

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 Governmental Oversight and Accountability

BILL: SB 1760

INTRODUCER: Senator Grall

SUBJECT: Public Officers and Employees

DATE: March 24, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Pre-meeting
2.			AEG	
3.			RC	

I. Summary:

SB 1760 places additional citizenship and residency requirements on state executive branch officers and defines the term “office” for purposes of the constitutional prohibition on dual office-holding.

This bill is not expected to affect state or local government revenues or expenditures.

This bill takes effect July 1, 2025.

II. Present Situation:

Residency Requirements

A residency requirement is a mandate that certain public officers – elected and, in some cases, appointed—be residents of the area they serve or the area in which they work. Current law places specific residency requirements on the following public officers in Florida:

- Governor.¹
- Lieutenant Governor.²
- Cabinet members (Attorney General, Chief Financial Officer, and Commissioner of Agriculture).³
- State legislators.⁴

¹ The Governor must be a state resident for seven years and an elector before being elected. FLA. CONST. art. IV, s. 5(b).

² The Lieutenant Governor must be a state resident for seven years and an elector before being elected. *Id.*

³ Cabinet members must be state residents for seven years and an elector before being elected. *Id.*

⁴ State legislators must be residents of the district from which they are elected, be an elector in the district from which they were elected, and have resided in Florida for at least two years prior to being elected. FLA. CONST. art. III, s. 15(c).

- State attorneys.⁵
- Public defenders.⁶
- County commissioners.⁷
- School board members.⁸
- Judges (supreme court justices, district court of appeal judges, and circuit court judges).⁹

All candidates for state and county public office, except candidates for judicial office, must subscribe to an oath affirming they are qualified electors of their county at the time of qualifying for public office.¹⁰ In order to be a qualified elector, one must be a U.S. citizen and a resident of the state as well as the county in which he or she registers to vote.¹¹ The Division of Elections within the Department of State has opined that, unless otherwise provided by the State Constitution, statute, or court ruling, the qualifications one must possess for public office, including residency, are determined as of the commencement of the term of office.¹² Accordingly, county constitutional officers¹³ must be residents of the jurisdiction they serve at the time of assuming office.

Commissions

For purposes of ch. 20, F.S., a “commission” is “a body created by specific statutory enactment within a department,^[14] the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor.”¹⁵ Commissions play an essential role, serving as regulatory oversight bodies across various policy areas. These entities are typically responsible for rulemaking, licensing, adjudicating disputes, or enforcing regulations.

⁵ State attorneys must be an elector of the state and reside in the territorial jurisdiction of the circuit in which they serve upon taking office. FLA. CONST. art. V., s. 17; *see also* Florida Division of Elections, *FAQ—Candidates*, <https://dos.fl.gov/elections/contacts/frequently-asked-questions/faq-candidates/> (last visited Mar. 23, 2025).

⁶ Public defenders must be an elector of the state and reside in the territorial jurisdiction of the circuit in which they serve upon taking office. FLA. CONST. art. V, s. 18; *see also* Florida Division of Elections, *FAQ—Candidates*, <https://dos.fl.gov/elections/contacts/frequently-asked-questions/faq-candidates/> (last visited Feb. 25, 2025).

⁷ County commissioners must be residents of the district from which they are elected at the time of election. FLA. CONST. art. VIII, s. 1(e); *see also* Florida Division of Elections Opinion 94-04; *State v. Grassi*, 532 So.2d 1055 (Fla. 1988).

⁸ A school board member must be a resident of the district school board member residence area and be an elector in the district in which he or she serves at the time of qualifying. Sections 1001.34 and 1001.36, F.S.; *see also* Florida Division of Elections Opinion 94-04.

⁹ Judges must reside in the territorial jurisdiction of the court they serve and be an elector of the state at the time of assuming office. FLA. CONST. art. V, s. 8; *see also Advisory Opinion to the Governor*, 192 So. 2d 757 (Fla. 1966).

¹⁰ Section 99.021(1)(a)1., F.S. Note candidates for municipal office are not explicitly required by this statute to reside within the municipality in which they are running for office. Instead, residency requirements for municipal offices are typically established on a local level. *See Nichols v. State*, 177 So.2d 467 (Fla. 1965); *Marina v. Leahy*, 578 So.2d 382 (Fla. 3rd DCA 1991); Florida Division of Elections Opinion 94-04.

¹¹ Section 97.041(1)(a), F.S.

¹² Florida Division of Elections Opinion 94-04.

¹³ The term “county constitutional officers” includes sheriffs, tax collectors, property appraisers, supervisors of elections, and clerks of circuit courts. FLA. CONST. art. VIII, s. 1(d).

¹⁴ “Department” means the principal administrative unit within the executive branch of state government. Section 20.03(8), F.S.

¹⁵ Section 20.03(4), F.S.

Board of Trustees

For purposes of ch. 20, F.S., a “board of trustees” is a “board created by specific statutory enactment and appointed to function adjunctively to a department, the Governor, or the Executive Office of the Governor to administer public property or a public program.”¹⁶ While these entities may function within an executive department or under the Governor’s authority, they often operate with a degree of autonomy, making policy decisions and managing public programs in alignment with statutory mandates. Florida college boards of trustees are required to reside in the service delivery area of the college,¹⁷ while university boards of trustees do not have to reside in the state.¹⁸

The Board of Governors

The State University System of Florida consists of 12 public universities,¹⁹ each governed by an individual board of trustees.²⁰ The Board of Governors (BOG) is responsible for overseeing, regulating, and managing the entire State University System.²¹ Through its authority, the BOG ensures affordable access to higher education, promotes articulation with other educational institutions, and upholds fiscal responsibility and accountability across Florida’s public universities.²² The BOG consists of 17 members, 14 of which are “citizens” appointed by the Governor, subject to Senate confirmation.²³ The commissioner of education, the chair of the advisory council of faculty senates, and the president of the Florida student association are also members.²⁴

Licensing Boards

For purposes of ch. 20, F.S., a “licensing board” is “a board authorized to grant and revoke licenses to engage in regulated occupations.”²⁵ The boards are typically established to oversee and enforce standards within various professions, ensuring that practitioners meet the requisite qualifications and that those practitioners adhere to established ethical and professional guidelines. The boards are commonly composed of professionals licensed in the respective fields and members of the public who represent consumer interests.

Quasi-public Entities

Throughout the Florida Statutes, entities have been established that are neither entirely governmental in nature nor entirely private but possess traits from both the public and private

¹⁶ Section 20.03(2), F.S. The definition specifically exempts boards created under ch. 253, F.S., relating to public lands and property.

¹⁷ FLA. CONST. art. IX, s. 8(c).

¹⁸ Section 1001.71(1), F.S.

¹⁹ Section 1000.21(9), F.S.; see State University System, *Universities*, <https://www.flbog.edu/universities/> (last visited Mar. 23, 2025).

²⁰ FLA. CONST. art. IX, s. 7(b), FLA. CONST.; s. 1001.71, F.S.

²¹ See FLA. CONST. art. IX, s. 7(d).

²² Section 20.155(4)(b), F.S.

²³ FLA. CONST. art. IX, s. 7(d); see s. 1001.70, F.S.

²⁴ FLA. CONST. art. IX, s. 7(d).

²⁵ Section 20.03(9), F.S.

sectors. These entities are often referred to as quasi-public entities (QPEs). The reasons for their establishment in law vary from entity to entity. Some are independent entities created to advance certain policy goals. For example, the Florida Housing Finance Corporation was created to finance or refinance housing and related facilities.²⁶ Others, like the Florida Healthy Kids Corporation²⁷ and Citizens Property Insurance Corporation,²⁸ are created to administer government programs or to achieve a particular outcome in the state or in a community.

Just as the purposes of these QPEs vary, so too do their structures. For example, some are nonprofit corporations established completely independent of government and others are for-profit corporations funded through methods that allow the entity to be entirely self-sufficient. The governing bodies of QPEs, usually a board of directors or board of trustees, vary, too. The membership of these boards ranges from government officials and political appointees to private sector representatives and board-elected members.

Executive Departments

Florida's executive branch structure is set forth in the State Constitution and further refined by statute. The State Constitution provides that “[a]ll functions of the executive branch of state government [must] be allotted to among not more than twenty-five departments,” excluding those explicitly created or authorized by the Constitution.²⁹ A “department” is the principal administrative unit within the executive branch of state government.³⁰ Each department is headed by a secretary³¹ appointed by the Governor or an executive director³² appointed by the Governor and Cabinet or a board.³³ Additionally, some departments house subunits that function independently of their parent department.³⁴ These department heads and administrative officers play a critical role in policy implementation, program administration, and regulatory enforcement.

Dual Office-holding

The State Constitution prohibits individuals from holding multiple public offices simultaneously and applies to public offices in state, county, and municipal government.³⁵ The provision applies to both elected and appointed offices, ensuring that no single individual accumulates multiple governmental roles that could create a conflict of interest.³⁶ Neither the State Constitution nor the

²⁶ Section 420.504(1), F.S.

²⁷ Florida Healthy Kids Corporation aims to improve children's health by providing comprehensive and affordable health insurance coverage. Section 624.91(2)(a), F.S.

²⁸ Citizens Property Insurance Corporation was created to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. Section 627.351(6)(a)1., F.S.

²⁹ FLA. CONST. art. IV, s. 6.

³⁰ Section 20.03(8), F.S.

³¹ See s. 20.03(12), F.S.

³² See s. 20.03(10), F.S.

³³ For example, the executive director of the State Board of Administration is appointed by a majority vote of the Board of Trustees comprised of the Governor, the Chief Financial Officer, and the Attorney General. The Governor must vote on the prevailing side. Section 215.441, F.S.

³⁴ For example, the Division of Administrative Hearings is housed with the Department of Management Services but is not subject to the department's control, supervision, or direction. Section 120.65(1), F.S.

³⁵ FLA. CONST. art. II, s. 5(a).

³⁶ *Bath Club, Inc. v. Dade County*, 394 So. 2d 110 (Fla. 1981); see *Blackburn v. Brorein*, 70 So. 2d 293 (Fla. 1954).

Legislature has defined the term “office,” leaving the court to establish its meaning through case law. Florida courts have interpreted the term “office” in opposition to the term “employment,” with the latter not being subject to prohibition on dual office-holding. An “office,” the courts have held, refers to a position that exercises sovereign power, has a legally prescribed tenure, and is established by law rather than by contract.³⁷ The term “employment,” by contrast, “does not comprehend a delegation of any part of the sovereign authority [of government].”³⁸ Positions such as department heads, members of governing boards, and elected officials have typically been considered offices, while positions like assistants, deputy clerks, and administrative employees have typically been classified as public employees.³⁹

Despite the general prohibition, Florida courts have recognized an *ex officio* exception that allows an individual to perform additional official duties if those duties are assigned by legislative designation to the office itself rather than to the individual holding it, provided that the additional duties are consistent with those already exercised.⁴⁰ For example, county commissioners and school board members may also serve *ex officio* on a property appraisal adjustment board if the law assigns this responsibility to their office rather than to the individual, as their additional duties are consistent with their existing responsibilities. Additionally, the State Constitution explicitly exempts certain roles, such as notaries public, military officers, and members of advisory bodies from the dual office-holding prohibition.⁴¹

III. Effect of Proposed Changes:

Section 1 creates s. 20.70, F.S., to establish “U.S. citizenship” and “state residency” requirements on a person serving as:

- A member of a commission;
- A member of a board of trustees;
- A member of the Board of Governors;
- A member of a licensing board;
- A member of a governing board or as the chief executive of a statewide entity statutorily created for a public purpose or to effectuate a government program, and which is not under the direct control of a governmental entity; or
- An appointee to state office.

Section 1 also requires the following persons be U.S. citizens, Florida residents, and residents in the same county as their respective department headquarters:

- A secretary of an executive branch department (this includes most executive branch secretaries, except the departments of Legal Affairs; Financial Services; Agriculture and Consumer Services; and those departments noted below).

³⁷ *State ex rel. Holloway v. Sheats*, 83 So. 508 (Fla. 1919); *State ex rel. Clyatt v. Hocker*, 22 So. 721 (Fla. 1897).

³⁸ *State ex rel. Holloway v. Sheats*, 83 So. 508 (Fla. 1919).

³⁹ See Office of the Attorney General, *Dual Office-holding*,

<https://www.myfloridalegal.com/files/pdf/page/4FF72ECF62927EEA85256CC6007B4517/DualOfficeHoldingPamplet.pdf> (last visited Mar. 23, 2025).

⁴⁰ *Bath Club, Inc. v. Dade County*, 394 So. 2d 110 (Fla. 1981).

⁴¹ Members of a constitutional revision commission and taxation and budget reform commission are also exempt. FLA. CONST. art. II, s. 5(a).

- The executive director of an executive branch department (this includes the executive directors of the departments of Revenue; Law Enforcement; Highway Safety and Motor Vehicles; Veterans' Affairs; Elderly Affairs; and Citrus; the executive director of the State Board of Administration; the Commissioner of Education; and the Adjutant General of the Department of Military Affairs).
- The chief administrative officer of any unit of state government housed under an executive branch department for administrative purposes but is not subject to control, supervision, or direction of such department (this includes, but is not limited to, the executive directors of the Florida Gaming Control Commission; Florida Transportation Commission; Fish and Wildlife Conservation Commission; the director of the Agency for Persons with Disabilities; the Commissioner of Insurance Regulation; and the Commissioner of Financial Regulation, the Chief Judge of the Division of Administrative Hearings, the executive director of the Human Relations Commission, and the chair of the Public Employees Relations Commission).

Section 2 creates s. 112.31251, F.S., to define the term “office” for purposes of the constitutional restriction on dual office-holding in Florida. “Office” is defined to mean any position in state, county, or municipal government that:

- Delegates to the individual holding the position a portion of sovereign power of the government;
- Requires the exercise of independent governmental authority performed in an official capacity rather than solely based upon a contractual or employment relationship;
- Has a prescribed tenure; and
- Exists independently of the individual holding the position.

The following offices are enumerated as positions that meet the definition of “office”:

- Governor, Lieutenant Governor, Cabinet officers;
- State senator and state representative;
- County commissioner, sheriff, tax collector, property appraiser, supervisor of elections, and clerk of circuit court;
- Member of the Board of Governors of the State University System;
- Member of a board of trustees for a state university;
- Member of a district school board;
- County or municipal administrator and attorney;
- The director of a county or municipal emergency management agency;
- Member of a state, county, or municipal board or commission that exercises governmental authority and is not purely advisory in nature;
- Member of the board of the Citizens Property Insurance Corporation;
- Member of the board of the Florida Housing Finance Corporation; and
- Member of the board of the Florida Healthy Kids Corporation.

While the position of a “police officer” or “law enforcement officer” has been held to be an office for purposes of dual office-holding under the State Constitution, the new statutory criteria of “prescribed tenure” may shift these positions away from being an “office” under the statutory interpretation. Likewise, other positions that do not have “prescribed tenure” may also fall

outside the statutory definition of “office”. However, the language and interpretation will continue to control, potentially leading to inadvertent noncompliance.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None identified.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

Art. IX, section 7(d) of the State Constitution provides that the Board of Governors of the State University System will be comprised of fourteen *citizen members dedicated to the purposes of the state university system*. Similarly, Art. IX, section 7(c) of the State Constitution provides that each board of trustees of a state university will be comprised of six *citizen* members appointed by the governor and five *citizen* members appointed by the Board of Governors.

Art. II, section 5(b) of the State Constitution requires each state and county officer to affirm:

I do solemnly affirm that I will support, protect, and defend the Constitution and Government of the United States and the State of Florida; that I am duly *qualified to hold office under the Constitution of the state*; and that I will well and faithfully perform the duties of *the office on which I am not about to enter*. So help me God.

(Emphasis added.)

Since the State Constitution explicitly places citizenship, dedication to the purposes of the state university system, and senate confirmation requirements on these appointees, it is unclear whether the legislature may add other qualifications (i.e., residency) that must be met for the officer.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None identified.

B. Private Sector Impact:

It is unclear whether the dual office-holding provisions of this bill will impact a law firm or attorney that has contracted to serve as the municipal attorney for more than one municipality. The position of municipal attorney may not meet the criteria enumerated on lines 47-54 to be included in the dual office-holding prohibition. Yet, the position is included in the statutorily enumerated positions that are mandated to be included in the dual office-holding prohibition.

C. Government Sector Impact:

This bill is not expected to affect state or local government revenues or expenditures.

VI. Technical Deficiencies:

None identified.

VII. Related Issues:

Section 1001.71(1), F.S., relating to university board of trustees, states “There shall be no state residency requirement for university board members, but the Governor and the Board of Governors shall consider diversity and regional representation.” This conflicts with the new language of Section 1 of the bill that applies to boards of trustees generally.

VIII. Statutes Affected:

This bill creates the sections 20.70 and 112.31251 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.