

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1058

SPONSOR: Committee on Ethics and Elections; Senator Posey and others

SUBJECT: Vacancies in Office

DATE: March 8, 2001 REVISED: 03/14/01 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bradshaw</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Fav/2 amendments</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1058 addresses several issues relating to vacancies in office which were identified in the Committee’s Interim Project Report 2001-023. In summary, the bill provides the following:

- Creates a definition of the term “qualify for office” to provide guidance to elected and appointed officials and the Governor on what is required in order for a vacancy not to occur.
- Requires each person appointed to an office requiring Senate confirmation to be a United States citizen, unless the office is one with solely advisory powers.
- Provides that the procedures relating to Senate confirmation relate to appointments made by officials other than the Governor.
- Changes the procedure for filling a vacancy on the Public Service Commission, if the vacancy was created by the Senate’s failure to act.

This bill substantially amends the following sections of the Florida Statutes: ss. 114.01, 114.04, 114.05 and 350.031, F.S.

II. Present Situation:

Chapter 114, Florida Statutes, relates to vacancies in office. This chapter provides when a vacancy will occur, how vacancies are filled, and procedures for Senate confirmation of appointments. Over the years, the Senate has been faced with several situations during the Senate confirmation process for which there has been little statutory guidance.

Qualify for Office

Article X, section 3, Florida Constitution and section 114.01, F.S., provide when a vacancy in office shall occur. Under the provisions of Art. X, sec. 3, Florida Constitution, one of the ways that a vacancy shall occur is “upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term.” Section 114.01, F.S., provides similar language and provides that the Governor is required to file an executive order with the Secretary of State setting forth the grounds for the vacancy and the date on which the vacancy occurred. There is no definition of what constitutes qualifying for office, and frequently appointees to office do not submit the necessary oath, bond, and financial disclosure statements within 30 days.

Citizenship

There are no general constitutional or statutory requirements for appointees to various boards to be United States citizens. Duties and responsibilities of members of boards and commissions vary greatly. Some boards are merely advisory while others have significant powers.

Officials Making Appointments

Section 114.05, F.S., provides general procedures relating to appointments requiring confirmation by the Senate. This section specifically relates to appointments made by the Governor. However, over the years the Legislature has provided for the confirmation of appointments made by other officers or bodies. Although the Senate has followed the provisions of s. 114.05, F.S., for all appointments requiring Senate confirmation, questions have arisen regarding the procedures to be used when an official other than the Governor has made the appointment.

Vacancies on the Public Service Commission

Section 350.031, F.S., provides the procedures for the appointment of Public Service Commissioners. The Public Service Commission Nominating Council nominates a list of at least three persons to fill vacancies on the Public Service Commission. This section provides that if the Senate refuses to confirm an appointment to the PSC, the council shall initiate the nominating process within 30 days. This is consistent with the provisions of s. 114.05, F.S., which provide for a vacancy to occur upon the Senate’s refusal to confirm and prohibits the appointee from being reappointed to the office for one year. However, the provisions of s. 350.031, F.S., also require the council to submit recommendations to the Governor within 60 days after a vacancy occurs *for any reason other than the expiration of the term*. If the Senate fails to act on an appointment during the session immediately following the effective date of the appointment, a vacancy in office is created. The general provisions of s. 114.05, F.S., allow an appointee to be reappointed if the Senate fails to take action on the appointment, unless the Senate has failed to act for two consecutive sessions.

III. Effect of Proposed Changes:

Senate Bill 1058 addresses several provisions relating to vacancies in office and Senate confirmation.

Qualify for Office

The bill provides a definition of the term “qualify for office” to mean taking and submitting the oath of office, posting bond, if required, and meeting all other applicable requirements of law. This will provide appointees, elected officials, and the Governor with guidance on what needs to be done in order for a vacancy not to occur for failure to qualify within 30 days of the effective date of appointment or election.

Citizenship

The bill requires each person appointed to an office that is required to be confirmed by the Senate to be a United States citizen. An exception is provided if the office is one with *solely* advisory powers.

Officials Making Appointments

Section 114.05, F.S., is amended to provide that the procedures relating to Senate confirmation relate to all appointments required to be confirmed, regardless of who has made the appointment.

Vacancies on the Public Service Commission

Finally, s. 350.031, F.S., is amended to change the procedures for the filling of a vacancy on the PSC which is created by the Senate’s failure to act on the appointment during the regular session immediately following the effective date of the appointment. Under the provisions of the bill, the Governor will be allowed to reappoint the original appointee, so long as the Senate did not fail to act on that appointment for two consecutive sessions, or the Governor, at his discretion, may appoint one of the other applicants that had been nominated for that position by the nominating council.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Ethics and Elections:

Provides the length of the term of office of an ad interim term.

#2 by Ethics and Elections:

Requires a person appointed to an office requiring Senate confirmation, other than an office having solely advisory powers, to be a resident of the state, in addition to being a United States citizen.