

FLORIDA FINANCIAL IMPACT ESTIMATING CONFERENCE
Citizenship Requirement to Vote in Florida Elections
Serial Number 18-14
August 23, 2019

FINANCIAL IMPACT STATEMENT

Because the proposed amendment is not expected to result in any changes to the voter registration process in Florida, it will have no impact on state or local government costs or revenues. Further, it will have no effect on the state's economy.

SUMMARY OF INITIATIVE FINANCIAL INFORMATION STATEMENT

Research on other states that have passed or considered similar changes has shown that significant costs have only been identified when the proposal has been accompanied by a specific requirement for proof or verification of citizenship. That requirement is not a part of this proposed amendment. In addition, according to the proposed amendment's Sponsor: "The language would in no way alter the process by which elections are conducted in Florida. Likewise, it would have no effect on the workloads of the Secretary of State or the county Supervisors of Elections." The Financial Impact Estimating Conference concurs with the Sponsor's interpretation. Further, there are no revenues linked to voter registration in Florida. Therefore the Conference finds that there is no impact on state costs or revenues and that there will be no impact on the state's budget.

Finally, given the lack of a fiscal impact and the nature of the proposed amendment, it will have no effect on the state's economy.

SUBSTANTIVE ANALYSIS

A. Proposed Amendment

Ballot Title:

Citizenship Requirement to Vote in Florida Elections

Ballot Summary:

This amendment provides that only United States Citizens who are at least eighteen years of age, a permanent resident of Florida, and registered to vote, as provided by law, shall be qualified to vote in a Florida election.

Article and Section Being Created or Amended:

Amends Article VI, Section 2

Full Text of the Proposed Amendment:

ARTICLE VI, Section 2. Electors.

~~Every citizen~~ Only a citizen of the United States who is at least eighteen years of age and who is a permanent resident of the state, if registered as provided by law, shall be an elector of the county where registered.

B. Effective Date

Article XI, Section 5(e), of the Florida Constitution, states: “Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”

Assuming the initiative is on the ballot in 2020, its effective date would be January 12, 2021.

C. Formal Communications to and from the Sponsor, Proponents, and Opponents

The proposed amendment’s Sponsor, Florida Citizen Voters, designated John Loudon, Chairman of Florida Citizen Voters Political Committee, and Erika Alba, Legal Counsel for Florida Citizen Voters, Foley & Lardner LLP, to speak on its behalf at meetings held by the Financial Impact Estimating Conference (FIEC). The Conference also sought input from those groups who were on record as supporting or opposing the petition initiative. However, none were identified.

D. Input Received from the Sponsor, Proponents, Opponents, and Interested Parties

The FIEC allows any proponent, opponent, or interested party to present or provide the conference with materials to consider. Other than a letter from the Sponsor, no materials were received. Further, no one other than the Sponsor addressed the FIEC either in support of, against, or for information purposes regarding the proposed amendment; however, written communication received from Maria Matthews, Director of the Division of Elections of the Department of State, indicated that no state costs have been identified.

E. Background

Article VI, Section 2 of the Florida Constitution states that “every citizen of the United States who is at least eighteen years of age and who is a permanent resident of the state, if registered as provided by law, shall be an elector of the county where registered.” Florida Statutes further contemplates the connection between citizenship and the legal right to vote. Section 97.041(1)(a), F.S., specifies that a person may become registered to vote only if that person is at least eighteen years of age, a legal resident of the state of Florida, a legal resident of the county where registered, and “a citizen of the United States.”

Section 97.052, F.S., directs the Department of State to prescribe by rule a uniform statewide voter registration application. This application is designed to elicit from the applicant “whether the applicant is a citizen of the United States by asking the question ‘Are you a citizen of the United States of America?’ and providing boxes for the applicant to indicate whether the applicant is or is not a citizen of the United States.” Per section 104.011, F.S., a person who willfully swears or affirms falsely to any oath or affirmation in connection with or arising out of voting or elections commits a felony of the third degree, which is punishable by a term of imprisonment not exceeding five years or a fine of up to \$5,000. Section 97.053(5)(a), F.S., states that a voter registration application is complete if it contains information necessary to determine eligibility including “a mark in the checkbox affirming that the applicant is a citizen of the United States.” Section 98.045, F.S., directs each Supervisor of Elections to ensure whether any applicant for voter registration is ineligible based upon a list of factors which includes if “the applicant is not a United States citizen.” Section 98.075, F.S., provides for procedures whereby an Elections Supervisor may

remove an individual from the voter registration database if he or she becomes aware that the person is ineligible because the person is not a citizen.¹

F. Discussion of Impact of Proposed Amendment

Section 100.371, F.S., requires the FIEC to review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by initiative. In this regard, the FIEC considers whether the proposed amendment increases or decreases any revenues or costs to state and local governments, the estimated economic impact on the economy, and the overall impact to the state budget.

The proposed amendment inadvertently neglected to underline the word “citizen” in the phrase “Only a citizen”. The FIEC solicited input from the Sponsor’s representative, Department of State, and legislative staff regarding the drafting conventions used in the proposed amendment. While there does not appear to be direct case law that touches upon this specific scenario, there is limited case law that implies that as long as the ballot summary is clear and did not result in any confusion or influence how the voters voted on the proposed amendment, this specific issue would be considered de minimis.

The intent of the proposed amendment is to change language in the Florida Constitution addressing voter eligibility from “every citizen” to “only a citizen.” The word “every” is explicitly inclusive, while “only” is implicitly exclusive. In other words, defining electors as “every citizen” specifies who can participate in elections without touching upon who cannot participate in elections. Given this interpretation, the new language simply affirms that non-citizens are not eligible to register to vote and participate in elections in the state.

Costs and Revenues

Input from the Sponsor stated: “The language would in no way alter the process by which elections are conducted in Florida. Likewise, it would have no effect on the workloads of the Secretary of State or the county Supervisors of Elections. Nor would the language impact the state’s revenues or expenditures in any way from the status quo.” In addition, the Department of State indicated that no state costs have been identified.

In order to determine if the proposed amendment would have an impact on state or local government costs or revenues, the FIEC reviewed the fiscal impact that similar language has had in other states. According to the National Conference of State Legislatures, at least 22 states use the phrase “every citizen” in relation to participation in elections. Recently, numerous states have had either constitutional or legislatively proposed changes aimed at revising the wording “every citizen” to “only a citizen” or making another change that was similar.

In 2018, the voters of North Dakota passed *Initiated Constitutional Measure Number 2*, changing the North Dakota Constitution to define a “qualified elector” as “only a citizen” instead of “every citizen.” Prior to the passage of this amendment, the North Dakota Secretary of State was asked to provide an analysis of the measure. In a memo to the North Dakota Legislative Council dated August 21, 2018, North Dakota Secretary of State Alvin Jaeger stated that “...because it does not change the current election administration procedures in state law, my office did not find anything in the proposed amendment that would cause a fiscal impact for an agency of the state, district or political subdivision.”² Email

¹ 2019 Florida Statutes retrieved from www.leg.state.fl.us on 08/23/19

² Report of the North Dakota Legislative Council, September 12, 2108, Appendix B, available at <https://vip.sos.nd.gov/pdfs/Measures%20Info/2018%20General/Analysis.pdf>, accessed 07/19/2019

correspondence with staff from the North Dakota Secretary of State's Office confirms that the state did not experience any additional costs or other impacts after passage of *Initiated Constitutional Measure Number 2*. The analysis performed before and after passage of North Dakota *Initiated Constitutional Measure Number 2* is of particular importance when evaluating the impact the proposed amendment (*Citizenship Requirement to Vote in Florida Elections*) would have in Florida because:

1. The proposed change to Florida's Constitution is virtually identical to the change that was made to North Dakota's Constitution.
2. According to staff from the North Dakota Secretary of State's Office, prior to passage of *Initiated Constitutional Measure Number 2*, North Dakota's method of determining citizenship was self-attestation. Likewise, Florida elections officials verify citizenship by requiring individuals to check a box affirming citizenship when registering to vote. It is important to note that North Dakota made no change to its method for indicating citizenship after the passage of its constitutional amendment.

In addition to North Dakota, numerous other states had proposed statutory or legislative changes which related to citizenship and voting; however, these initiatives either failed to pass their respective state Legislatures or have yet to be considered at a general election. In Alabama, Senate Bill 313 of the 2019 Regular Session proposed to place a constitutional amendment on the 2020 Presidential ballot to change the right to vote from "every citizen" to "only a citizen." On April 26, 2019, the Government Affairs Committee prepared a fiscal analysis of the bill. The analysis only addressed the additional cost to advertise the proposed constitutional amendment prior to the election and did not address any potential impacts resulting from the passage of the amendment.³ The bill passed the Alabama Legislature and will be considered during the 2020 General Election.

In Maine, HP 149 was considered without final passage during the 2019 Legislative Session. If it had passed, the bill would have placed a constitutional amendment on an upcoming ballot to add "only a citizen of the United States may vote in a state, county or municipal or other local election." The fiscal note prepared for this bill evaluated the additional costs of its placement on the ballot. No impacts resulting from the passage of the amendment were identified.⁴ The Maryland, Mississippi, and Texas Legislatures considered without passage statutory changes which would have provided specific instructions for verifying citizenship prior to a person's participation in elections. Analysis performed on these measures is not applicable to the *Citizenship Requirement to Vote in Florida Elections* proposed amendment because the bills in these other states were fundamentally different. First, they identified specific documentation required for an individual to be able to register to vote, and second they required specific action to be taken by state and local election officials to verify voter eligibility. This means that Florida's proposed amendment is more comparable to the actions taken and underway in North Dakota and Alabama, respectively.

Based upon this analysis, the proposed amendment will have no impact on state or local government costs, as it is not anticipated to result in any procedural change. In addition, there is no reasonable relationship between the proposed changes being made and any state or local government revenue stream. When examining similar proposals in other states, the only instances where it was assumed that there would be additional costs were proposals which placed affirmative requirements on a governmental entity to verify citizenship of voters. Proposals which simply changed wording from "every citizen" to "only a citizen" either assumed no fiscal impact to state or local governments or did not address any impact arising after

³ Bill Status for SB313 (Regular Session 2019), Alabama State Legislature, available at <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2019RS/FiscalNotes/FN-39743.htm>, accessed 07/19/2019

⁴ HP 149, Documents and Disposition, 129th Maine Legislature, First Regular Session, available at http://www.mainelegislature.org/legis/bills/display_ps.asp?id=186&PID=1456&snum=129, accessed 07/19/2019

the of actual passage of the amendment. The FIEC has determined that the proposed amendment will not result in process changes and thus will not have an impact on state and local government costs or revenues.

Economic Analysis

Section 100.371, F.S., requires the FIEC to estimate the impact on the economy of the proposed amendment. As such, the Conference has agreed upon the following guidelines to determine whether a proposed constitutional amendment needs an economic analysis. In this regard, no economic analysis is needed when all of the following are projected to occur:

- No or minimal changes to any state or local expenditures.
- No or minimal changes to any state or local revenues.
- No or minimal changes to the level of federal receipts.
- Based on economic theory, academic research, or the nature of the initiative, no or minimal changes are expected to any economic metrics. These include—but are not limited to—personal income, jobs, capital investment, costs of production, industry mix, or level of imports from or exports to other states or countries.

For these purposes, minimal means that the amount or effect is not large enough to be significant or affect a situation to a noticeable degree.

As stated previously, the proposed amendment will not result in any changes to state or local expenditures or revenues. In addition, the proposed amendment will not change the level of federal funding via penalties, grants, level of apportionment, or any other federal funding mechanism. Lastly, there is no reasonable argument that this amendment impacts any of the economic metrics listed in the guideline above. Therefore, *Citizenship Requirement to Vote in Florida Elections* would have no impact on the state and local economy in Florida.

Budget Analysis

The proposed amendment is not anticipated to result in any additional costs or revenues for the state. Accordingly, there will be no impact on the state budget.