HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4041 Write-in Candidates
SPONSOR(S): Geller
TIED BILLS: **IDEN./SIM. BILLS:** SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 0 N	Toliver	Williamson
2) Transportation & Economic Development Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution sets forth residency requirements for legislators, county commissioners, justices and judges, and the governor, lieutenant governor, and members of the cabinet. The constitutional residency requirement for legislators, county commissioners, justices and judges has been interpreted by Florida courts to mean that residency within the district represented by the office sought is required only at the time of election.

The Florida Statutes provide a residency requirement for write-in candidates. Section 99.0615, F.S., requires a write-in candidate to reside within the district represented by the office sought at the time of qualification. Two recent Florida District Courts of Appeal have held the statute unconstitutional because it conflicts with the residency requirements within the Florida Constitution, which requires residency at the time of election and not at the time of qualification. Both cases have been appealed to the Florida Supreme Court. The Florida Supreme Court has heard oral arguments on the issue but has not issued an opinion in either case.

This bill repeals s. 99.0615, F.S., which was found unconstitutional by the First and Fourth District Courts of Appeal.

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:

Residency Requirements for Candidates

The Florida Constitution sets forth eligibility requirements, which includes residency requirements, for legislators,[1] county commissioners,[2] judges,[3] and the governor, lieutenant governor, and members of the cabinet.[4] The Florida Supreme Court has held that the legislature is prohibited from imposing any additional eligibility requirements upon candidates for these offices;[5] however, the legislature is allowed to mandate certain qualifications solely for the purpose of entry onto the ballot, such as full and public disclosure of financial interests, taking an oath, and paying filing fees.[6]

The Florida Constitution sets forth the following residency requirements:

- A legislator must be an elector and resident of the district from which elected, and must have resided in the state for two years prior to the election.[7]
- A county commissioner must be elected from the district from which he or she resides.[8]
- A justice or judge must reside in the territorial jurisdiction of the court from which elected.[9]
- The governor, lieutenant governor, and members of the cabinet must be an elector who has resided in the state for the seven years preceding the election.[10]

The constitutional residency requirement for legislators, county commissioners, justices, and judges has been interpreted by Florida courts to mean that residency within the district represented by the office sought is required only at the time of election.[11]

The Florida Statutes also provide residency requirements in certain instances. Section 1001.361, F.S., provides that notwithstanding any local law or county charter, each candidate for district school board member must be a resident of the district school board member residence area at the time of qualification. Section 1001.463, F.S., provides that the office of district school superintendent is automatically vacated if the superintendent moves from the district he or she represents.

As for municipal elections, s. 100.3605, F.S., provides that The Florida Election Code governs the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. As such, the residency requirement for city commissioners is at the time of assuming office, unless otherwise provided by special act, charter, or ordinance provision.[12]

Residency Requirements for Write-in Candidates

The Florida Statutes provide a residency requirement for write-in candidates. Section 99.0615, F.S., requires a write-in candidate to reside within the district represented by the office sought at the time of qualification.

Litigation Concerning Residency Requirements for Write-in Candidates

[1] Article III, s. 15(c), FLA. CONST.
[2] Article VIII, s. 1(e), FLA. CONST.
[3] Article V, s. 8, FLA. CONST.
[4] Article IV, s. 5, FLA. CONST.
[5] *State v. Grassi*, 532 So.2d 1055 (Fla. 1988).
[6] *Matthews v. Steinberg*, 153 So.3d 295, 297 (Fla. 1st DCA 2014) citing *Norman v. Ambler*, 46 So.3d 178, 182-83 (Fla. 1st DCA 2010).
[7] Article III, s. 15(c), FLA. CONST.
[8] Article VIII, s. 1(e), FLA. CONST.
[9] Article V, s. 8, FLA. CONST.
[10] Article IV, s. 5(b), FLA. CONST.
[11] *Norman*, 46 So.3d at 183 (residency of legislators); *Grassi*, 532 So.2d at 1056 (residency of county commissioners); *Miller v. Mendez*, 804 So.2d 1243, 1246-47 (Fla. 2001) (residency of judges).
[12] Division of Elections Opinion 94-04 (1994).

In September 2014, the Florida Fourth District Court of Appeal held in *Francois v. Brinkmann* that s. 99.0615, F.S., was unconstitutional because "the timing of its residency requirement for write-in candidates conflicts with the timing of the residency requirement for county commission candidates as established by Article VIII, section 1(e) of the Florida Constitution."[13] The case involved a county commission primary where five candidates were on the ballot and an additional candidate, Mr. Francois, entered the race as a write-in candidate.[14] Mr. Francois did not live in the district represented by the office sought at the time of filing his papers to qualify as a write-in candidate.[15] In *Francois*, the court reasoned that s. 99.0615, F.S., imposed qualifications in contravention to those specified in the constitution and, therefore, the statute was unconstitutional.[16]

One month following the *Francois* decision, the Florida First District Court of Appeal also held s. 99.0615, F.S., unconstitutional in *Matthews v. Steinberg*.[17] The *Matthews* case involved a write-in candidate for state representative who did not "reside within the district he wished to represent at the time he filed his qualifying paperwork with the Division of Elections."[18] The *Matthews* court, like the *Francois* court,[19] found that the requirement that residency occur at the time of qualification within s. 99.0615, F.S., was in direct contravention of the Florida Constitution's requirement of residency at the time of election and, therefore, was unconstitutional.[20]

Both cases, *Francois* and *Matthews*, were appealed to the Florida Supreme Court.[21] The Florida Supreme Court ordered the proceedings for the *Matthews* case stayed pending disposition of the *Francois* case.[22] The Florida Supreme Court heard oral arguments for the *Francois* case on April 9, 2015, but has not issued an opinion.[23]

Effect of the Bill

The bill repeals s. 99.0615, F.S., which was found unconstitutional by the First and Fourth District Courts of Appeal.

B. SECTION DIRECTORY:

Section 1 repeals s. 99.0615, F.S., relating to write-in candidate residency requirements.

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.

[13] *Francois v. Brinkmann*, 147 So.3d 613, 616 (Fla. 4th DCA 2014*); appeal filed with the Florida Supreme Court (Brinkmann v. Francois*, SC14-1899).
[14] *Id*.
[15] *Id*.
[16] *Francois*, 147 So.3d at 616.
[17] *Matthews*, 153 So.3d 295; appeal filed with the Florida Supreme Court (*Steinberg v. Matthews*, SC14-2202).
[18] *Id.*
[19] *Id*. at 297 citing *Francois*, 147 So.3d at 615 ("The statutory requirement directly contravenes and adds to the constitutional fiat that legislators reside in the district at the time of election.")
[20] *Id*. at 298
[21] *Brinkmann v. Francois*, SC14-1899; *Steinberg v. Matthews*, SC14-2202.
[22] *Steinberg v. Matthews*, SC14-2202, Order Stay Proceedings, 11/17/2014, available at http://jweb.flcourts.org/pls/docket/ds_docket?p_caseyear=2014&p_casenumber=2202 (last visited 12/11/2015).
[23] *Brinkmann v. Francois*, SC14-1899.

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:

The bill is exempt from the mandate requirements because it is amending the elections laws.

2. Other:

The constitutionality of s. 99.0615, F.S., is currently before the Florida Supreme Court in *Brinkmann v. Francois*, SC14-1899; however, the Florida Supreme Court has not issued an opinion in the case.

B. RULE-MAKING AUTHORITY:

The bill does not appear to require any additional rulemaking authority for the Division of Elections, Department of State.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.