

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 Committee on Rules

BILL: CS/SB 444

INTRODUCER: Rules Committee and Senator Ingoglia

SUBJECT: Residency of Local Elected Officials

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Biehl</u>	<u>Roberts</u>	<u>EE</u>	Favorable
2.	<u>Sagues</u>	<u>Bouck</u>	<u>ED</u>	Favorable
3.	<u>Biehl</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 444 revises the residency requirement for school board candidates. Current law requires a candidate for school board to be a resident of the district school board member residence area in which he or she seeks election at the time he or she qualifies to run for the office. This bill changes the time at which the residency requirement must be met to the time at which an elected school board member assumes office.

The bill also does the following relating to local redistricting:

- 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 the governing body or an incumbent member of the governing body based on the candidate's or incumbent's residential address.
- Requires county commission board districts to be as nearly equal in population as practicable.
- Requires municipalities, from time to time, to fix the boundaries of their districts in order to keep them as nearly equal in proportion to their respective populations as practicable, and provides that they may only do so in odd-numbered years.
- Voids any local ordinance adopted by a county, municipality, or school district on or after July 1, 2023, that conflicts with the provisions in the bill.

The bill takes effect July 1, 2023.

II. Present Situation:

District School Boards

For the purpose of electing district school board members, each district must be divided into at least five district school board member residence areas.¹ A district may also have 7 district school board members, with 5 residence areas and two members elected at large, contingent upon district school board resolution approved by voters in the district.²

Each candidate for district school board member must, at the time she or he qualifies, be a resident of the district school board member residence area from which the candidate seeks election. Each candidate who qualifies to have her or his name placed on the ballot is listed according to the district school board member residence area in which she or he resides. 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.³

Many elected offices require that the public officials holding them live within a specified district or area. Unless otherwise provided for constitutionally, legislatively, or judicially, any residency requirement for an elected office must be met at the time of assuming office.⁴ Some offices with specified residency requirements are below.

Office	Point at Which Residency Requirement Must be Met
City commissioner	At time of assuming office, unless otherwise provided by city charter or ordinance ⁵
Congressional member (U.S. Senator or U.S. Representative)	At time of election ⁶
County commissioner	At time of election ⁷
Constitutional county officers (clerk of court, supervisor of elections, property tax appraiser, sheriff)	At time of assuming office ⁸

¹ Section 1001.36(1), F.S.

² Sections 1001.36(1) and 1001.34(2), F.S.

³ Section 1001.361, F.S.

⁴ Florida Division of Elections, *Guidelines for Determining When Residency Qualifications for Elected Office Must be Met* (2018), available at <https://soe.dos.state.fl.us/pdf/DE%20Guide%200008%20-%20Guidelines%20for%20Determining%20When%20Residency%20Qualifications....pdf>.

⁵ See *Nichols v. State*, 177 So.2d 467 (Fla. 1965); *Marina v. Leahy*, 578 So.2d 382; and Division of Elections, *Advisory Opinions by Year* (94-04 and 92-10), <https://www.dos.myflorida.com/elections/laws-rules/advisory-opinions/advisory-opinions-by-year/> (last visited March 27, 2023).

⁶ U.S. CONST. art. 1, ss. 2 and 3.

⁷ See *State v. Grassi*, 532 So.2d 1055 (Fla. 1988); FLA. CONST. art. VII, s. 1(e), Division of Elections, *Advisory Opinions by Year* (94-04 and 92-10), <https://www.dos.myflorida.com/elections/laws-rules/advisory-opinions/advisory-opinions-by-year/> (last visited March 27, 2023), and Office of Attorney General, *Attorney General Opinion 74-293*, <http://myfloridalegal.com/ago.nsf/Opinions/BA862ABB5A8981B3852566B3005C4A25> (last visited Mar. 27, 2023).

⁸ See Division of Elections, *Advisory Opinions by Year* (90-30, 94-04 and 92-10), <https://www.dos.myflorida.com/elections/laws-rules/advisory-opinions/advisory-opinions-by-year/> (last visited Mar. 27, 2023)

Governor, Lieutenant Governor, or Cabinet member	At time of election ⁹
Judge	At time of assuming office ¹⁰
State legislators	At time of election ¹¹
School board members	At time of qualifying ¹²
School superintendent	At time of assuming office ¹³

County Commissions

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.¹⁴ Non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹⁵ 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.¹⁶

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,¹⁷ representing districts that are contiguous and as nearly equal in population as practicable, which are redrawn after each decennial census.¹⁸ One commissioner must reside in each district as provided by law. County commissioners are responsible for any boundary adjustments to ensure district populations are as nearly equal as possible, but these changes may only be made during odd-numbered years.¹⁹

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.²⁰ 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.²¹

⁹ FLA. CONST. art. IV, s. 5.

¹⁰ See FLA. CONST. art. V, s. 8, and Division of Elections, *Advisory Opinions by Year* (78-31 and 94-04), <https://www.dos.myflorida.com/elections/laws-rules/advisory-opinions/advisory-opinions-by-year/> (last visited Mar. 27, 2023).

¹¹ See *Ruiz v. Farias*, 43 So.3d 124 (Fla. 3DCA 2010).

¹² See ss. 1001.34 and 1001.361, F.S.; and Division of Elections opinions 82-02 and 94-04.

¹³ See Division of Elections, *Advisory Opinions by Year* (94-04), <https://www.dos.myflorida.com/elections/laws-rules/advisory-opinions/advisory-opinions-by-year/> (last visited Mar. 27, 2023).

¹⁴ FLA. CONST. art. VIII, s. 1(a).

¹⁵ FLA. CONST. art. VIII, s. 1(f).

¹⁶ FLA. CONST. art. VIII, s. 1(g).

¹⁷ FLA. CONST. art. VIII, s. 1(e).

¹⁸ *Id.*

¹⁹ Section 124.01(3), F.S.

²⁰ Section 124.011(1), F.S.

²¹ Section 124.011(1)(a)-(b), F.S.

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.²²

Municipalities

The Florida Constitution provides that municipalities may be established or abolished and their charters amended pursuant to general or special law.²³ Under the Florida Constitution and Municipal Home Rule Powers Act,²⁴ 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 purposes except as provided by law.²⁵ Additionally, municipalities are constitutionally authorized to exercise any power for municipal purposes except when expressly prohibited by general or special law.²⁶

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 the specific municipality.²⁷ The only constitutional requirement as to the municipal form of government is that each municipal legislative body must be elected.²⁸

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.

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.²⁹ The Court has held that the Fourteenth Amendment requires seats in state legislatures be reapportioned on a

²² Fla. Association of Counties, County Districting, <https://www.fl-counties.com/county-districting/> (last visited April 20, 2023).

²³ FLA. CONST. art. VIII, s. 2.

²⁴ Chapter 166, F.S.

²⁵ 12A Fla. Jur. 2d Counties, etc. s. 95.

²⁶ Fla. Const. art. VIII, s. 2(b).

²⁷ 12A Fla. Jur. 2d Counties, Etc. s. 105.

²⁸ FLA. CONST. art. VIII, s. 2(b).

²⁹ *Grove v. Emison*, 507 U.S. 25, 34 (1993); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 416 (2006).

population basis and that decennial reapportionment is a rational approach to readjust legislative representation to take into consideration population shifts and growth.³⁰

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.”³¹ 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.³² For state legislative and other districts, the courts have permitted a great population deviation among districts, but they must be “substantially equal.”³³

All political subdivisions are subject to federal requirements, which include equal population,³⁴ compliance with the Voting Rights Act,³⁵ and other applicable laws and judicial precedent.

Florida Constitution

The Florida Constitution establishes standards for congressional and state legislative redistricting.³⁶ 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.³⁷ The second tier addresses equal protection, compactness, and use of political and geographical boundaries.³⁸

III. Effect of Proposed Changes:

The bill brings the residency requirement for school board members more in line with those for other offices by providing that a school board member must meet the residency requirement at the time he or she assumes office.

The bill also:

- 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 the

³⁰ *Reynolds v. Sims*, 377 U.S. 584 (1964).

³¹ *Baker v. Carr*, 369 U.S. 186 (1962).

³² *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969).

³³ *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

³⁴ 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 as long as the population of each district is equal to that of the others as near as it is practicable to attend 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” mandates as 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).

³⁵ 52 U.S.C. 10301.

³⁶ FLA. CONST. art. III, ss. 20 and 21.

³⁷ FLA. CONST. art. III, ss. 20(a) and 21(a).

³⁸ FLA. CONST. art. III, ss. 20(b) and 21(b).

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

- Requires county commission board districts to be as nearly equal in population as practicable.
- Requires municipalities, from time to time, to fix the boundaries of their districts in order to keep them as nearly equal in proportion to their respective populations as practicable, and provides that they may only do so in odd-numbered years.
- Voids any local ordinance adopted by a county, municipality, or school district on or after July 1, 2023, that conflicts with the provisions in the bill.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill prohibits counties, municipalities, and school districts 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 124.01, 1001.36, and 1001.361, Florida Statutes.

This bill creates section 166.0321, Florida Statutes.

IX. 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 on April 19, 2023:

The CS adds to the bill the substance of SB 1080, related to local redistricting, which was favorably reported by its first committee of reference.

- B. **Amendments:**

None.