

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 75 Freeholder Voting
SPONSOR(S): Government Operations Subcommittee; Davis
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 116

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 0 N, As CS	Naf	Williamson
2) Community & Military Affairs Subcommittee	11 Y, 0 N	Gibson	Hoagland
3) State Affairs Committee			

SUMMARY ANALYSIS

A freeholder election is an election in which only qualified electors who own land in the jurisdiction may vote. Current law requires each freeholder voting in a freeholder election to submit an affidavit made before an inspector affirming that he or she is a freeholder who is a qualified elector residing in the county, district, or municipality in which the election or referendum is to be held.

The bill removes the current freeholder's affidavit requirement and instead provides that a freeholder must submit a written declaration, which does not require notarization.

The bill provides an effective date of July 1, 2012.

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:

Background

Freeholder Elections

A freeholder election is an election in which only qualified electors¹ who own land in the jurisdiction may vote.² Typically, freeholder elections in counties, municipalities, and special districts concern bond issuance, district creation, or officer selection. Some issues for which freeholder elections are held in Florida are:

- issuance by a county, school district, municipality, special district or local governmental body with taxing powers of local bonds to finance or refinance capital projects;³
- issuance by a county of general obligations bonds;⁴
- issuance by a county of bonds to build bridges over navigable streams;⁵
- creation of a water or sewer district in unincorporated areas;⁶
- issuance of bonds for a water or sewer district;⁷ and
- creation of a special neighborhood improvement district.⁸

By statute, "each registered elector who makes a sworn affidavit of ownership to the inspectors, giving either a legal description, address, or location of property in the elector's name which is not wholly exempt from taxation shall be . . . considered a freeholder."⁹ Currently, each freeholder voting in a freeholder election must submit an affidavit made before an inspector affirming that he or she is a freeholder who is a qualified elector residing in the county, district, or municipality in which the election or referendum is to be held.¹⁰ Compliance with the notarization requirement may be difficult for an active duty military freeholder or other Uniformed and Overseas Citizens Absentee Voting Act freeholder.¹¹

Verification of Documents

Section 92.525, F.S., provides two processes for document verification that is authorized or required by law, by rule of an administrative agency, or by rule or order of court:

- by oath or affirmation before an authorized officer, or
- by the signing of a written declaration.

The form of the written declaration is specified as follows:

¹ Required qualifications for electors are set out in s. 97.041, F.S., and include, but are not limited to, age, citizenship, and residency requirements.

² See s. 100.241, F.S.

³ Art. VII, s. 12, Fla. Const.

⁴ S. 153.07, F.S.

⁵ S. 130.18, F.S.

⁶ S. 153.53, F.S.

⁷ S. 153.56, F.S.

⁸ S. 163.511, F.S.

⁹ S. 100.241(3), F.S.

¹⁰ S. 100.241(2), F.S.

¹¹ The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 U.S.C. 1973ff-6) was enacted by Congress in 1986. It requires states and territories to allow certain groups of citizens to register and vote absentee in elections for Federal offices.

UOCAVA citizens are U.S. citizens who are active members of the Uniformed Services, the Merchant Marine, and the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration, their family members, and U.S. citizens residing outside the United States. Section 101.6952, F.S., contains special provisions for absentee ballots for absent uniformed services and overseas voters, including use of the federal write-in absentee ballot for federal, state, or local elections when an official absentee ballot is not received.

A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.¹²

A person who knowingly makes a false written declaration commits perjury by false written declaration, a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.¹³

Effect of Proposed Changes

The bill removes the current affidavit requirement for an elector to establish that he or she is a freeholder qualified to vote in an election or referendum limited to freeholders, and in its place the bill provides that the elector must submit a written declaration as provided in s. 92.525, F.S., which affirms that the elector is a freeholder who is a qualified elector residing in the county, district, or municipality in which the election or referendum is to be held.

B. SECTION DIRECTORY:

Section 1: amends s. 100.241, F.S., relating to freeholder voting.

Section 2: provides an effective date of July 1, 2012.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹² S. 92.525(2), F.S.

¹³ S. 92.525(3), F.S.; Ss. 775.082, 775.083, and 775.084, F.S., specify penalties, including terms of imprisonment and fines, for felony offenders.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Under section 5 of the Federal Voting Rights Act, new statewide legislation that implements a voting change, including but not limited to, a change in the manner of voting, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office is subject to preclearance review before it can be legally enforced.¹⁴ Preclearance review may be obtained through submission to the U.S. Department of Justice or through a declaratory judgment action filed in the U.S. District Court for the District of Columbia.¹⁵ The preclearance review is conducted to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe counties. Pursuant to correspondence with House staff, the Department of State has indicated that this legislation would require preclearance since it is a change that affects voting. Until precleared by the U.S. Attorney General or the U.S. District Court for the District of Columbia, the legislation would be unenforceable in Florida's five covered jurisdictions.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 16, 2011, the Government Operations Subcommittee amended and passed House Bill 75 as a committee substitute. The committee substitute differs from the original filed version in that it removes the current process by which an elector may establish that he or she is a freeholder who is qualified to vote, and does not include the original bill's duplicative penalty provision. The analysis has been updated to reflect this amendment.

¹⁴ 42 U.S.C. s. 1973c.

¹⁵ *Id.*