



2024 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

Initiative Petitions Committee

Final Report and Recommendation to the Charter Review Commission

March 15, 2024

Committee Members:

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At its May 15, 2023 meeting, the 2024 Orange County Charter Review Commission ("CRC") formed the Initiative Petitions Committee to study the current initiative petition process and practice, and determine whether to recommend changes to the Orange County Charter.

Based on its study, the Initiative Petitions Committee recommends certain substantive changes to the initiative petition process, as embodied in the Committee's recommended charter amendment (attached as Exhibit "A"), which the Committee recommends that the CRC place on the 2024 General Election ballot for consideration by the voters of Orange County.

Overview of the Committee Process

The committee held eight (8) meetings from May 2023 through February 2024. The meetings were often attended by several members of the public as well as occasional elected officials and/or their representatives. The committee considered input from the public and elected officials who appeared before the CRC and committee, including Orange County Supervisor of Elections Bill Cowles, District 5 Commissioner Emily Bonilla, and a representative of Comptroller Phil Diamond.

The committee began its work in its May 31, 2023 and June 14, 2023 meetings by reviewing, discussing, and debating the substantial revisions to the charter's initiative petition process initiated by the 2016 CRC, as well as other revisions approved by the voters in 2014 and 2020.

The committee thereafter proceeded to review Sec. 601 (Initiative and referendum), Sec. 602 (Procedure for initiative and referendum), and Sec. 603 (Limitation), line by line, and made a considerable number of proposed revisions.

At its July 14, 2023 meeting, a 4/2 majority of the committee voted to revise Sec. 601 A. to lower the number of signed petitions necessary to propose a charter amendment from **10 percent of registered voters in each commission district** to **5 percent of registered voters in a majority of commission districts**. The purpose of this change was to approximate the number of registered voters required to sign a petition to change the Florida Constitution. In that case 8 percent of the voters in the previous presidential election are needed to move a citizen initiative onto the ballot. Estimating a turnout of 60% in a presidential election multiplied by 8 percent yields 4.8% which the committee rounded up to 5% of all registered voters in Orange County. As in the process of amending the Florida Constitution, the requisite percentage of voters (8% of those who voted in the previous presidential election) must be obtained in the majority of Congressional Districts. Here the committee has applied a similar methodology requiring the requisite number of voters sign the petition in a majority of commission districts.

At the same meeting, a 4/2 majority of the committee voted to revise Sec. 601 B. to lower the number of signed petitions necessary to propose an ordinance from **7 percent of registered voters in each commission district** to **3 percent of registered voters in a majority of commission districts**. Using a similar methodology, the relationship of the percentages of 10% for charter amendments to 7% for ordinances (70%): 4.8% times 70% yields a result of 3.36% which the committee rounded down to 3%. As in the process of amending the Florida Constitution, the requisite percentage of voters must be obtained in the majority of Congressional Districts. Here the committee has applied a similar methodology requiring the requisite number of voters sign the petition in a majority of commission districts.

Both actions also removed language in those subsections requiring that at least 75% of the required signatures be on forms containing the Comptroller's financial impact statement (discussed further below).

At the same meeting, a 4/2 majority of the committee voted to **revise Sec. 602 B. and 602 C. to remove a requirement for the inclusion of an affidavit to be signed by a petition gatherer**, whereby the petition gatherer would provide certain information under oath, including the petition gatherer's name and address, paid or volunteer status, and statements that the petition was signed in the petition gatherer's presence, that the petition signer had sufficient time to read the petition, and that the petition gatherer believes the petition signer's signature to be genuine. (The committee later voted to add back certain petition gather affidavit requirements for paid petition gatherers, to be consistent with state constitutional amendment petition gathering requirements, as discussed below.) The requirement for volunteer petition gatherers to sign an affidavit exposing themselves to criminal prosecution if they were to make an accidental error in identifying the signer's signature to be genuine was deemed by the committee to be an excessive infringement upon the petition gatherer's right to participate in a legitimate civic activity.

At the same meeting, the committee unanimously voted to revise Sec. 602 D. to revise the deadline for the submission of petitions to the Supervisor of Elections to be the “fifth working day of the following month.”

At its September 8, 2023 meeting, the committee considered Sec. 602 E. This subsection currently contains three processes applicable to an initiative petition: (1) review of the initiative petition by a legal review panel; (2) preparation of a financial impact statement by the Comptroller; and (3) a public hearing to be held by the Board of County Commissioners on the initiative petition. Each of these three processes is triggered by verification that an initiative petition has been signed by at least 1% of county voters in each commission district.

The legal review panel consists of three licensed attorneys with demonstrated experience in Florida local government law, selected through the County’s procurement process. They are tasked with reviewing an initiative petition and determining whether it meets single-subject requirements, and is not inconsistent with the Florida Constitution, general law, or the restrictions of the charter. If a majority finds that the initiative petition does not, the petition drive terminates.

The financial impact statement is a not-to-exceed 75-word statement prepared by the Comptroller, including the estimated increase or decrease in any revenues or costs to the county or local governments or to the citizens resulting from the approval of the proposed initiative petition. The financial impact statement is to be included as a separate statement on the ballot following the ballot summary for the initiative petition. The financial impact statement is also required to be included in revised initiative petition forms.

Finally, Sec. 602 E. requires that the Board of County Commissioners hold a public hearing on the initiative petition within 60 days after the legal review panel finds the initiative petition legal, at which the sponsor of the initiative petition, the BOCC, and the public can comment on the petition.

At its September 8, 2023 meeting, a 3/1 majority of the committee voted to **delete the entirety of Sec. 602 E., removing the legal review panel, financial impact statement, and public hearing processes, together with the 1% triggering threshold.** The committee was of the opinion that the requirements of Sec. 602 E were so onerous as to discourage the use of the citizen initiative propose changes to the charter. In fact, since the passage of these onerous requirements, no citizens group has attempted this necessary means of citizen involvement in the governance of the county. Article I Section 1 of the Florida Constitution clearly states: “All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people.” The committee agreed this sentiment should be reflected in the Orange County charter.

As part of the same motion, the 3/1 majority of the committee voted to **add a provision to Sec. 602 A., requiring that an initiative petition sponsor submit letters from 3**

Florida attorneys stating that they have reviewed the proposed initiative petition, and that in the attorney's legal opinion, the proposed initiative petition meets single-subject requirements, and is not inconsistent with the Florida Constitution, general law, or the restrictions of the charter.

At the same meeting, a 3/2 majority of the committee voted to **revise Sec. 602 F. to remove the process by which a petition signer could withdraw his or her signature** by filing a form with the Supervisor of Elections. In theory the ability to withdraw one's signature appears harmless and yet in practice it has been used to defeat reasonable proposed amendments by targeting voters with misinformation who have signed the petitions in order to reduce the percentages below the requisite threshold. In no other form of voting is a citizen allowed to withdraw his or her vote from a candidate or proposition once cast.

At the same meeting, a 3/2 majority of the committee voted to **revise Sec. 602 G.1. and G.2. to provide that an initiative petition referendum would be held “at the earlier of the next primary or general election** occurring at least one hundred fifty (150) days after verification of sufficient signatures by the supervisor of elections.”

At its October 11, 2023 meeting, the committee reviewed its work to date, and by consensus agreed to add clarifying language to Sec. 602 G.2. relating to the Board of County Commissioners' vote on a proposed ordinance by initiative.

At its October 30, 2023 meeting, the committee received a presentation from Assistant Orange County Comptroller Chris Dawkins concerning the preparation of financial impact statements by the Comptroller's Office.

At its December 11, 2023 meeting, the committee considered a recommendation from Supervisor Cowles' office that, rather than completely deleting all petition gatherer affidavit requirements, the committee instead retain at least the lesser affidavit requirements imposed on paid petition circulators for state constitutional amendments under Sec. 100.371(5), Fla. Stat. Based on that recommendation, the committee voted to revise Sec. 602 B. and C. to require the inclusion of a petition form of the affidavit referenced in that statute, to be completed by paid petition gatherers only.

At that same meeting, the committee received a report from General Counsel Vose, advising about a recent Division of Elections opinion rendered to the Broward County Attorney. In that opinion, the Florida Department of State, Divisions of Elections, reviewed a provision in the Broward County Charter requiring the placement of a separate 75-word financial impact statement on the ballot after a proposed Broward County charter amendment. The Division of Elections came to the conclusion that based on recent case law, the Broward County charter provision was preempted by state law.

The Broward County requirement to place a separate 75-word financial impact statement on the ballot after a proposed charter amendment is substantially similar to the requirement of Sec. 602 G.1. and G.2, providing the same for charter amendments and

ordinances proposed by initiative petition. As a result, Mr. Vose advised that under prevailing election law guidance from the Division of Election, the referenced requirements in Sec. 602 G.1. and G.2 are likely preempted by state law.

Based on this advice, the committee voted to delete the above-referenced requirement for ballot placement of a separate 75-word financial impact statement from Sec. 602 G.1. and G.2.

Finally, at its March 15, 2024 meeting, a 4/2 majority of the committee voted add back in the requirement for the Comptroller's preparation of a financial impact statement, but not the placement of such statement on the ballot, as reflected in the new Sec. 602 E. **At the same meeting, a 4/2 majority of the committee voted to approve this final report and recommendation, including the proposed ballot and charter language attached as Exhibit "A".**

Exhibit “A”

Ballot Proposal: The ballot title and ballot summary for this question are as follows:

**AMENDMENT REVISING ORANGE COUNTY
CHARTER INITIATIVE PETITION PROCESS**

Revising the charter initiative petition process by lowering petition requirements for charter amendments from 10 percent of registered voters in each commission district to 5 percent in a majority of districts, and for ordinances from 7 percent in each district to 3 percent in a majority of districts; removing signature withdrawal procedures; and revising financial impact statement, public hearing, legal review, and petition affidavit requirements.

_____ Yes
_____ No

Text Revisions: Upon approval of this question at referendum, the following portions of the Orange County Charter are amended to read as follows:

Sec. 601. Initiative and referendum.

The power to propose amendment or repeal of this Charter, or to propose enactment, amendment or repeal of any county ordinance by initiative is reserved to the people of the county.

- A. *Charter.* A petition seeking to amend or repeal the Charter of Orange County shall be signed by five (5) ~~ten (10)~~ percent of the county electors in a majority of commission districts ~~each commission district~~ as of January 1 of the year in which the petition is initiated. ~~No less than seventy five (75) percent of the minimum number of required signatures shall be on petition forms approved by the supervisor of elections containing the comptroller's financial impact statement pursuant to section 602.E.3.~~

- B. *Ordinance.* A petition seeking to enact, amend or repeal an ordinance shall be signed by three (3) ~~seven (7)~~ percent of the county electors in a majority of commission districts ~~each commission district~~ as of January 1 of the year in which petition is initiated. ~~No less than seventy five (75) percent of the minimum number of required signatures shall be on petition forms approved by the supervisor of elections containing the comptroller's financial impact statement pursuant to section 602.E.3.~~

Sec. 602. Procedure for initiative and referendum.

- A. *Initiation and overview of process.* The sponsor of an initiative petition shall register as a political committee as required by general law, and shall, prior to obtaining any signatures, submit the text of the proposed petition to the supervisor of elections, with the form on which signatures will be affixed, and shall obtain the approval of the supervisor of elections of such form. The style and requirements of such form may be specified by ordinance. Concurrent with this submission, the sponsor of an initiative petition shall prepare and submit translations of the ballot title and ballot summary into those languages required by law for placement on the ballot, and shall submit letters from three (3) attorneys licensed to practice law in the state of Florida, each stating that the attorney has reviewed the proposed initiative petition, including ballot title, ballot summary, proposal language, and ballot language translations, and that in the attorney's legal opinion, the proposed initiative petition embraces but one (1) subject and matter directly connected therewith, and is not inconsistent with the Florida Constitution, general law, or the restrictions of section 603. Within fifteen (15) days after the aforementioned submittals, the supervisor of elections shall render a determination on the form on which signatures will be affixed. Each initiative petition shall embrace but one (1) subject and matter directly connected therewith. The beginning date of any petition drive shall commence upon the date of approval by the supervisor of elections of the form on which signatures will be affixed, and said drive shall terminate one hundred eighty (180) days after that date. ~~The one hundred eighty day (180) period shall be suspended and shall not recommence until the completion of all reviews and procedures required by Sec. 602.E. (legal review, financial impact statement, revised petition, sufficiency determination by supervisor of elections and public hearing).~~ In the event sufficient signatures are not submitted during that one-hundred-eighty-day period ~~(as extended by any suspension of same during the reviews and procedures required by Sec. 602.E.),~~ the petition drive shall be rendered null and void and none of the signatures may be carried over onto another petition. If sufficient signatures are submitted during that one-hundred-eighty-day period, the supervisor of elections shall within thirty (30) days thereafter verify the signatures thereon and submit a written report to the board.
- B. *Form of petition.* The form on which signatures will be affixed shall contain the ballot title, ballot summary, and full text of the charter or ordinance change proposed. Such form shall also contain the form of affidavit referenced in F.S. § 100.371(5). ~~Such form shall also contain an affidavit to be completed by a petition gatherer, signed and verified by the petition gatherer under penalty of perjury pursuant to F.S. § 92.525(1)(c), for each petition gathered by that petition gatherer. Such affidavit shall specify the name and address of the petition gatherer who gathered the petition, whether the petition gatherer was a paid petition gatherer or a volunteer petition gatherer, and if paid, whether paid on an hourly basis, a per signature basis, or some other basis therein described. Such affidavit shall also specify that the petition was signed in the petition gatherer's presence, that the petition signer had sufficient time to read the petition language, and that the petition gatherer believes the signature on the petition to be the genuine signature of the petition signer.~~
- C. *Petition gathering.* As used in this Charter, "petition gatherer" means any individual who gathers signatures in person for a county initiative petition. A petition gatherer gathering signatures for a county initiative petition who is not being paid to do so shall display a badge that states the words "volunteer gatherer", in a form and manner specified by

ordinance. A petition gatherer gathering signatures for a county initiative petition who is being paid to do so shall display a badge that states the words "paid gatherer", in a form and manner specified by ordinance. Petition forms gathered by a paid gatherer shall contained a completed affidavit referenced in F.S. § 100.371(5), signed by the paid gatherer. ~~The petition gatherer shall sign and verify under penalty of perjury pursuant to F.S. § 92.525(1)(c) the affidavit required on the petition form for each petition gathered by the petition gatherer. Petitions signed by an elector but not gathered by a petition gatherer shall not be required to have a completed petition gatherer's affidavit, but such petitions shall be submitted by the sponsor to the supervisor of elections with an accompanying statement signed and verified under penalty of perjury pursuant to F.S. § 92.525(1)(c), averring that such accompanying petitions were submitted by the signing elector directly to the sponsor and were not collected by a petition gatherer, and stating the month during which such petitions were received by the sponsor.~~

D. *Submission of signed petitions gathered by petition gatherers; verification of requisite signatures.* The sponsor shall submit all signed petitions gathered by petition gatherers during a month or otherwise received by the sponsor during such month to the supervisor of elections for signature verification no later than the fifth working day of the following month. The supervisor of elections shall verify the validity of signatures for each signed petition submitted within thirty (30) days after submittal to the supervisor of elections. No signature shall be valid unless handwritten and submitted on a paper petition form completed and submitted in a manner consistent with this section. The supervisor of elections shall post a running tally of the number of signatures verified for each initiative petition on the supervisor of elections' website for public view. Otherwise valid signatures not timely submitted to the supervisor of elections shall not be counted towards the total number of signatures required under Section 601.

E. ~~*Legal review, financial impact; public hearing.*~~

1. ~~*One (1) percent threshold.*~~ Upon verification by the supervisor of elections that a petition has been signed by at least one (1) percent of the county electors in each commission district, the supervisor of elections shall have ten (10) days to so notify the board, the comptroller and the legal review panel.

2. ~~*Legal review panel.*~~ The legal review panel shall be a panel of three (3) persons licensed to practice law in the state of Florida who have demonstrated experience in Florida local government law, and who shall be selected on a bi-annual basis through the county's procurement process applicable to legal services. The legal review panel shall meet and render a determination, within twenty (20) days after notification pursuant to section 602.E.1. by the supervisor of elections, whether the proposed initiative petition, including ballot title, ballot summary, proposal language, and ballot language translations, embraces but one (1) subject and matter directly connected therewith, and is not inconsistent with the Florida Constitution, general law, or the restrictions of the Charter. If at least two (2) members of the legal review panel determine that the proposed initiative petition embraces but one (1) subject and matter directly connected therewith, and is not inconsistent with the

Florida Constitution, general law, or the restrictions of the Charter, then the legal review panel shall render a written opinion setting forth its determination and the reasons therefor, and shall so notify the board, the supervisor of elections, and the sponsor of the petition. If at least two (2) members of the legal review panel determine that the proposed initiative petition does not embrace but one (1) subject and matter directly connected therewith, or is inconsistent with the Florida Constitution, general law, or the restrictions of the Charter, then the legal review panel shall render a written opinion setting forth its determination and the reasons therefor, and shall so notify the board, the supervisor of elections, and the sponsor of the petition. In such case, the petition drive shall thereafter terminate, and none of the signatures acquired in such a petition drive may be carried over onto another petition.

3. ~~*Financial impact statement.* Within twenty (20) days after notification pursuant to section 602 E. 1. by the supervisor of elections, the comptroller shall prepare and transmit to the board, supervisor of elections, and the sponsor of the petition, a financial impact statement, not exceeding seventy five (75) words, including the estimated increase or decrease in any revenues or costs to the county or local governments or to the citizens resulting from the approval of the proposed initiative petition. The comptroller shall also prepare translations of the financial impact statement into those languages required by law for placement on the ballot. Upon receipt of the financial impact statement, the sponsor of the petition shall prepare and submit to the supervisor of elections for review and approval a revised petition form containing the financial impact statement, which statement shall be separately contained and placed immediately following the ballot summary. The supervisor of elections shall, within fifteen (15) days after submittal of the revised petition form containing the financial impact statement, render a determination on the form of the revised petition.~~

4. ~~*Public hearing.* Within sixty (60) days after notification of legality by the legal review panel, the board shall hold a public hearing on the petition, at which the sponsor of the initiative petition, the board, and the public may comment on the petition.~~

E. *Financial impact statement.* Upon verification by the supervisor of elections that a petition has been signed by at least one (1) percent of the county electors, the supervisor of elections shall within ten (10) days so notify the board and the comptroller. Within twenty (20) days after such notification, the comptroller shall prepare and transmit to the board, supervisor of elections, and the sponsor of the petition, a financial impact statement, including the estimated increase or decrease in any revenues or costs to the county or local governments or to the citizens resulting from the approval of the proposed initiative petition.

F. *Termination of petition drive by sponsor; withdrawal of signature by petition signer.* A sponsor of an initiative petition may terminate a petition drive by filing with the supervisor of elections a completed initiative termination form promulgated by the supervisor of elections. Prior to final verification of sufficient signatures for an initiative petition by the

~~supervisor of elections, a petition signer may withdraw his or her signature by filing with the supervisor of elections a completed signature withdrawal form adequately identifying the petition signer and petition drive, promulgated by the supervisor of elections and available to print from the supervisor of elections' website.~~

G. *Referendum.*

1. *Charter.* After the requisite number of signatures have been verified by the supervisor of elections, a referendum shall be held on the question of the adoption of the proposed petition at the earlier of the next primary or general election occurring at least one hundred fifty (150) days after verification of sufficient signatures by the supervisor of elections. ~~The comptroller's financial impact statement shall be separately contained and placed on the ballot immediately following the corresponding ballot summary.~~ If the question of the adoption of the proposed petition is approved by a majority of those registered electors voting on the question, the proposed petition shall be enacted and shall become effective on the date specified in the petition, or, if not so specified, on January 1 of the succeeding year. A charter amendment adopted by initiative may not be amended or repealed for a period of one (1) year after its effective date.
2. *Ordinance.* Within thirty (30) days after the requisite number of signatures have been verified by the supervisor of elections and reported to the board, the board shall notice and hold a public hearing on the proposed petition according to law and vote on whether to adopt the proposed petition as an ordinance~~it~~. If the board fails to adopt the proposed petition, the board shall so notify the supervisor of elections, and a referendum shall be held on the question of the adoption of the proposed petition at the earlier of the next primary or general election occurring at least one hundred fifty (150) days after verification of sufficient signatures by the supervisor of elections. ~~The comptroller's financial impact statement shall be separately contained and placed on the ballot immediately following the corresponding ballot summary.~~ If the question of the adoption of the proposed petition is approved by a majority of those registered electors voting on the question, the proposed petition shall be declared by resolution of the board to be enacted and shall become effective on the date specified in the petition, or, if not so specified, on January 1, of the succeeding year. The board shall not amend or repeal an ordinance adopted by initiative for a period of one (1) year after the effective date of such ordinance.
3. The initiative power shall not be restricted, except as provided by general law and this Charter.
4. Charter amendments and ordinances by initiative appearing on the ballot shall be numbered using alphabet lettering and placed in the following order: first, charter amendments proposed by the Charter review commission; next, charter amendments proposed by the board; next, charter amendments proposed by initiative petition; and last, ordinances by initiative. In each case, the article and

section of the charter or code of ordinances being created or amended shall be stated along with the title.

Sec. 603. Limitation.

- A. The power to enact, amend or repeal an ordinance by initiative shall not include ordinances relating to administrative or judicial functions of county government, including but not limited to, county budget, debt obligations, capital improvement programs, salaries of county officers and employees and the levy and collection of taxes.
- B. The power to amend this charter by initiative, or to enact, amend or repeal an ordinance by initiative, shall not extend to the regulation of employer wages, benefits or hours of work, the encumbrance or allocation of tax revenues for any purpose not then authorized by law, or the encumbrance or allocation of tax revenues conditioned upon a prospective change in Florida law.
- C. Notwithstanding any other provision of this charter, the board is prohibited from declaring enacted any ordinance by initiative which, in the determination of the board, is wholly or partially violative of the limitations of this section or Florida law.