

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Judiciary Committee

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BILL: SB 1100

INTRODUCER: Senator Detert

SUBJECT: Residence of the Clerk of the Circuit Court

DATE: March 21, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maclure	Maclure	JU	<b>Pre-meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This bill repeals the statutory requirement for the clerk of the circuit court, or a deputy, to reside at the county seat or within two miles of the county seat.

This bill repeals section 28.08, Florida Statutes.

**II. Present Situation:**

The State Constitution provides for there to be an elected clerk of the circuit court in each county.<sup>1</sup> The constitution also requires, in every county, that there be a county seat at which the principal offices and permanent records of the county are located.<sup>2</sup>

Section 28.08, F.S., requires the clerk of the circuit court, or a deputy, to reside at the county seat or within two miles of the county seat. The Legislature enacted the law in 1871.<sup>3</sup> The act creating the requirement included the same requirement applicable to the county sheriff. The original act required compliance within three months, and it allowed the court to fine the clerk between \$100 and \$500 for noncompliance. It is unknown why this requirement was enacted.

A candidate, at the time of qualifying as candidate for public office, must subscribe to an oath that he or she is a qualified elector of the county.<sup>4</sup> In order to be a qualified elector, one must be

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<sup>1</sup> See FLA. CONST. art. V, s. 16, and art. VIII, s. 1(d).

<sup>2</sup> FLA. CONST. art VIII, s. 1(k).

<sup>3</sup> Chapter 1851.

<sup>4</sup> Section 99.021, F.S.

a resident of Florida and the county in which he or she registers to vote.<sup>5</sup> The Division of Elections has “opined that unless otherwise provided constitutionally, legislatively or judicially, the qualifications one must possess for public office, which would include residency, are effective at the commencement of the term of office.”<sup>6</sup> Thus, a county constitutional officer, such as the clerk of the circuit court, must be a resident of the county at the time of assuming office.<sup>7</sup>

### **III. Effect of Proposed Changes:**

This bill repeals the section of the Florida Statutes, s. 28.08, F.S., which requires the clerk of the circuit court, or a deputy, to reside within two miles of the county seat. The repeal does not affect the requirement for a clerk of the circuit court to be a resident of the county at the time of assuming office.

The bill provides an effective date of July 1, 2011.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

#### **C. Government Sector Impact:**

None.

### **VI. Technical Deficiencies:**

None.

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<sup>5</sup> Fla. Dept. of State, Div. of Elections, Advisory Opinion DE 94-04 (March 3, 1994).

<sup>6</sup> *Id.*

<sup>7</sup> *See id.*

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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