

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 571 Residency of Candidates and Public Officers

**SPONSOR(S):** Rodrigues

**TIED BILLS:**                   **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ethics & Elections Subcommittee	11 Y, 0 N	Davison	Marino
2) Local & Federal Affairs Committee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

For all offices, unless otherwise provided for constitutionally, legislatively, or judicially, the qualifications one must possess, including residency, are effective at the commencement of the term of office.

There are two alternative interpretations of the term “resident.” First, courts have defined residency as any place of abode or dwelling place, however temporary it may be. The second interpretation incorporates the term “legal residence,” which is synonymous with “domicile” or “permanent abode.” A “legal residence” or “domicile” means a residence at a particular time, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time.

The bill requires candidates and public officers to use the address at which the candidate or public officer maintains his or her domicile to satisfy any candidate residency requirement. A candidate or public officer may only have one domicile at a time. The bill provides a list of factors that may be used for determining whether a candidate or public officer meets the residency requirement.

The bill provides that an active duty military member may not be deemed to have acquired a domicile in Florida by being stationed on duty in this state. An active duty military member may not be deemed to have abandoned domicile in this state because he or she is stationed in another municipality, state, or country. However, an active duty military member is not prohibited from establishing a new domicile where he or she is stationed.

The bill preempts and supersedes any ordinance, regulation, or local law of a county, municipality, or other political subdivision that establishes residency requirements for candidates or public officers. Ordinances, regulations, or laws that impose stricter requirements are not preempted or superseded by the bill.

The bill explicitly states that in accordance with the Florida Constitution, the bill does not apply to members of the Legislature.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of January 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Pursuant to section 99.021, F.S., candidates, at the time of qualifying, are required to subscribe to an oath that they are qualified electors.<sup>1</sup> In order to be a qualified elector, one must be a resident of Florida and the county wherein he or she registers to vote.<sup>2</sup> For all offices, unless otherwise provided constitutionally, legislatively, or judicially, the qualifications one must possess, including residency, are effective at the commencement of the term of office.<sup>3</sup> The following table indicates the residency requirements for each type of candidate and when the requirements must be satisfied.

Governor, Lieutenant Governor, Cabinet Member	<i>At the time of election</i> , and throughout the term of office, the governor, lieutenant governor, and each cabinet member must have resided in the state for the preceding seven years. The Attorney General must have been a member of the Florida Bar for the preceding five years. Art. IV, s. 5, Fla. Const.
Legislator	Legislators are required to be at least twenty-one years of age, have resided in the state for the preceding two years, and to be an elector and resident of the district from which elected <i>at the time of assuming office</i> , and throughout the term of office. Art. III, s. 15(c), Fla. Const. A legislator assumes office on election day. Art. III, s. 15(d), Fla. Const.
Judicial Officer	<i>At the time of assuming office</i> , and throughout the term of office, in order to be eligible for office of justice or judge of any court, the person must be an elector of the state and reside in the territorial jurisdiction of the court. <i>At the time of assuming office</i> , and throughout the term of office, in order to be eligible for the office of justice of the Supreme Court or judge of a district court of appeal, the person must have been a member of the Florida Bar for the preceding ten years. <i>At the time of assuming office</i> , and throughout the term of office, in order to be eligible for circuit or county court judge, the person must have been a member of the Florida Bar for the preceding five years. In order to be eligible for election or appointment to the office of county court judge in a county with a population of 40,000 or less, the person must be a member in good standing of the Florida Bar. Art. V, s. 8, Fla. Const.; In re Advisory Opinion to the Governor, 192 So. 2d 757 (1966); Op. Div. of Elections 78-31.
State Attorney	<i>At the time of assuming office</i> , a state attorney must be an elector of the state, reside in the territorial jurisdiction of the circuit, and have been a member of the Florida Bar for the preceding five years, and throughout the term of office. Art. V, s. 17, Fla. Const.

<sup>1</sup> The oath for judicial candidates is contained in section 105.031, F.S.

<sup>2</sup> See Guidelines for Determining When Residency Qualifications for Office Must be Met (updated 3-2012), Fla. Dept. of State, Office of General Counsel, March 2012. This qualification applies to all state offices other than a judicial office.

<sup>3</sup> See Op. Div. of Elections 94-04.

Public Defender	<i>At the time of assuming office</i> , a public defender must be an elector of the state, reside in the territorial jurisdiction of the circuit, and have been a member of the Florida Bar for the preceding five years, and throughout the term of office. Art. V., s. 18, Fla. Const.
Constitutional County Officers (e.g., clerk of court, supervisor of elections, property tax appraiser, sheriff, etc.)	There are no constitutional residency requirements, but county charters may mandate residency requirements, if any, including durational requirements. Residency requirements must be met <i>at the time of assuming office</i> , and throughout the term of office. <i>Guidelines for Determining When Residency Qualifications for Office Must be Met</i> , Fla. Dept. of State/Office of General Counsel, Updated March 2012.
County Commissioner	A county commissioner is required to be a resident of the district in which he is elected <i>at the time of election</i> , and throughout the term of office. Art. VIII, s. 1(e), Fla. Const.; <i>State v Grassi</i> , 532 So. 2d 1055; Op. Attorney Gen. 74-293.
Deputy Supervisor of Elections	No residency requirement. However, the Legislature could enact a statute requiring residency. s. 112.021, F.S. (2013); Op. Div. of Elections 84-12.
City Commissioner	There are no constitutional residency requirements for city commissioners, but city charter or ordinance may mandate residency requirements, including durational requirements. Residential requirements must be met <i>at the time of assuming office</i> , and throughout the term of office, unless otherwise provided by city charter or ordinance. <i>Marina v. Leahy</i> , 578 So. 2d 382 (Fla. 3d DCA 1991); <i>Guidelines for Determining When Residency Qualifications for Office Must be Met</i> , Fla. Dept. of State/Office of General Counsel, Updated March 2012.
City or county code enforcement boards	<i>At the time of assuming office</i> , members must be residents of the municipality or county, respectively. s. 162.05, F.S. (2013). There is no residency requirement for special masters appointed by a municipality's governing body to hold hearings and assess fines against violators of the municipal codes and ordinances. Op. Attorney Gen. 95-05.
School Superintendent	<i>At the time of assuming office</i> , and throughout the term of office, a school superintendent must reside in the district. Section 1001.463, F.S. (2013), states that failure to maintain residency results in vacancy, which implies a residency requirement.
School Board	<i>At the time of qualification</i> , and throughout the term of office, each member of the district school board must be a qualified elector of the district in which he or she serves, must be a resident of the district school board member residence area from which he or she is elected, and must maintain said residency throughout his or her term of office. s. 1001.34, F.S. (2013); s. 1001.361, F.S. (2013).
Political Party Executive Committee	<i>At the time of assuming office</i> , must be a resident of the county, unless otherwise provided by party rule. For filling a vacancy, the vacancy must be filled by a qualified member of the political party residing in the district where the vacancy occurred. s. 103.091(1), (5), F.S. (2013). A political party office is deemed vacant if the incumbent ceases to be an inhabitant of the state, district, or precinct for which he or she was elected or appointed. 103.131(4), F.S (2013). <i>See also</i> Op. Div. of Elections 80-30.
Write-in Candidate	<i>At the time of qualification</i> , and throughout the term of office, all write-in candidates must reside within the district represented by the office sought. s. 99.0615, Fla. Stat.

The Florida Constitution provides that each house of the Florida Legislature is the sole judge of its members' qualifications.<sup>4</sup> Because this power is committed exclusively to the legislative branch, the Florida Supreme Court has held that the judicial branch has no authority to inquire into a legislator's qualifications

<sup>4</sup> Art. III, s. 2, Fla. Const.  
**STORAGE NAME:** h0571a.EES  
**DATE:** 3/11/2014

to hold office.<sup>5</sup> The exclusive authority of each chamber of the Legislature to judge the qualifications of its members means that there are no judicial opinions expressly interpreting and applying Article III, section 15(c), of the Florida Constitution, which contains legislative qualifications. The Legislative Qualifications Clause of the Florida Constitution requires each legislator to be “at least twenty-one years of age, an elector and resident of the district from which elected and . . . have resided in the state for a period of two years prior to election.”<sup>6</sup>

There are two alternative interpretations of the term “resident.” First, courts have defined residency as “any place of abode or dwelling place . . . however temporary it may be . . . .”<sup>7</sup> This interpretation is generally disconnected from the personal rights, duties, and obligations that may be connected to a particular location and does not depend on the permanent, temporary or transient nature of one’s presence at the location.<sup>8</sup>

The second interpretation of the term resident incorporates the concept of “legal residence.” The term “legal residence” is synonymous with “domicile” or “permanent abode.” A “legal residence” or “domicile” means a residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time.<sup>9</sup> The term refers to the place where an individual has “his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning.”<sup>10</sup> Thus, one could have multiple “abodes” or “residences,” but can only have one domicile or “legal residence” at a given time.<sup>11</sup>

Factual support for residency may be a voter’s registration, a driver’s license, tax receipts, receipt of mail, or the presence of activities normally indicative of home life. These indicators may not prove place of legal residency, but may be used as evidence of that fact.<sup>12</sup>

The following factors may also be considered: where one claims to reside as reflected in statements to others or in official documents; the abandonment of a prior legal residence as evidenced by moving or selling a prior legal residence; the abandonment of rights and privileges associated with a previous legal residence; where one has registered as a voter; where one claims a legal residence for a homestead exemption; where one claims a legal residence for a driver’s license or other government privilege or benefit; transferring one’s bank accounts to where one maintains a legal residence; where one’s spouse and minor children maintain a legal residence, work, and attend school; where one receives mail and correspondence; where one customarily resides; where one conducts business affairs; where one rents or leases property; and where one plans the construction of a new legal residence.<sup>13</sup>

An individual may change his legal residency. An individual has accomplished a change of residence when a good faith intention is coupled with an actual removal evidenced by positive overt acts. Intention is a highly significant factor in determination of residency.<sup>14</sup>

The residency requirement for an office is continuous. Failure to maintain the residency requirement through the elected term results in a vacancy of office.<sup>15</sup>

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<sup>5</sup> *McPherson v. Flynn*, 397 So. 2d 665, 668 (Fla. 1981) (noting that “[t]he constitution grants the sole power to judge these qualifications to the legislature in unequivocal terms. The courts of this state, therefore, have no jurisdiction to determine these constitutional qualifications.”)

<sup>6</sup> Art. III, s. 15(c), Fla. Const.

<sup>7</sup> *Robinson v. Fix*, 151 So. 512, 512 (Fla. 1933).

<sup>8</sup> *Minick v. Minick*, 149 So. 483, 488 (Fla. 1933).

<sup>9</sup> *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955) (quoting *Wade v. Wade*, 113 So. 374, 375 (Fla. 1927)).

<sup>10</sup> *Minick*, 149 So. at 487.

<sup>11</sup> *Id.* at 488.

<sup>12</sup> Op. Div. of Elections 90-30 (citing Op. Div. of Elections 80-27).

<sup>13</sup> Memorandum, *Constitutional Residency Requirements for Members of the Florida Legislature*, Daniel Nordby & George T. Levesque, Jan. 8, 2013.

<sup>14</sup> Op. Div. of Elections 93-05 (citing *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955)).

<sup>15</sup> Art. X, s. 3, Fla. Const.

In *State v. Grassi*, the Florida Supreme Court held that it is unconstitutional for the Legislature to impose additional qualifications upon candidates in addition to those required by the constitution.<sup>16</sup> Therefore, for offices in which the constitution provides a residency requirement, the Legislature may be prohibited from imposing additional residency requirements. However, it could be argued that codifying case law<sup>17</sup> providing indicia of the establishment of legal residency is not considered imposing an additional qualification.

### *Enforcement*

Section 99.061(7)(c), F.S., specifies that the filing officer performs a ministerial function in reviewing qualifying papers, and may not determine whether the contents of the qualifying papers are accurate. Residency of candidates is not within the jurisdiction of the Commission on Ethics. The Florida Elections Commission is required to investigate all violations of chapter 104, F.S., election laws and chapter 106, F.S., campaign finance laws, after receiving a sworn complaint or information reported to it pursuant to law.<sup>18</sup>

Section 104.011, F.S., provides that “[a] person who willfully swears or affirms falsely to any oath or affirmation . . . in connection with or arising out of . . . elections commits a felony in the third degree.”<sup>19</sup> Therefore, for offices for which the qualifications must be met at the time of qualifying, Florida Elections Commission has jurisdiction over complaints alleging that a candidate signed an oath when, in fact, he or she did not meet the residency requirements.

The residency of a public officer may be enforced by any person by filing a complaint for a writ of quo warranto, which challenges a public officer’s authority to hold office.<sup>20</sup>

### **Effect of Proposed Changes**

The bill creates section 99.0125, F.S., which provides for residency of candidates, and section 111.015, F.S., which provides for residency of public officers.

The bill requires candidates and public officers to use the address at which the candidate or public officer maintains his or her domicile to satisfy any residency requirement. A candidate or public officer may only have one domicile at a time. The building claimed as a domicile must be zoned for residential use and must comply with all requirements necessary to obtain a certificate of occupancy or certificate of completion pursuant to applicable building codes.

Factors that may be considered in determining whether a candidate or public officer meets a residency requirement include, but are not limited to:

- (a) A formal declaration of domicile in the public records of the county.
- (b) A statement, oral or written, indicating the intention to establish a place as his or her domicile.
- (c) Whether he or she transferred the title to his or her previous residence.
- (d) The address at which he or she claims a homestead exemption.
- (e) An address at which he or she has purchased, rented, or leased property.
- (f) The address where he or she plans to build a new home.
- (g) The amount of time that he or she spends at property he or she owns, leases, or rents.
- (h) Proof of payment for, and usage activity of, utilities at property owned by the candidate or public officer.
- (i) The address at which he or she receives mail and correspondence.

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<sup>16</sup> *State v. Grassi*, 532 So. 2d 1055, (Fla. 1988).

<sup>17</sup> See, e.g., *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955); *Smith v. Croom*, 7 Fla. 81 (1857); *Frank v. Frank*, 75 So. 2d 282 (Fla. 1954); Op. Attorney Gen. 063-1 (March 20, 1963).

<sup>18</sup> s. 106.25(2), F.S. (2013)

<sup>19</sup> Pursuant to section 106.265, F.S., the Florida Elections Commission may also impose a civil penalty of up to \$1,000 per count.

<sup>20</sup> *Belle Island Inv. Co. Ltd. v. Feingold*, 453 So. 2d 1143, 1146 (3d DCA 1984).

- (j) The address provided to register his or her dependent children for school.
- (k) The address of his or her spouse or immediate family members.
- (l) The physical address of his or her employment.
- (m) Previous permanent residency in a state other than Florida or in another country, and the date his or her residency was terminated.
- (n) The address on his or her voter information card or other official correspondence from the supervisor of elections providing proof of voter registration.
- (o) The address on his or her valid Florida driver license, Florida identification card, or any other license required by law.
- (p) The address on the title to, or a certificate of registration of, his or her motor vehicle.
- (q) The address listed on filed federal income tax returns.
- (r) The location where his or her bank statements and checking accounts are registered.
- (s) A request made to a federal, state, or local government agency to update or change his or her address.
- (t) Whether he or she has relinquished a license or permit held in another jurisdiction.

An active duty military member may not be deemed to have acquired a domicile in Florida by being stationed on duty in this state. Alternatively, an active duty military member may not be deemed to have abandoned domicile in this state because he or she is stationed in another municipality, state, or country. However, an active duty military member is not prohibited from establishing a new domicile where he or she is stationed.

The factors may be used by the Florida Elections Commission in determining a violation of section 104.011, F.S., which may only be enforced for candidates who must meet the residency requirement at the time of qualification.

The factors may be used by a court in determining the right to relief in relation to a complaint a writ of quo warranto in cases where it is alleged that a public officer does not have the authority to hold public office.

This bill preempts and supersedes any ordinance, regulation, or local law of a county, municipality, or other political subdivision that establishes residency requirements for candidates for elected public office or public officers. Ordinances, regulations, or laws that impose stricter requirements are not preempted or superseded by the bill.

#### *Members of the Legislature*

In accordance with Article III, Section 2 of the Florida Constitution, this bill does not apply to members of the Legislature.

#### **B. SECTION DIRECTORY:**

Section 1: creates s. 99.0125, F.S.; requires a candidate required to reside in a specific geographic area to have only one domicile at a time; provides factors that may be considered when determining residency; provides exceptions for active duty military members; preempts certain local residency requirements for candidates.

Section 2: creates s. 111.015, F.S.; requires a public officer required to reside in a specific geographic area to have only one domicile at a time; provides factors that may be considered when determining residency; provides exceptions for active duty military members; preempts certain local residency requirements for public officers.

Section 3: provides for applicability; provides that the bill does not apply to members of the Legislature.

Section 4: provides an effective date of January 1, 2015.

## 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.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect revenues or expenditures of county or municipal governments.

#### 2. Other:

The bill may be interpreted as imposing qualifications upon candidates in addition to those required by the constitution, which, pursuant to *State v Grassi*, 532 So. 2d 1055 (Fla. 1988), is constitutionally prohibited. However, it could be argued that the bill codifies existing case law.

### B. RULE-MAKING AUTHORITY:

Rulemaking is not provided in the bill and it does not appear any additional rulemaking authority is necessary.

### C. DRAFTING ISSUES OR OTHER COMMENTS: None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A