

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1461 Voter Identification
SPONSOR(S): Gaetz
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1596

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	9 Y, 4 N	Naf	Williamson
2) State Affairs Committee	13 Y, 0 N, As CS	Naf	Hamby

SUMMARY ANALYSIS

Current law requires a voter to present valid picture identification before he or she is allowed to vote at a polling place. It also contains two provisions that appear to be in conflict:

- A prohibition against use of a voter's identification to confirm or otherwise challenge the voter's address; and
- A prohibition against asking a voter to provide additional information or to recite his or her address if the address on the voter's identification matches the address in the supervisor's records.

This bill removes the prohibition against use of a voter's identification to confirm the voter's address.

The bill provides an effective date of upon becoming a law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Requirements for and use of elector¹ identification at polls are governed by s. 101.043, F.S.

The precinct register² is used at the polls to identify an elector before he or she is allowed to vote. Each elector must present one of the following current and valid picture identifications to the clerk or inspector:³

- Florida driver's license.
- Florida identification card issued by the Department of Highway Safety and Motor Vehicles.
- United States passport.
- Debit or credit card.
- Military identification.
- Student identification.
- Retirement center identification.
- Neighborhood association identification.
- Public assistance identification.⁴

If the picture identification does not contain the elector's signature, the elector must provide an additional identification that contains his or her signature.⁵

The address appearing on the identification presented by the elector may not be used as the basis to confirm an elector's legal residence or otherwise challenge an elector's legal residence.⁶

The elector must sign his or her name in the space provided on the precinct register or on an electronic device provided for that purpose. The clerk or inspector must compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided on the precinct register or on an electronic device provided for that purpose. If the clerk or inspector is satisfied as to the identity of the elector, the elector must be allowed to vote.⁷

When an elector presents his or her picture identification to the clerk or inspector and the elector's address on the picture identification matches the elector's address in the supervisor's records, the elector may not be asked to provide additional information or to recite his or her home address.⁸ This provision appears to be in conflict with the previous prohibition against using an elector's identification to confirm an elector's legal residence at all.⁹

¹ Section 97.021, F.S., provides that "elector" is synonymous with "voter" or "qualified elector or voter," except where the word is used to describe presidential electors.

² Section 98.461(2), F.S., provides that a computer printout or electronic database shall be used at the polls as a precinct register. The precinct register must contain the date of the election, the precinct number, and the following information concerning each registered elector: last name, first name, middle name or initial, and suffix; party affiliation; residence address; registration number; date of birth; sex, if provided; race, if provided; whether the voter needs assistance in voting; and such other additional information as to readily identify the elector. The precinct register must also contain a space for the elector's signature and a space for the initials of the witnessing clerk or inspector, or an electronic device may be provided for that purpose.

³ If the elector does not provide the required identification, he or she may vote a provisional ballot. See s. 101.043(2), F.S.

⁴ Section 101.043(1)(a), F.S.

⁵ See s. 101.043(1)(b), F.S.

⁶ *Id.* This sentence was added to the statute by ch. 2011-40, L.O.F. (CS/CS/HB 1355).

⁷ Section 101.043(1)(b), F.S.

⁸ Section 101.043(1)(c), F.S. This sentence was added to the statute by ch. 2011-40, L.O.F. (CS/CS/HB 1355).

⁹ See note 6.

Effect of Proposed Changes

The bill deletes the prohibition against using the address on the identification presented by the elector to confirm the elector's legal residence. Therefore, the effect of the remaining language in s. 101.043, F.S., would be to allow a poll worker to use the address on an elector's identification to confirm the elector's legal address, but not to challenge it.

B. SECTION DIRECTORY:

Section 1 amends s. 101.043, F.S., relating to elector identification at the polls.

Section 2 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority. If the Division of Elections of the Department of State needs to amend current rules as a result of the bill, it appears to have sufficient authority to do so.¹⁰

C. DRAFTING ISSUES OR OTHER COMMENTS:

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 review before it can be legally enforced.¹¹ Preclearance review may be obtained through submission to the U.S. Department of Justice or through a declaratory judgment action filed in the U.S. District Court for the District of Columbia.¹² The preclearance review is conducted 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 counties. Until precleared by the U.S. Attorney General or the U.S. District Court for the District of Columbia, legislation that implements a voting change is unenforceable in Florida's five covered jurisdictions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 8, 2012, the State Affairs Committee adopted an amendment and passed HB 1461 as a committee substitute. The amendment reinstated the current prohibition against using the address on an elector's identification to challenge his or her legal residence, which was deleted in the original bill.

The analysis is drafted to the committee substitute as passed by the State Affairs Committee.

¹⁰ See s. 97.012(1), F.S., and s. 102.014(5), F.S. (granting the Department of State general authority to adopt rules to implement chapters 97-102 and chapter 105, F.S.; and granting the Department of State authority to create a polling place procedures manual, respectively).

¹¹ 42 U.S.C. s. 1973c.

¹² *Id.*