HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION

BILL #: HB 4243

RELATING TO: Volusia County

SPONSOR(S): Representative Ziebarth

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
  (1) COMMUNITY AFFAIRS
  (2)
  (3)
  (4)
  (5)

I. <u>SUMMARY</u>:

The bill amends the uniform election dates for Volusia County.

The bill provides a municipal election schedule and qualification dates.

II. <u>SUBSTANTIVE RESEARCH</u>:

A. PRESENT SITUATION:

The "Municipal Home Rule Powers Act of 1973" is codified in Chapter 166, F.S. Section 166.021, F.S., sets forth the powers of municipalities, as granted pursuant to Art. VIII, Sec. 2(b) of the State Constitution. Section 166.021(1), F.S. states, in pertinent part, that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law. "Municipal purposes" is defined as "any activity or power which may be exercised by the state or its political subdivisions." [s. 166.021(2), F.S. (1997)].

Prior to 1995, municipalities were expressly prohibited from changing their municipal charters or enacting special laws with regard to the terms of elected officers and the manner of their election without approval by referendum of the electors. In 1995, the legislature passed Chapter 95-178, Laws of Florida, which allowed municipalities to change their election dates and qualifying periods for candidates without having to hold a referendum to either amend their charter of pass a special act. It also authorized changes in the terms of elected municipal officers as needed as a result of changed election dates for the purpose of providing the orderly transition of office. [s. 106.021(4), F.S. (1997)].

The effect of Chapter 95-178, Laws of Florida, is that the municipalities retained the prerogative to determine their election dates and qualifying periods for candidates, while facilitating the establishment of uniform election dates and qualifying periods for municipal elections in those counties where the municipalities desire to do so in cooperation with the local supervisor of elections. The law has allowed for such decisions to be made locally, obviating the need for charter or special act amendment by referendum.

Prior to 1995, if a municipality had not adopted either the Florida Election Code or a provision of its own relative to a particular subject, then there was no legal authority upon which the municipality could proceed nor upon which the county supervisor of elections could rely in advising a municipality. Opinions rendered by the Attorney General and the Division of Elections had determined that some provisions of the Florida Election Code were not applicable to municipalities, including entire chapters in some cases and parts of others, depending on the subject.

The Division of Elections, in analyzing the effects of legislation adopted in 1977 substantially revising the election laws of Florida, issued an opinion that in the absence of an express adoption of all or part of the state election code by a municipality in the exercise of its home rule power, the following provisions of the Florida Election Code apply to municipal elections: Chapters 97, 98, 104 and 106 and sections 100.201-.351, 100.361, 101.031, 101.041, 101.121, 101.635 and 101.75, F.S. [DE 077-37, Division of Elections Opinion "Application of Election Code to Municipal Election Chapters 97-106, F.S."]. As a result of the foregoing, county supervisors of elections and the Division of Elections indicated that they frequently received inquiries and requests for assistance from municipalities regarding election procedures.

The Legislature in enacting Chapter 95-178, Laws of Florida, attempted to address these concerns by creating section 100.3605, F.S. relating to the conduct of municipal elections. This section provides that the Florida Election Code, chapters 97-106, governs the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. Further, no charter or ordinance provision may be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities. Governing bodies of municipalities are expressly authorized to change, by ordinance, election and qualifying dates and to provide for the orderly transition of office resulting from such date changes.

While state and county election dates and procedures are uniform, municipal election dates occur throughout the year. In most of those counties containing numerous cities, several municipal elections per year are held. The method of qualifying, qualifying periods, terms of office and the date officials take office vary among the municipalities.

There are nearly 400 municipalities in Florida. Municipal elections throughout the State are held at the individual discretion of each municipality. However, at least five counties have established uniform county-wide election dates by special act of the Legislature: Broward, Okaloosa, Palm Beach, Pasco, and Pinellas. In other counties, the municipalities and local supervisor of elections have developed interlocal agreements which have facilitated the conduct of municipal elections.

In 1995, the Legislature passed SB 3024, which became law on June 9, 1995 (Chapter 95-462, Laws of Florida). This local legislation provided nonbinding uniform election dates for Volusia County. While the bill created an exception to general law for all the municipalities in Volusia County that did not choose to opt out, the objectives of this bill were achieved by compliance with general law as amended during the Regular 1995 Session of the Legislature (Chapter 95-178, Laws of Florida, effective January 1, 1996).

Prior to enacting Chapter 95-462, Laws of Florida, municipal elections in Volusia County were held in February, April, May, September, October, November and December. Under Chapter 95-462, Laws of Florida, municipal elections in odd-numbered years are held as follows: General elections are held in October (the date established by the Florida Election Code for the second primary); primary elections, if required, are held in September (the date established by the Florida Election Code for the first primary); and run-off elections, if required are held in November (the date established by the Florida Election Code for the general election).

The law also authorizes municipalities with overlapping terms for officers to hold elections in even-numbered years. In even-numbered years, general elections are held in October (the date established by the Florida Election Code for the second primary); primary elections, if required, are held in September (the date established by the Florida Election Code for the first primary); and run-off elections, if required are held in November (the date established by the Florida Election Code for the general election).

As a result, 15 out of the 16 municipalities in Volusia County now hold their primary elections in September, their general elections in October, and any needed run-off election in November. The Town of Ponce Inlet opted out of Chapter 95-462. For reference purposes, there are 5 municipalities in Volusia County which hold annual elections: DeBary, Oak Hill, Orange City, the Town of Ponce Inlet and the Town of Pierson.

Under Chapter 95-462, Laws of Florida, candidates for municipal office must qualify with the municipal clerk, as required by law, during the last two full business weeks in July. The Supervisor of Elections is to receive the names of the candidates and the offices for which they have filed on the first Friday after the close of qualifying.

The Supervisor of Elections is granted the authority to change any election date in order to avoid a conflict with a religious holiday, with the concurrence of a majority vote of the Volusia Council of Governments.

While the intent of Chapter 95-462, Laws of Florida, was to reduce voter confusion regarding the dates of municipal elections, as well as some confusion regarding "book closing dates" and the final dates on which qualified residents were allowed to vote in a particular election, the Volusia County Supervisor of Elections has noticed lingering voter confusion and low voter turnout for municipal elections.

Voter confusion appears to still be related to the dates of municipal elections. Under current law, the only municipal election held in November is a "run-off," which may or may not occur in any given race. Because national, state and county-wide elections are held in even-numbered years, voters are inundated with information from candidates, political parties, and other groups urging people to get out and vote. Voter confusion regarding election dates is at a minimum. In an odd-numbered year, voters are not provided with as much information and with the general election being held in October, voter confusion results. To add to voter confusion in odd-numbered years, most calenders designate the first Tuesday after the first Monday in November as "Election Day."

B. EFFECT OF PROPOSED CHANGES:

HB 4243 substantially rewords sections 2 and 3 of Chapter 95-462, Laws of Florida, to change the uniform municipal election and qualification dates. This bill eliminates the reference to "municipalities with overlapping terms for officers of their governing body" found in section 2(b) of Chapter 95-462. As there could be an instance where elections are required to be held annually but there are no overlapping terms, the bill attempts to clarify that the target is simply those municipalities which hold annual elections.

Under this bill, the Supervisor of Elections may change any election date in order to avoid a religious holiday after <u>consultation</u> with the affected municipalities, rather than concurrence by majority vote of the Volusia Council of Governments. The bill also eliminates references to "primary elections," "general elections" and "run-offs." Instead, the bill attempts to eliminate confusion by adding language to clarify that when a general or run-off election is provided for they shall be the first and second elections, respectively. Similarly, when a primary and general election are provided for they shall be the first and second elections, respectively. Any other required or permitted municipal election shall be scheduled in accordance with law.

To help alleviate voter confusion, HB 4243 provides for the following municipal election schedule:

CITIES RUNNING ELECTIONS EVERY OTHER YEAR - ODD-NUMBER YEARS

- First Election: 28 days (4 weeks) prior to the first Tuesday after the first Monday in November. This will assure that the election falls in the month of October.

- Second Election: The first Tuesday after the first Monday in November.

- Affected Cities: Daytona Beach, Daytona Beach Shores, DeLand, Deltona, Edgewater, Holly Hill, Lake Helen, New Smyrna Beach, Ormond Beach, Port Orange and South Daytona.

CITIES RUNNING ELECTIONS ANNUALLY

- Affected Cities: DeBary, Orange City, Town of Pierson and Oak Hill.

IN ODD-NUMBERED YEARS:

- First Election: The date established by the Florida Election Code for the first primary if it were an even-numbered year. Pursuant to section 100.061, F.S. (1997), in each year in which a general election is held, a first primary election shall be held on the Tuesday 9 weeks prior to the general election. (September)

- Second Election: 28 days (4 weeks) prior to the first Tuesday after the first Monday in November of each odd-numbered year. (October)

IN EVEN-NUMBERED YEARS:

- First Election: The date established by the Florida Election Code for the first primary. Pursuant to section 100.061, F.S. (1997), in each year in which a general election is held, a first primary election shall be held on the Tuesday 9 weeks prior to the general election. (September)

- Second Election: The date established by the Florida Election Code for the second primary. Pursuant to section 100.091, F.S. (1997), in each year in which a general election is held, a second primary . . . shall be held on the Tuesday 5 weeks prior to the general election. (Usually falls in October)

It is important to note the difference in election dates in odd-numbered years between the cities which hold their elections every other year and those that hold their elections annually. According to the Volusia County Supervisor of Elections, it would be difficult to carry all 16 municipalities on a single ballot. Therefore, the first election in the 4 cities which hold annual elections (the Town of Ponce Inlet holds annual elections but opted out of Chapter 95-462, Laws of Florida) would be held in September and the second election held in October, during odd-numbered years. For these 4 cities, voter confusion may still result, as an election is not formally scheduled for the month of November. If a "run-off" is necessary, the date would be scheduled by the Supervisor of Elections. The remaining municipalities would hold their first election in odd-numbered years in October and their second election in November. Again, any additional elections would have to be scheduled by the Supervisor of Elections.

HB 4243 also changes the qualifying dates under Chapter 95-462, Laws of Florida. Under this bill, candidates elected under the schedule provided in section 2(1) of the bill (odd-numbered years, elections only held every other year), would be required to file their papers and pay their fees to the applicable municipal clerk during normal business hours between 9 a.m. on the 71st day, and 12 noon on the 61st day prior to the first Tuesday after the first Monday in November of each odd-numbered year. To illustrate, in the 1999 election cycle, qualifying would begin on August 23 and end on September 2. Under this provision of the bill, candidates are given an 11 day qualifying period.

On the other hand, candidates elected under the schedule provided in section 2(2)(c) and (d) of the bill (even-numbered years), would be required to file their papers and pay their fees to the applicable municipal clerk during the time period established by the Florida Election Code for qualifying for the general election. The method for qualifying for nomination or election to office under the Florida Election Code is set forth in section 99.061, F.S. (1997). The first day of qualifying shall be the 50th day prior to the first primary, and qualifying ends no later than noon of the 46th day prior to the date of the first primary. To illustrate, in the 1998 election cycle, qualifying will begin on July 13 and end on July 17. Under this provision of the bill, candidates are only given a 5 day qualifying period.

The bill is silent with respect to the qualifying dates for candidates elected under the schedule provided in section 2(2)(a) and (b) of the bill (odd-numbered years, elections held annually). Therefore, it is unclear what the qualifying dates would be for candidates running for municipal office in DeBary, Orange City, Town of Pierson and Oak Hill.

HB 4243 provides that the names of all candidates and the office for which they have filed must be received by the Supervisor of Elections from the municipal clerks by 5 p.m. on the next business day after the close of qualifying.

Except to the extent amended by HB 4243, the provisions of Chapter 95-462, Laws of Florida are ratified, confirmed, and continue in full force and effect.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Sections 2 and 3 of chapter 95-462, Laws of Florida

D. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. <u>Lower Taxes:</u>

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

STANDARD FORM (REVISED 6/97)

3. <u>Personal Responsibility:</u>

    a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

       N/A

    b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

       N/A

4. <u>Individual Freedom:</u>

    a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

       N/A

    b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

       N/A

5. <u>Family Empowerment:</u>

    a. If the bill purports to provide services to families or children:

      (1) Who evaluates the family's needs?

         N/A

      (2) Who makes the decisions?

         N/A

      (3) Are private alternatives permitted?

         N/A

      (4) Are families required to participate in a program?

         N/A

STANDARD FORM (REVISED 6/97)

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

E. SECTION-BY-SECTION RESEARCH:

Section 1:   Amends sections 2 and 3 of chapter 95-462; provides election schedule for odd-numbered year elections; provides election schedule for annual elections; provides for designation of first and second elections; and provides for filing dates.

Section 2:   Provides that the provisions of chapter 95-462, Laws of Florida, remain in effect, except as amended by section 1 of the bill.

Section 3:   Provides effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes [X] No [ ]

IF YES, WHEN? November 12, 1997

WHERE? Daytona, Florida; The News-Journal

B.   REFERENDUM(S) REQUIRED? Yes [ ] No [X]

IF YES, WHEN?

C.   LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No [ ]

D.   ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No [ ]

IV.   <u>COMMENTS</u>:

NONE.

V.   <u>AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES</u>:

Amendment #1: Offered by the sponsor of the bill. Corrects the qualifying dates for candidates running in even-numbered years to allow for an 11-day qualifying period. The qualifying period would take place in the month of July.

Amendment #2: Corrects an omission in the bill. Provides for qualifying dates for candidates running in odd-numbered years in those municipalities which hold their elections annually. The qualifying period would be an 11-day period ending simultaneously with the time period established by the Florida Election Code for qualifying for the general election if it were an even-numbered year (July).

VI.   <u>SIGNATURES</u>:

COMMITTEE ON COMMUNITY AFFAIRS:
Prepared by: Legislative Research Director:

_____   _____
     Dawn Roberts   Joan Highsmith-Smith