

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 411 Residency of Local Elected Officials

**SPONSOR(S):** Steele and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 444

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**FINAL HOUSE FLOOR ACTION:** 87 Y's

25 N's

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 411 passed the House on March 31, 2023. The bill was amended in the Senate on April 27, 2023, and returned to the House. The House concurred in the Senate amendment and passed the bill as amended on May 4, 2023. The bill includes SB 1080 and HB 7069.

The United States Constitution delegates to each state, subject to congressional regulation, the authority to create districts within each state for the different levels of government. The Florida Constitution sets forth standards for congressional and state legislative redistricting.

The Florida Constitution grants the authority for home rule by counties and municipalities in Florida, including the authority for establishing district boundaries for various governing bodies within each jurisdiction. Current law provides that county commission districts and school board member residence areas may only be modified in odd-numbered years and that boundary adjustments for county commission districts should ensure populations are as nearly equal in population as possible and that school board member residence areas should ensure populations are as nearly equal in population as practicable.

Each candidate for district school board must be a resident of the district school board member residence area to which the candidate seeks election at the time she or he qualifies. Each candidate who qualifies to have her or his name placed on the ballot must be listed according to the district school board member residence area in which she or he resides.

The bill prohibits county commission districts, municipal districts, and school board member residence areas from being drawn with the intent to favor or disfavor a candidate for or incumbent of a governing body based on the candidate's or incumbent's residential address. It also prohibits district boundary changes from being made during a certain period. The bill voids any local ordinance adopted by a county, municipality, or school district, on or after July 1, 2023, that conflicts with these provisions.

The bill requires an elected candidate for district school board member to reside in the district school board member residence area by the date she or he assumes office instead of upon qualifying for such office. The bill also requires each candidate who qualifies to have her or his name placed on the ballot to be listed according to the district school board member residence area in which she or he is a candidate, rather than the residence area in which she or he currently resides.

The bill may have an indeterminate, though likely insignificant, fiscal impact on local government expenditures.

The bill was approved by the Governor on May 17, 2023, ch. 2023-101, L.O.F., and will become effective on July 1, 2023.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Background

#### Redistricting

The terms “redistricting” and “reapportionment” are often used interchangeably to describe the process of redrawing congressional, state legislative and other district boundaries after each decennial census. Redrawing districts is necessary to accommodate population growth and shifts, ensuring that each district contains equal or nearly equal populations in compliance with applicable state and federal law.

#### *United States Constitution*

The U.S. Supreme Court has recognized that Art. I, ss. 2 and 4 of the U.S. Constitution delegates to state legislatures the exclusive authority to create congressional districts.<sup>1</sup> The Court has held that the Fourteenth Amendment requires seats in state legislatures be reapportioned on a population basis and that decennial reapportionment is a rational approach to readjust legislative representation to take into consideration population shifts and growth.<sup>2</sup>

In addition to state specific requirements to redistrict, states are obligated to redistrict based on the principle commonly referred to as “one-person, one-vote.”<sup>3</sup> The requirement that each district be equal in population applies differently to congressional districts than to state legislative and other districts. The populations of congressional districts must achieve absolute mathematical equality, with no *de minimis* exception.<sup>4</sup> For state legislative and other districts, the courts have permitted a greater population deviation amongst districts but they must be “substantially equal.”<sup>5</sup>

All political subdivisions are subject to federal requirements, which include equal population,<sup>6</sup> compliance with the Voting Rights Act,<sup>7</sup> and other applicable laws and judicial precedent.

#### *Florida Constitution*

The Florida Constitution establishes standards for congressional and state legislative redistricting.<sup>8</sup> These standards are set forth in two tiers. The first tier prohibits the “intent to favor or disfavor a political party or an incumbent,” provides protections for racial and language minorities, and provides for contiguity.<sup>9</sup> The second tier addresses equal population, compactness, and use of political and geographical boundaries.<sup>10</sup>

#### County Commissions

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<sup>1</sup> *Grove v. Emison*, 507 U.S. 25, 34 (1993); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 416 (2006).

<sup>2</sup> *Reynolds v. Sims*, 377 U.S. 584 (1964).

<sup>3</sup> *Baker v. Carr*, 369 U.S. 186 (1962).

<sup>4</sup> *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969).

<sup>5</sup> *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

<sup>6</sup> Equal population is specifically mandated by the Florida Constitution and is based on the constitutional concept of “One Person, One Vote,” derived by the U.S. Supreme Court from the Equal Protection Clause of the U.S. Constitution. County commissioners in arranging their districts do not have to create districts with identical population so long as the population of each district is equal to that of the others as near as it is practicable to attain that end. *See Prince v. State ex rel. Williams*, 157 Fla. 103, 25 So. 2d 5 (1946); According to U.S. Supreme Court precedent, a redistricting plan presumptively meets the “One Person One Vote,” mandate so long as the “maximum deviation” does not exceed 10 percent. *See Chapman v. Meier*, 420 U.S. 1 (1975). Nevertheless, any significant deviation (even within the 10 percent overall deviation margin) must be “based on legitimate considerations incident to the effectuations of a rational state policy . . .” *See Reynolds v. Sims*, 377 U.S. 533, 579 (1964).

<sup>7</sup> 52. U.S.C. 10301.

<sup>8</sup> Article III, ss. 20 and 21, FLA. CONST.

<sup>9</sup> Article III, ss. 20(a) and 21(a), FLA. CONST.

<sup>10</sup> Article III, ss. 20(b) and 21(b), FLA. CONST.

The Florida Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties.<sup>11</sup> Non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>12</sup> Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.<sup>13</sup>

Each county, except as otherwise provided by county charter, is governed by a board of county commissioners composed of five or seven members serving staggered four-year terms,<sup>14</sup> representing districts that are contiguous and as nearly equal in population as practicable, which are redrawn after each decennial census.<sup>15</sup> One commissioner must reside in each district as provided by law. County commissioners are responsible for any boundary adjustments to ensure district populations are nearly equal as possible, but these changes may only be made during odd-numbered years.<sup>16</sup>

The default method created by general law provides that each county has a five-member commission, with a commissioner representing each district elected at-large by all voters of the county.<sup>17</sup> Subject to approval in a referendum of the county's voters, the commission may alternatively be structured as:

- A five-member board, with each member elected only by the qualified electors who reside in the same county commission district as the commissioner; or
- A seven-member board, with five members elected only by the qualified electors who reside in the same county commission district as the commissioner and two members elected at-large.<sup>18</sup>

Most counties use the default five-member board, elected at-large method, while 20 counties elect commissioners from single-member districts and seven counties use the seven-member board system.<sup>19</sup>

### Municipalities

The Florida Constitution provides that municipalities may be established or abolished and their charters amended pursuant to general or special law.<sup>20</sup> Under the Florida Constitution and Municipal Home Rule Powers Act,<sup>21</sup> municipalities are constitutionally granted all government, corporate, and proprietary powers necessary to enable them to conduct municipal government, perform municipal functions, render municipal services and exercise any power for municipal purpose except as provided by law.<sup>22</sup> Additionally, municipalities are constitutionally authorized to exercise any power for municipal purpose except when expressly prohibited by general or special law.<sup>23</sup>

The Florida Constitution does not specify the form of organization for municipal government. The powers of municipal government may be given to a Mayor, elected as the top official, or vested in a city council or other such governing body chosen by the electors to make policy and decisions that impact

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<sup>11</sup> Article VIII, s. 1(a), FLA. CONST.

<sup>12</sup> Article VIII, s. 1(f), Fla. CONST.

<sup>13</sup> Article VIII, s. 1(g), Fla. CONST.

<sup>14</sup> Article VIII, s. 1(e), FLA. CONST.

<sup>15</sup> *Id.*

<sup>16</sup> Section 124.01(3), F.S.

<sup>17</sup> Section 124.011(1), F.S.

<sup>18</sup> Section 124.011(1)(a)-(b), F.S.

<sup>19</sup> Fla. Association of Counties, County Districting, <https://www.fl-counties.com/county-districting> (last visited April 16, 2023). On November 8, 2022, the voters of Alachua County approved an amendment to s. 2.2(A) the county charter and now require county commissioners to be elected only by the qualified electors within their respective districts. *See* ch. 2022-257, Laws of Fla.

<sup>20</sup> Article VIII, s. 2, FLA. CONST.

<sup>21</sup> Chapter 166, F.S.

<sup>22</sup> 12A Fla. Jur. 2d Counties, Etc. s. 95.

<sup>23</sup> Article VIII, s. 2(b), FLA. CONST.

the specific municipality.<sup>24</sup> The only constitutional requirement as to the municipal form of government is that each municipal legislative body must be elected.<sup>25</sup>

There is no state constitutional or specific state statute provision that addresses requirements for municipal redistricting, but some local municipal charters may have applicable provisions that must also be followed.

### District School Boards

Pursuant to the Florida Constitution, each county constitutes a school district.<sup>26</sup> In Florida, there are 67 school districts, corresponding with the 67 counties in the state.<sup>27</sup> Each school district must have a school board composed of five or more members.<sup>28</sup> The school boards operate, control, and supervise all free public schools within the school district and determine the rate of school district taxes within constitutional limits.<sup>29</sup> The powers and duties of district school boards are further prescribed by law.<sup>30</sup>

### *Elections*

District school board members are chosen by a vote of the electors in a nonpartisan election for staggered terms of four years.<sup>31</sup> For the purpose of electing district school board members, each school district is divided into at least five district school board member residence areas, which must be numbered one to five and must be, as nearly as practicable, equal in population.<sup>32</sup> For districts with more than five district school board members, the district can be divided into five district school board member residence areas, with the remaining district school board members serving at large, or the district can be divided into district school board member residence areas for each member.<sup>33</sup>

District school board members can be elected by either district-wide election or a single-member district election.<sup>34</sup> In a district-wide election, all qualified electors in the district are entitled to vote for one candidate from each district school board member residence area.<sup>35</sup> The candidate from each district school board member residence area who receives the highest number of votes in the general election is elected to the district school board.<sup>36</sup> In school districts with single-member representation, candidates for district school board member are elected only by qualified electors who reside in a specific residence area.<sup>37</sup>

Current law requires each school district be divided into school board member residence areas as nearly equal in population as practicable.<sup>38</sup> District school boards may make any change that they

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<sup>24</sup> 12A Fla. Jur. 2d Counties, Etc. s. 105.

<sup>25</sup> Article VIII, s. 2(b), FLA. CONST.

<sup>26</sup> Article IX, s. 4(a), FLA. CONST.; s. 1001.30, F.S. However, the Florida Constitution provides two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district.

<sup>27</sup> Florida Department of Education, *Public Schools/Districts*, [https://web03.fldoe.org/Schools/schoolmap\\_text.asp](https://web03.fldoe.org/Schools/schoolmap_text.asp) (last visited Feb. 20, 2023). The Florida School for the Deaf and Blind, the Florida Virtual School, and the university laboratory schools are considered independent school districts but their governing boards are not elected.

<sup>28</sup> Article IX, s. 4(a), FLA. CONST.

<sup>29</sup> Article IX, s. 4(b), FLA. CONST.

<sup>30</sup> Sections 1001.41 and 1001.42, F.S.

<sup>31</sup> Article IX, s. 4(a), FLA. CONST.; *see also* ss. 1001.361 and 105.031(1), F.S.

<sup>32</sup> Section 1001.36(1), F.S.

<sup>33</sup> Section 1001.36(1)(a), F.S.

<sup>34</sup> Sections 1001.361 and 1001.362, F.S. In 41 school districts, school board members are elected by a district-wide vote of electors. In 21 school districts, school board members are elected by a vote of the electors within their residence area (single member district election). In five school districts, some school board members are elected by a vote of the electors within their residence area and others are elected by a district wide vote. Florida School Board Association, *School Board & Superintendent Elections & Composition (Jan. 3, 2019)*, available at <https://fsba.org/wp-content/uploads/2019/02/School-Board-Superintendent-Elections-Composition.pdf> (last visited March 5, 2023).

<sup>35</sup> Section 1001.361, F.S.

<sup>36</sup> *Id.*

<sup>37</sup> Section 1001.362(2)(b), F.S.

<sup>38</sup> Section 1001.36(1), F.S.

deem necessary in the boundaries of any district school board member residence area provided that such changes are made in odd-numbered years and do not affect the residence qualifications of any incumbent member during the term for which he or she is elected.<sup>39</sup>

*Qualifying for District School Board*

A candidate for district school board must be a resident of the district school board residence area to which the candidate seeks election at the time she or he qualifies.<sup>40</sup> Candidates for district school board must qualify to run for office with the supervisor of elections (supervisor) in their respective district.<sup>41</sup> Such candidates must qualify no earlier than noon of the 71<sup>st</sup> day, and no later than noon of the 67<sup>th</sup> day, before the primary election.<sup>42</sup> School board member candidates must, during the time for qualifying, pay to the respective supervisor a qualifying fee, which consists of a filing fee<sup>43</sup> and an election assessment,<sup>44</sup> or qualify by the petition process.<sup>45</sup> A candidate qualifying by the petition process<sup>46</sup> is not required to pay the qualifying fee.<sup>47</sup> All candidates for school board member must subscribe to a candidate oath and a loyalty oath, make a full and public disclosure of financial interests, and appoint a campaign treasurer and designate a campaign depository.<sup>48</sup>

Residency Requirements for State and County Offices

Current law requires candidates for state and county offices to be residents of the district they represent at certain times. The chart below summarizes the time at which candidates for specified offices must establish residency:

| Office   | Time at which Residency must be established  |
|--|--|
| State senator  | At the time of election <sup>49</sup>        |
| State representative   | At the time of election <sup>50</sup>        |
| County commissioner  | At the time of election <sup>51</sup>        |
| County constitutional officer (i.e. sheriff, tax collector, supervisor of elections, property appraiser, clerk of the circuit court) | At the time of assuming office <sup>52</sup> |
| District school board member   | At the time of qualifying <sup>53</sup>      |

**Effect of the Bill**

The bill prohibits county commission districts, municipal districts, and district school board member residence areas from being drawn with the intent to favor or disfavor a candidate for the governing body

<sup>39</sup> Section 1001.36(2), F.S.

<sup>40</sup> Section 1001.361, F.S.

<sup>41</sup> Section 105.031(1), F.S.

<sup>42</sup> *Id.*

<sup>43</sup> The amount of the filing fee is three percent of the annual salary of the office sought. *See* s. 105.031(3), F.S.

<sup>44</sup> The amount of the election assessment is one percent of the annual salary of the office sought. *See* s. 105.031(3), F.S.

<sup>45</sup> Section 105.031(3), F.S.

<sup>46</sup> *See* s. 105.035, F.S., for information regarding such petition process.

<sup>47</sup> Section 105.035(1), F.S.

<sup>48</sup> Section 105.031(5), F.S.

<sup>49</sup> Article III, s. 15(c), FLA. CONST.; *see also* Division of Elections, FAQ – Candidates,

<https://dos.myflorida.com/elections/contacts/frequently-asked-questions/faq-candidates/> (last visited March 6, 2023).

<sup>50</sup> *Id.*

<sup>51</sup> Article VIII, s. 1(e), FLA. CONST.; *see also State v. Grassi*, 532 So.2d 1055 (Fla. 1988).

<sup>52</sup> DE 94-04, Division of Elections Advisory Opinion (March 3, 1994).

<sup>53</sup> Section 1001.361, F.S.

or an incumbent member of the governing body based on the candidate's or incumbent's residential address.

The bill requires county commission districts to be nearly equal in population "as practicable," instead of "as possible" and requires municipalities, from time to time, to fix the boundaries of their districts so as to keep them as nearly equal in proportion to their respective populations "as practicable".

The bill provides that boundary changes for county commission districts, municipal districts, and district school board member residence areas may not occur in the 270 days before a general election.

The bill voids any local ordinance adopted by a county or a municipality, or a resolution adopted by a district school board, on or after July 1, 2023, that conflicts with the provisions of the bill.

The bill also requires that an elected candidate for district school board member reside in the district school board residence area to which she or he is elected by the date she or he assumes office, instead of upon qualifying for such office. Lastly, the bill also requires that each candidate who qualifies to have her or his name placed on the ballot must be listed according to the district school board member residence area in which she or he is a candidate, rather than according to the district school board member residence area in which she or he resides.

## **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:**

The bill prohibits counties, municipalities, and district school boards from taking into account certain factors during redistricting. The costs associated with training and implementation regarding this provision will have an indeterminate, but likely insignificant, fiscal impact.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.