shall be placed on the ballot of a general ~~regularly scheduled~~ election. The ballot for the referendum must conform to the requirements of s. 101.161.

(10) DATES FOR REFERENDA.—A referendum to adopt or amend a local government discretionary sales surtax under this section must be held at a general election as defined in s. 97.021.

~~(11)(10)~~ PERFORMANCE AUDIT.—

~~(a) For any referendum held on or after March 23, 2018, To adopt a discretionary sales surtax under this section, an independent certified public accountant licensed pursuant to chapter 473 shall conduct a performance audit of the program associated with the proposed surtax adoption proposed by the county or school district.~~

(b)1. At least 180 days before the referendum is held, the county or school district shall provide a copy of the final resolution or ordinance to the Office of Program Policy Analysis and Government Accountability.

2. Within 60 days after receiving the final resolution or ordinance, the Office of Program Policy Analysis and Government Accountability shall procure the certified public accountant and may use carryforward funds to pay for the services of the certified public accountant.

3.(b) At least 60 days before the referendum is held, the performance audit must ~~shall~~ be completed and the audit report, including any findings, recommendations, or other accompanying documents, must ~~shall~~ be made available on the official website of the county or school district.

4. The county or school district shall keep the information on its website for 2 years from the date it was posted.

5. The failure to comply with the requirements under subparagraph 1. or subparagraph 3. renders any referendum held to adopt a discretionary sales surtax void.

(c) For purposes of this subsection, the term “performance audit” means an examination of the program conducted according to applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. At a minimum, a performance audit must include an examination of issues related to the following:

1. The economy, efficiency, or effectiveness of the program.
2. The structure or design of the program to accomplish its goals and objectives.
3. Alternative methods of providing program services or products.
4. Goals, objectives, and performance measures used by the program to monitor and report program accomplishments.
5. The accuracy or adequacy of public documents, reports, and requests prepared by the county or school district which relate to the program.
6. Compliance of the program with appropriate policies, rules, and laws.

(d) This subsection does not apply to a referendum held to adopt the same discretionary surtax that was in place during the month of December immediately before the date of the referendum.

Section 2. Subsections (27) through (45) of s. 97.021, F.S., are renumbered as subsections (28) through (46), respectively, and new subsection (27) is added to that section, to read:

97.021 Definitions.—For the purposes of this code, except where the context clearly indicates otherwise, the term:

(27) “Petition circulator” means an entity or individual who collects signatures for compensation for the purpose of qualifying a proposed constitutional amendment for ballot placement.

Section 3. Effective 30 days after the effective date of this act, subsections (3) through (7) of section 100.371, Florida Statutes, are renumbered as subsections (11) through (15), respectively, present subsections (5) and (6) are amended, and new subsections (3) through (10) are added to that section, to read:

100.371 Initiatives; procedure for placement on ballot.—

(3) A person may not collect signatures or initiative petitions for compensation unless the person is registered as a petition circulator with the Secretary of State.

(4) An application for registration must be submitted in the format required by the Secretary of State and must include the following:

(a) The information required to be on the petition form under s. 101.161, including the ballot summary and title as approved by the Secretary of State.

(b) The applicant's name, permanent address, temporary address, if applicable, and date of birth.

(c) An address in this state at which the applicant will accept service of process related to disputes concerning the petition process, if the applicant is not a resident of this state.

(d) A statement that the applicant consents to the jurisdiction of the courts of this state in resolving disputes concerning the petition process.

(e) Any information required by the Secretary of State to verify the applicant's identity or address.

(5) All petitions collected by a petition circulator must contain, in a format required by the Secretary of State, a completed Petition Circulator's Affidavit which includes:

(a) The circulator's name and permanent address;

(b) The following statement, which must be signed by the circulator:

By my signature below, as petition circulator, I verify that the petition was signed in my presence. Under penalties of perjury, I declare that I have read the foregoing Petition Circulator's Affidavit and the facts stated in it are true.

(6) The division or the supervisor of elections shall make petition forms available to registered petition circulators. All such forms must contain information identifying the petition circulator to which the forms are provided. The division shall maintain a database of all registered petition circulators and the petition forms assigned to each. Each supervisor of elections shall provide to the division information on petition forms assigned to and received from petition circulators. The information must be provided in a format and at times as required by the division by rule. The division must update information on petition forms daily and make the information publicly available.

(7)(a) A sponsor that collects petition forms or uses a petition circulator to collect petition forms serves as a fiduciary to the elector signing the petition form, ensuring that any petition form entrusted to the petition circulator shall be promptly delivered to the supervisor of elections within 30 days after the elector signs the form. If a petition form collected by any petition circulator is not promptly delivered to the supervisor of elections, the sponsor is liable for the following fines:

1. A fine in the amount of \$50 for each petition form received by the supervisor of elections more than 30 days after the elector signed the petition form or the next business day, if the office is closed. A fine in the amount of \$250 for each petition form received if the sponsor or petition circulator acted willfully.

2. A fine in the amount of \$500 for each petition form collected by a petition circulator which is not submitted to the supervisor of elections. A fine in the amount of \$1,000 for any petition form not submitted if the sponsor or petition circulator acted willfully.

(b) A showing by the sponsor that the failure to deliver the petition form within the required timeframe is based upon force majeure or impossibility of performance is an affirmative defense to a violation of this subsection. The fines described in this subsection may be waived upon a showing that the failure to deliver the petition form promptly is based upon force majeure or impossibility of performance.

(8) If the Secretary of State reasonably believes that a person or entity has committed a violation of this section, the secretary may refer the matter to the Attorney General for enforcement. The Attorney General may institute a civil action for a violation of this section or to prevent a violation of this section. An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate order.

(9) The division shall adopt by rule a complaint form for an elector who claims to have had his or her signature misrepresented, forged, or not delivered to the supervisor. The division shall also adopt rules to ensure the integrity of the petition form gathering process, including rules requiring sponsors to account for all petition forms used by their agents. Such rules may require a sponsor or petition circulator to provide identification information on each petition form as determined by the department as needed to assist in the accounting of petition forms.

(10) The date on which an elector signs a petition form is presumed to be the date on which the petition circulator received or collected the petition form.

(13)(5)(a) Within ~~75~~ 45 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State, the Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments, estimated economic impact on the state and local economy, and the overall impact to the state budget resulting from the proposed initiative. The 75-day time limit is tolled when the Legislature is in session. The Financial Impact Estimating Conference shall submit the financial impact statement to the Attorney General and Secretary of State.

(b) Immediately upon receipt of a proposed revision or amendment from the Secretary of State, the Coordinator of the Office of Economic and Demographic Research shall contact the person identified as the sponsor to request an official list of all persons authorized to speak on behalf of the named sponsor and, if there is one, the sponsoring organization at meetings held by the Financial Impact Estimating Conference. All other persons shall be deemed interested parties or proponents or opponents of the initiative. The Financial Impact Estimating Conference shall provide an opportunity for any representatives of the sponsor, interested parties, proponents, or opponents of the initiative to submit information and may solicit information or analysis from any other entities or agencies, including the Office of Economic and Demographic Research.

(c) All meetings of the Financial Impact Estimating Conference shall be open to the public. The President of the Senate and the Speaker of the House of Representatives, jointly, shall be the sole judge for the interpretation, implementation, and enforcement of this subsection.

1. The Financial Impact Estimating Conference is established to review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by initiative. The Financial Impact Estimating Conference shall consist of four principals: one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research, or his or her designee; one person from the professional staff of the Senate; and one person from the professional staff of the House of Representatives. Each principal shall have appropriate fiscal expertise in the subject matter of the initiative. A Financial Impact Estimating Conference may be appointed for each initiative.

2. Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than 150 ⁷⁵ words in length, and immediately submit the statement to the Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.

3. If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, or if the Supreme Court has rejected the initial submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court by 5 p.m. on the 75th day before the election, the following statement shall appear on the ballot pursuant to s. 101.161(1): “The financial impact of this measure, if any, cannot be reasonably determined at this time.”

(d) The financial impact statement must be separately contained and be set forth after the ballot summary as required in s. 101.161(1). If the financial impact statement estimates increased costs, decreased revenues, a negative impact on the state or local economy, or an indeterminate impact for any of these areas, the ballot must include a statement indicating such estimated effect in bold font.

(e)1. Any financial impact statement that the Supreme Court finds not to be in accordance with this subsection shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court's advisory opinion is rendered at least 75 days before the election at which the question of ratifying the amendment will be presented. The Financial Impact Estimating Conference shall prepare and adopt a revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's opinion.

2. If, by 5 p.m. on the 75th day before the election, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference for an initiative amendment that otherwise meets the legal requirements for ballot placement, the financial impact statement shall be deemed approved for placement on the ballot.

3. In addition to the financial impact statement required by this subsection, the Financial Impact Estimating Conference shall draft an initiative financial information statement. The initiative financial information statement should describe in greater detail than the financial impact statement any projected increase or decrease in revenues or costs that the state or local governments would likely experience and the estimated economic impact on the state and local economy if the ballot measure were approved. If appropriate, the initiative financial information statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. The initiative financial information statement must include both a summary of not more than 500 words and additional detailed information that includes the assumptions that were made to develop the financial impacts, workpapers, and any other information deemed relevant by the Financial Impact Estimating Conference.

4. The Department of State shall have printed, and shall furnish to each supervisor of elections, a copy of the summary from the initiative financial information statements. The supervisors shall have the summary from the initiative financial information statements available at each polling place and at the main office of the supervisor of elections upon request.

5. The Secretary of State and the Office of Economic and Demographic Research shall make available on the Internet each initiative financial information statement in its entirety. In addition, each supervisor of elections whose office has a website shall post the summary from each initiative financial information statement on the website. Each supervisor shall include a copy of each summary from the initiative financial

information statements and the Internet addresses for the information statements on the Secretary of State’s and the Office of Economic and Demographic Research’s websites in the publication or mailing required by s. 101.20.

(14)(6) The Department of State may adopt rules in accordance with s. 120.54 to carry out the provisions of subsections (1)-(14) ~~(1)-(5)~~.

Section 4. Section 104.186, Florida Statutes, is created to read:

104.186 Initiative petitions; violations.—A person who compensates a petition circulator as defined in s. 97.021 based on the number of petition forms gathered commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section does not prohibit employment relationships that do not base payment on the number of signatures collected.

Section 5. Effective 30 days after the effective date of this act, section 104.187, Florida Statutes, is created to read:

104.187 Initiative petitions; registration.—A person who violates s. 100.371(3) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or 775.083.

Section 6. The provisions of this act apply to all revisions or amendments to the State Constitution by initiative that are proposed for the 2020 election ballot and each ballot thereafter; provided, however, that nothing in this act affects the validity of any petition form gathered before the effective date of this act or any contract entered into before the effective date of this act.

Section 7. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor June 7, 2019.

Filed in Office Secretary of State June 7, 2019.