

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 707 Form of Candidate Oath
SPONSOR(S): Ethics, Elections & Open Government Subcommittee, Bell
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 666

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ethics, Elections & Open Government Subcommittee	16 Y, 2 N, As CS	Skinner	Toliver
2) State Affairs Committee	16 Y, 1 N	Skinner	Williamson

SUMMARY ANALYSIS

Current law requires candidates for nomination or election to state, local, or judicial office to take a specific oath or affirmation in writing. A copy of such oath or affirmation must be made available to the candidate by the filing officer before whom such candidate seeks to qualify.

The candidate oath must include specified information, including, the name as the candidate wishes it to appear on the ballot, an affirmation that the candidate is qualified under the Constitution and laws of Florida for such office, and that such candidate will support the federal and state constitutions. Candidates are required to sign the candidate oath and provide an address.

The bill specifies that the address in the oath or affirmation must be the candidate's *address of legal residence*. Under the Florida Election Code, "address of legal residence" means the legal residential address of the elector and includes all information necessary to differentiate one residence from another, including, but not limited to, a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier.

The bill may have an indeterminate, but likely insignificant, negative fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Candidate Oath of Affirmation

The Florida Election Code¹ requires each candidate² for an elected office in Florida to take and subscribe to an oath or affirmation in writing in order to qualify for nomination or election.³ Current law specifies the format, including information that is required to be included, for the oath or affirmation a candidate for state and local office,⁴ federal office,⁵ or state judicial office,⁶ must take.

The oath or affirmation candidates for state or local elected office must take requires the candidate to:

- Provide his or her name as he or she wishes it to appear on the ballot.
- Provide the name of the office for which he or she is running.
- Affirm that he or she is a qualified elector of his or her county.
- Affirm that he or she is qualified under the Constitution and laws of Florida to hold the office for which he or she is running.
- Affirm that he or she has not qualified for any other public office in the state for which the term, or any part thereof, runs concurrently with the term of the office he or she seeks.⁷
- Affirm that he or she has resigned from any office from which he or she is required to resign from before qualifying as a candidate for another public office.⁸
- Affirm that he or she will support the United States Constitution and the Florida Constitution.⁹

The oath or affirmation candidates for judicial office must take requires the candidate to:

- Provide his or her name as he or she wishes it to appear on the ballot.
- State which judicial office he or she is a candidate for.
- Provide the county that is his or her legal residence.
- Affirm that he or she is a qualified elector of the state and of the territorial jurisdiction of the court to which he or she seeks election.
- Affirm that he or she is qualified under the Constitution and laws of Florida to hold the judicial office to which he or she desires to be elected or retained.
- Affirm that he or she has not qualified for any other public office in the state for which the term, or any part thereof, runs concurrently with the term of the office he or she seeks.¹⁰
- Affirm that he or she has resigned from any public office from which he or she is required to resign from before qualifying as a candidate for another public office.¹¹
- Affirm that he or she will support the United States Constitution and the Florida Constitution.¹²

Candidates for state, local, and judicial office must sign the oath or affirmation and provide their address¹³ below the signature.¹⁴ Unlike other areas of the Florida Election Code, the oath or affirmation

¹ Chapters 97-106 are cited as “The Florida Election Code.” See s. 97.011, F.S.

² See s. 97.021(7), F.S.

³ Sections 99.021 and 105.031(4)(b), F.S.

⁴ Section 99.021(1)(a)1., F.S.

⁵ See s. 99.021(1)(a)2., F.S.

⁶ See s. 105.031(4)(b), F.S.

⁷ See s. 99.012(2), F.S.

⁸ See s. 99.012(3)(a), F.S.

⁹ Section 99.021(1)(a)1., F.S.

¹⁰ *Supra* note 7.

¹¹ *Supra* note 8.

¹² Section 105.031(4)(b), F.S.

¹³ Once elected, the personal identifying information of certain officials, such as judges, sheriffs, state attorneys, and public defenders, is exempt from public record requirements. See s. 119.071(4)(d), F.S.

¹⁴ Sections 99.021(1)(a)1. and 105.031(4)(b), F.S.

does not specify the type of address required. The term “address,” as it is used in the oath or affirmation, is not defined in the Florida Election Code; however, the term “address of legal residence” is defined to mean the legal residential address of the elector and includes all information necessary to differentiate one residence from another, including, but not limited to, a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier.¹⁵ A copy of the oath or affirmation must be made available to the candidate by the officer before whom the candidate seeks to qualify.

Residency Requirements for Elected Officials

Many elected offices require public officials holding such offices to reside within a specified district or area. Unless otherwise provided elsewhere in law, residency requirements must be met at the time of assuming office.¹⁶ The chart below summarizes the time at which candidates for specified offices must establish residency:

Office	Time at which residency must be established
City commissioner	At the time of assuming office, unless provided elsewhere by city charter or ordinance ¹⁷
Congressional member (U.S. Senator or U.S. Representative)	At time of election ¹⁸
County commissioner	At time of election ¹⁹
Constitutional county officers (clerk of court, supervisor of elections, property appraiser, tax collector, sheriff)	At time of assuming office ²⁰
Governor, Lieutenant Governor, Cabinet member	At time of election ²¹
Judges	At time of assuming office ²²
Legislators (state senators and representatives)	At time of election ²³
School board member	At time of qualifying ²⁴
School superintendent	At time of assuming office ²⁵

Effect of the Bill

The bill specifies that the address of the candidate that is required to be included in the signed oath or affirmation for a state, local, or judicial elected office must be the candidate’s *address of legal residence*.²⁶

B. SECTION DIRECTORY:

Section 1 amends s. 99.021, F.S., relating to form of candidate oath.

¹⁵ Section 97.021(3), F.S.

¹⁶ Guidelines for Determining When Residency Qualifications for Elected Office Must be Met, Florida Division of Elections, DE Reference Guide 0008, updated 10/2018, *available at* <https://soe.dos.state.fl.us/pdf/DE%20Guide%200008%20-%20Guidelines%20for%20Determining%20When%20Residency%20Qualifications....pdf> (last visited March 10, 2023); *see also* Division of Elections Advisory Opinion 94-04.

¹⁷ *See Nichols v. State*, 177 So.2d 467 (Fla. 1965); *Marina v. Leahy*, 578 So.2d 382 (Fla. 3rd DCA 1991); and Division of Elections Advisory Opinions 94-04 and 92-10.

¹⁸ Article 1, ss. 2 and 3, U.S. CONST.

¹⁹ Article VIII, s. 1(e), FLA. CONST.; *see also State v. Grassi*, 532 So.2d 1055 (Fla. 1988); Division of Elections Advisory Opinions 94-04 and 92-10; and Attorney General Opinion 74-293.

²⁰ Division of Elections Advisory Opinions 90-30, 92-10, and 94-04.

²¹ Article IV, s. 5, FLA. CONST.

²² Article V, s. 8, FLA. CONST.; Division of Elections Advisory Opinions 78-31 and 94-04.

²³ Article III, s. 15(c), FLA. CONST.; *see also Ruiz v. Farias*, 43 So.3d 124 (Fla. 3DCA 2010).

²⁴ Section 1001.361, F.S.

²⁵ Division of Elections Advisory Opinion 94-04.

²⁶ *Supra* note 15.

Section 2 amends s. 105.031, F.S., relating to qualification; filing fee; candidate's oath; and items required to be filed.

Section 3 provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Current state, local, and judicial candidate oath forms require candidates to list their address. The bill requires such candidates to list their address of legal residence. These forms are promulgated²⁷ by the Department of State and will likely have to be updated to specify the address of legal residence must be the address listed. As such, the bill may have an indeterminate, but likely insignificant, negative fiscal impact on state government.

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. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill will likely require the alteration of certain forms adopted through rule by the Department of State, however, the Department of State has sufficient rulemaking authority under s. 97.012, F.S., to accomplish this objective.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 14, 2023, the Ethics, Elections & Open Government Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment revised the oath that candidates for *judicial* office must take upon qualifying to require that the candidate state his or her address of legal residence, instead of any type of address.

This analysis is drafted to the committee substitute as adopted by the Ethics, Elections & Open Government Subcommittee.