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.)

Prepared By: The Professional Staff of the Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations

BILL: CS/SB 116

INTRODUCER: Ethics and Elections Subcommittee on Ethics and Elections and Senator Wise

SUBJECT: Freeholder Voting

DATE: January 13, 2012   REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE		ACTION
1.	Carlton	Roberts	EE		**Fav/CS**
2.	Carlton	Phelps	RC		**Favorable**
3.	Smith	Meyer, R.	BTA		**Favorable**
4.			BC		
5.					
6.					

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [X] Statement of Substantial Changes

B. AMENDMENTS....................... [ ] Technical amendments were recommended

[ ] Amendments were recommended

[ ] Significant amendments were recommended

I. Summary:

Section 100.241(2), F.S., requires a voter participating in a freeholder election to submit a sworn affidavit to an election inspector affirming that he or she is a qualified elector and freeholder residing in the county, district, or municipality in which the election or referendum is to be held. CS/SB 116 removes the affidavit requirement in favor of a written declaration affirming his or her status as a freeholder qualified to vote in a freeholder election.

CS/SB 116 substantially amends s. 100.241, F.S.

II. Present Situation:

A freeholder election is an election in which only qualified electors who own land in the jurisdiction may vote. Typically, freeholder elections concern bond issuance, district creation, and officer selection in counties, municipalities, and special districts. Some examples of freeholder elections in Florida are:

- issuance of local bonds to finance or refinance capital projects;[1]
- freeholders who are qualified electors residing in a county must approve the issuance of bonds;[2]
- general obligations bonds;[3]
- bonds to build bridges over navigable streams;[4]
- creation of a water or sewer district in unincorporated areas;[5]
- issuance of bonds for water or sewer districts;[6] and,
- creation of special neighborhood improvement districts.[7]

By statute, "each registered elector who makes a sworn affidavit of ownership to the inspectors, giving either a legal description, address, or location of property in the elector's name which is not wholly exempt from taxation shall be…considered a freeholder."[8] Currently, each freeholder voting in a freeholder election must submit an affidavit made before an inspector affirming that he or she is a freeholder and qualified elector residing in the county, district, or municipality in which the election or referendum is to be held.[9] When a freeholder is voting by absentee ballot, he or she submits the same affidavit as those freeholders voting at the polls. However, the freeholder must go through the additional burden of finding a notary public to notarize his or her affidavit. If an election is limited to freeholders, a person who is not a freeholder commits a first degree misdemeanor if they vote in the freeholder election.[10]

Compliance with the affidavit requirement may be difficult, if not impossible, for an active duty military freeholder or other Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") freeholder. Efforts to obtain notarization can be logistically difficult, if not dangerous in some circumstances. Further, voter participation may be impacted by excessive fees charged by overseas notaries public.

III. Effect of Proposed Changes:

CS/SB 116 removes the affidavit requirement in favor of requiring a freeholder to submit a written declaration as provided in s. 92.525, F.S., attesting that he or she is a freeholder, a qualified elector residing in the county, district, or municipality in which the election or referendum is to be held, and identifying his or her property. Section 92.525, F.S., authorizes verification of a document by oath or affirmation before an officer or by signing a written declaration.[11] The form of the written declaration is specified in s. 92.525(2), F.S., which provides:

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[1] Section 12, Article VII, Florida Constitution.
[2] Section 130.03, F.S.
[3] Section 153.07, F.S.
[4] Section 130.18, F.S.
[5] Section 153.53, F.S.
[6] Section 153.56, F.S.
[7] Section 163.511, F.S.
[8] Section 100.241(3), F.S.
[9] Section 100.241(2), F.S.
[10] Section 100.241(5), F.S.
[11] Section 92.525(1), F.S.

> A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

Pursuant to s. 92.525(3), F.S., a person who knowingly makes a false declaration commits perjury by false written declaration, a third degree felony.[12]

By requiring a written declaration instead of a sworn affidavit, CS/SB 116 alleviates the difficulty absentee and UOCAVA voters may have in obtaining notarization because s. 92.525, F.S., does not require that a written declaration be countersigned.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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[12] Additionally, s. 104.011(1), F.S., provides that "any person who willfully swears or affirms falsely to any oath or affirmation…in connection with or arising out of voting or elections commits a felony of the third degree."

C.   Government Sector Impact:

None.

VI.   Technical Deficiencies:

None.

VII.   Related Issues:

Under section 5 of the Voting Rights Act, new statewide legislation that implements a voting change including but not limited to a change in the manner of voting, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office, is subject to preclearance by the U.S. Department of Justice or the federal District Court for the District of Columbia. The preclearance review is to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe. Until precleared, the legislation is unenforceable in Florida's five covered jurisdictions.[13]

VIII.   Additional Information:

A.   Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Rules Subcommittee on Ethics and Elections on October 5, 2011:
The CS removes the affidavit requirement in favor of a written declaration to establish that a voter is a freeholder who is eligible to participate in a freeholder election. The CS also removes the crime of perjury by false written declaration from the bill because other applicable provisions make it a third degree felony to falsely execute a written declaration or oath.

B.   Amendments:

None.

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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[13] Quoting Department of State, *Senate Bill 116 Bill Analysis* (September 19, 2011) (On file with Transportation, Tourism and Economic Development Appropriations Subcommittee)