

STORAGE NAME: h1025a.rpp

DATE: March 17, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
REAL PROPERTY AND PROBATE
ANALYSIS**

BILL #: HB 1025

RELATING TO: Voter Registration

SPONSOR(S): Representative(s) Rojas and Barreiro

COMPANION BILL(S): SB 1276(i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELECTION REFORM YEAS 8 NAYS 0
 - (2) REAL PROPERTY AND PROBATE
 - (3) FINANCE AND TAXATION
 - (4)
 - (5)
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I. SUMMARY:

HB 1025 deletes from the statutory requirements for the Florida Voter Registration Application Form both the question eliciting the address of the applicant's homestead property and the statement informing the applicant of the potential consequences of registering to vote in a precinct other than that in which the applicant's homestead property is located. This bill also abolishes the requirement that the supervisor of elections forward the names and homestead addresses of such applicants to the appropriate property appraiser, and the corresponding requirement that the property appraiser examine such information to determine whether to terminate the applicant's homestead exemption and assess back taxes.

This bill does not appear to have a significant fiscal impact on state or local governments.

HB 1025 is effective July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Last year, the Legislature passed an omnibus election bill to reform Florida's voter registration and absentee voting system. Chapter 98-129, Laws of Florida. The omnibus bill became law without the Governor's signature on May 22, 1998. Id. Several statutory provisions relating to homestead exemption and voter registration requirements were enacted and are the subject of HB 1025.

Specifically, Chapter 98-129, Laws of Florida, requires the supervisor of elections to forward the name and homestead address of any person who registers to vote at an address, other than that at which the person claims a homestead exemption, to the property appraiser for the county in which the homestead is claimed. s. 98.015(11), F.S. (1998 Supp.). The property appraiser is required to examine the information to determine whether to initiate proceedings to terminate the applicant's homestead exemption and assess back taxes. s. 196.141(2), F.S. (1998 Supp.). In order to collect the necessary information to implement these requirements, the Florida Voter Registration Application Form ("Application") was revised to elicit the address of any homestead property of the applicant. s. 97.052(2), F.S. (1998 Supp.).

In addition, the Application was revised to include a specific statement informing the applicant that the property appraiser of the county in which the applicant's homestead property is located will be notified if an applicant registers to vote in a precinct other than the one in which the homestead property is located, and that such referral may result in termination of the applicant's homestead exemption and assessment of back taxes. Id.

It should be noted that these provisions of Chapter 98-129, Laws of Florida, become effective July 1, 1999. Also of note is the fact that the "trigger provision" eliciting homestead information on the Application has not been "precleared" by the federal government. The federal Voting Rights Act of 1965 requires the U.S. Department of Justice ("USDOJ") to review state laws which impact voting rights to determine whether they will have any discriminatory effect on minority voters. In counties subject to preclearance under section 5 of the Act (Collier, Hardee, Hendry, Hillsborough, and Monroe Counties), state laws cannot go into effect until the USDOJ approves them. The State originally sought preclearance of the "trigger provision," as well as the other two homestead provisions, but subsequently withdrew that request for two of the three provisions in order to expedite review of the remaining sections of Chapter 98-129, Laws of Florida. The State is in the process of gathering supporting documentation and will likely re-submit the provisions to the USDOJ for preclearance in the near future. Senate Committee on Ethics & Elections, Senate Staff Analysis and Impact Statement for SB 1276, March 8, 1999.

1. *Voter Registration Eligibility Requirements*

In order to register to vote in Florida, a person must be

- * at least 18 years old;
- * a citizen of the United States;
- * a legal resident of the State of Florida; and
- * a legal resident of the county in which that person seeks to be registered.

s. 97.041(1), F.S. (1997).

A person who has been convicted of a felony, or adjudicated mentally incapacitated with respect to voting, and has not had his or her right to vote restored, is not eligible for voter registration. Id.

The Florida Statutes do not contain a definition of "legal resident" for purposes of determining whether a voter is a resident of a particular voting district. In addition, a person is not required by Florida law to register to vote in the county where the person owns homestead property. The Division of Elections, Attorney General of Florida, and Florida courts have consistently construed "legal residence" to mean a permanent residence, domicile, or permanent abode, rather than a residence that is temporary. See generally, Bloomfield v. City of St. Petersburg Beach, 82 So.2d 364 (Fla. 1955); Walker v. Harris, 398 So.2d 955 (Fla. 4th DCA 1981); Op. Div. Elect. Fla. 80-27 (August 27, 1980); Op. Div. Elect. Fla. 93-05 (June 23, 1993); and, Op. Atty. Gen. 070-97 (August 3, 1970). In Bloomfield v. City of St. Petersburg Beach, the Florida Supreme Court held that the "establishment of

one's residence will usually depend on a variety of acts or declarations all of which must be weighed in the particular case as evidence would be weighed upon any other subject". 82 So.2d at 369 (Fla. 1955). Therefore, legal residence is determined on a case-by-case basis by considering where a person intends to make a permanent home and whether factual evidence exists to corroborate the intent.

2. Homestead Exemption

Article VII, section 6 of the State Constitution, provides that "[e]very person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law". The phrase "legally or naturally dependent on the owner" refers to persons to whom the owner is under a legal duty to support, and to persons related by blood to the owner who are, by reason of disability of age, or non-age, physical or mental incapacity, coupled with lack of property means, dependent in fact for support and who have a reasonable expectation of support or some reasonable claim to support. 1939 Op. Atty. Gen. 438.

The term "permanent residence" is defined in s. 196.012(18), F.S. (1997), as follows:

Permanent residence means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

Intention to establish a permanent residence in this state is a factual determination made by the property appraiser after consideration of several relevant factors, including the place where a taxpayer registered to vote. s. 196.015, F.S. (1997). However, no one factor is considered conclusive of the establishment of permanent residence. Id. As previously stated, Florida law does not require a person to register to vote in the county or precinct in which the person owns homestead property.

The application form for homestead exemption requires a taxpayer to furnish certain information to the property appraiser for the purpose of determining whether the taxpayer is a "permanent resident." s. 196.121(2), F.S. (1997). The property appraiser must examine each application for homestead exemption filed with or referred to him or her, and allow the homestead exemption if the claim complies with Florida law. s. 196.141, F.S. (1998 Supp.). If the applicant is not entitled to a homestead exemption, the property appraiser must serve upon the applicant a notice of denial. s. 196.151, F.S. (1997). The applicant may appeal the property appraiser's denial to the county value adjustment board. Id. The action of the value adjustment board is final unless the applicant files a proceeding for declaratory judgment in circuit court within 15 days after the application is denied by the board. Id.

B. EFFECT OF PROPOSED CHANGES:

In essence, HB 1025 eliminates certain provisions of Chapter 98-129, Laws of Florida, regarding the format of the Florida Voter Registration Application Form and certain duties of supervisors of elections and property appraisers with respect to homestead exemption.

Specifically, the bill eliminates the requirement that the supervisor of elections forward the name and address, of any person who registers to vote at an address other than that at which the applicant claims a homestead exemption, to the property appraiser for the county in which the homestead is claimed. In addition, the bill abolishes the corresponding requirement that the property appraiser examine such information to determine whether to initiate proceedings to terminate an applicant's homestead exemption and assess back taxes. The bill also deletes from the Application both the question eliciting the address of any homestead property owned by the applicant and the statement informing the applicant of the potential consequences of registering to vote in a precinct other than that in which the applicant's homestead property is located.

C. 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?

No.

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

Yes. The responsibilities, obligations, and work of the supervisors of elections and property appraisers will be reduced. The supervisors of elections will not be required to elicit or forward information regarding a voter applicant's homestead exemption to the appropriate property appraiser, and property appraisers will not be required to examine such information to determine whether to initiate proceedings to terminate an applicant's homestead exemption and assess back taxes.

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

No.

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

An agency or program is not 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. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No.

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

No.

4. Individual Freedom:

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

No.

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

No.

5. Family Empowerment:

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

The bill does not purport 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.

(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?

No.

- 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:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A.

- (2) service providers?

N/A.

- (3) government employees/agencies?

N/A.

D. STATUTE(S) AFFECTED:

- s. 97.052(2), F.S. (1998 Supp.), is amended.
- s. 97.052(3), F.S. (1998 Supp.), is amended.
- s. 98.015(11), F.S. (1998 Supp.), is repealed.
- s. 196.141(2), F.S. (1998 Supp.), is amended.

E. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Undetermined at this time.

2. Recurring Effects:

Undetermined at this time, however, the Division of Elections will not be required to enlarge the Florida Voter Registration Application Form and expend additional funds printing a larger form.¹

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Undetermined at this time.

¹ The Florida Voter Registration Application Form is currently printed on letter size paper. The additional question and statement regarding homestead exemption cannot be added to the Application form without enlarging the paper size or increasing the number of pages. This increase in size will result in an undetermined increase in the expense of printing the Application. Telephone conversation with Ed Kast, National Voter Registration Act Administrator, Florida Division of Elections, (March 11, 1999).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Undetermined at this time.

2. Recurring Effects:

Undetermined at this time, however, the supervisors of elections will not be required to expend financial resources reviewing Applications to determine if information regarding homestead exemptions should be forwarded to a property appraiser, and property appraisers will not be required to expend financial resources to examine such information to determine whether to initiate proceedings to terminate a homestead exemption and assess back taxes.²

3. Long Run Effects Other Than Normal Growth:

Undetermined at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the requirements of Article VII, Section 18, Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

² A proponent of this bill asserts that implementation of these specific provisions of Chapter 98-129, Laws of Florida, will impose a significant administrative and financial burden on the supervisors of elections. For example, applications submitted in Leon County are currently scanned by computer; however, the computer software is not designed to search for the address of homestead property and determine if the property is located within the precinct where the applicant registered to vote. Therefore, either new software must be developed and purchased by the county, or each Application must be manually reviewed. Telephone conference with a Florida Supervisor of Elections (March 10, 1999).

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A proponent of HB 1025 asserts that Chapter 98-129, Laws of Florida, was enacted to prevent future cases of voter fraud such as that which occurred during the 1998 mayoral election in Miami. However, in his opinion, the provisions of Chapter 98-129, Laws of Florida, related to the Application and homestead exemption do not address voter fraud as intended. A person is not required to register to vote in the county in which the person owns homestead property, rather, a person is required to register where the person maintains a "legal residence". In other words, it is permissible to maintain a valid homestead exemption in County A while legally registered to vote in County B. Therefore, requiring the supervisor of elections to forward the names and addresses of applicants who register to vote at an address other than that at which the person claims a homestead exemption to the appropriate property appraiser for review will not necessarily reduce voter fraud. Furthermore, such requirements will impose significant administrative and financial burdens on local governments.³

The Florida Association of Property Appraisers is not taking a position on HB 1025.⁴

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

Dawn Roberts

Staff Director:

Dawn Roberts

AS REVISED BY THE COMMITTEE ON REAL PROPERTY AND PROBATE:

Prepared by:

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³ Telephone conference with a Florida Supervisor of Elections (March 10, 1999).

⁴ Telephone conference with Larry E. Levy, Property Appraisers Association of Florida (March 10, 1999).