

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/CS/CS/SB 602

INTRODUCER: Rules Committee; Judiciary Committee; Ethics and Elections Committee; and Senator Latvala

SUBJECT: Residency of Candidates and Public Officers

DATE: April 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Roberts</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Fox</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/CS/SB 602 adopts standards similar to those in recently-enacted Joint Rule 7 dealing with residency for legislators; it clarifies what the term “residence” means for candidates and public officers in meeting constitutional and statutory residency requirements. The bill provides a non-exhaustive list of factors that a court may consider in determining where a candidate or officer resides for purposes of residency requirements that apply upon qualifying as a candidate (regardless of whether the person is seeking partisan office) or upon taking office.

The bill specifically excludes members of the Legislature who are covered by the Joint Rule.

The bill takes effect on January 1, 2015.

II. Present Situation:

The Florida Constitution and Florida Statutes contain various provisions requiring that certain public officers “reside” in a prescribed geographic area. Some of the residence requirements apply at the time that a person qualifies as a candidate for that office, while others apply only once a person takes office. For example, the Florida Constitution specifies that, unless otherwise

provided in county charter, the counties must be divided into districts and that “One commissioner residing in each district shall be elected as provided by law.”¹

Currently, there is no definition of the term “residence” in the Florida Constitution or Florida Statutes that pertains to a candidate for office or a person once elected to office. However, over the past 100 years, the courts have consistently opined that, for purposes of residence requirements, a person’s residence is his or her domicile.² “Domicile” is a legal term of art. The courts have explained domicile as follows:

One can have only one domicile.³ 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.⁴ Legal residence consists of the concurrence of both fact and intention. In terms of establishing residence, the bona fides of the intention is a highly significant factor.⁵ Historically, the place where a married person’s family resides is generally deemed to be his legal residence. However, this presumption can be overcome by other circumstances.⁶ Absence from one’s current domicile or legal residence without the intent to abandon it does not result in the obtainment of a new domicile at wherever one might be presently located, even where the absence may be for an extended period of time.⁷ Establishment of residence will usually depend on a variety of acts or declarations all of which must be weighed in the particular case as evidence would be weighed upon any other subject.⁸

Some of the factors that have been considered by the courts are:

- selling the home where one was previously domiciled;⁹
- transferring one’s bank accounts to where one maintains a residence;¹⁰
- maintaining a residence with one’s family;¹¹
- where one conducts business affairs;¹²
- where one leases an apartment;¹³
- where one plans the construction of a new home;¹⁴
- where one registers as a voter;¹⁵

¹ FLA. CONST. Article VIII, s. 1(e).

² “The rule is well settled that the terms ‘residence,’ ‘residing,’ or equivalent terms, when used in statutes, or actions, or suits relating to taxation, right of suffrage, divorce, limitations of actions, and the like, are used in the sense of ‘legal residence’; that is to say, the place of domicile or permanent abode, as distinguished from temporary residence.” *Herron v. Passailaigue*, 110 So. 539, 543 (Fla. 1926).

³ *Minick v. Minick*, 111 Fla. 469, (Fla. 1933).

⁴ *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955).

⁵ *Id.*

⁶ *Smith v. Croom*, 7 Fla. 81 (Fla. 1857).

⁷ See e.g. *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955); *Wade v. Wade*, 113 So. 374 (Fla. 1927); and *Dennis v. State*, 17 Fla. 389 (1879).

⁸ *Wade v. Wade*, 113 So. 374, 376 (Fla. 1927).

⁹ See *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955).

¹⁰ *Id.*

¹¹ See *id.*; see also *Smith v. Croom*, 7 Fla. 81 (1857).

¹² See *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955).

¹³ See *Frank v. Frank*, 75 So. 2d 282 (Fla. 1954).

¹⁴ See *Biederman v. Cheatham*, 161 So. 2d 538 (Fla. 2d DCA 1964).

¹⁵ See Op. Atty. Gen. 063-31 (March 20, 1963).

- where one maintains a homestead exemption;¹⁶
- where one has identified the residence on his or her driver's license or other government documents;¹⁷
- where one receives mail and correspondence;
- where one customarily resides;¹⁸
- whether the structure has the normal features of a home;¹⁹ and
- statements made indicating intention to move to the district.²⁰

In essence, any evidence that would indicate that one has adopted a particular location as one's home and the "chief seat of [one's] affairs and interests" would be instrumental in proving permanent residency when combined with one's intent to make that location one's permanent residence.²¹ Although some authorities suggest that factors such as where one possesses and exercises political rights might be given less weight,²² the better course indicates that all the evidence should be weighed in the totality of the circumstances.²³

Failure to maintain the legal residence required results in a vacancy in office.²⁴ The Legislature has codified Article X, s. 3, Fla. Const., and provided a mechanism to address such vacancies.²⁵ Specifically, if an officer fails to maintain the residence required of him or her by law, the Governor is required to file an Executive Order with the Secretary of State setting forth the facts which give rise to the vacancy.²⁶ The office shall be considered vacant as of the date specified in the Executive Order or, in the absence of such a date, as of the date the order is filed with the Secretary of State. The office would then be filled as provided by law.²⁷

Governor and Cabinet Members

The Florida Constitution provides as follows with respect to the election of the Governor and Florida Cabinet members:

... When elected, the governor, lieutenant governor, and each cabinet member must be an elector not less than thirty years of age who has resided in the state for the preceding seven years. The attorney general must have been a member of the bar of Florida for the preceding five years. No person who has, or but for resignation would have, served as governor or acting governor for more than six

¹⁶ *Weiler v. Weiler*, 861 So. 2d 472, 477 (Fla. 5th DCA 2003).

¹⁷ *See id.*

¹⁸ *See id.*

¹⁹ *See Perez v. Marti*, 770 So. 2d 284 (Fla. 3d DCA 2000).

²⁰ *See Walker v. Harris*, 398 So. 2d 955 (Fla. 4th DCA 1981) and *Butterworth v. Espey*, 565 So. 2d 398 (Fla. 2d DCA 1990).

²¹ *See Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955).

²² *Smith v. Croom*, 7 Fla. 81, 159 (1857).

²³ *See Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955).

²⁴ Article X, s. 3, Fla. Const., provides, "Vacancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent's succession to another office, unexplained absence for sixty consecutive days, **or failure to maintain the residence required when elected or appointed**, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term." (Emphasis supplied.)

²⁵ Section 114.01, F.S.

²⁶ Section 114.01(2), F.S.

²⁷ Section 114.04, F.S.

years in two consecutive terms shall be elected governor for the succeeding term.²⁸

In addition, the statutes require the governor and members of the cabinet to “reside” in Tallahassee.²⁹ Failure to do so, in the case of cabinet members, results in a statutory vacancy in office.³⁰

The validity of these additional statutory, “residency” requirements is suspect. The Florida Supreme Court has “consistently held that statutes imposing additional qualifications for office are unconstitutional where the basic document of the constitution itself has already undertaken to set forth those requirements”³¹ (emphasis added). In *State v. Grassi*³², the Supreme Court invalidated a statute requiring a county commission candidate to be a resident of the district to which he or she seeks election *at the time of qualifying*. Because the constitution already provided that county commissioners reside in their district *at the time of election*, the Grassi court found that the statute created an unconstitutional, additional residency requirement. Similarly, the statutes requiring the governor and cabinet members to reside in Tallahassee appear to impose qualification requirements in addition to those provided for in the constitution (the governor and cabinet members be at least 30 years of age and residents of the state for at least 7 years at the time of election). Notwithstanding, a court inclined to uphold the constitutionality of these provisions might take the position that they do not require “domicile” in the traditional residency sense, but rather merely impose merely temporary “living conditions” necessary to the efficient operation of state government.

III. Effect of Proposed Changes:

The bill creates two new statutes codifying the criteria used by courts to determine whether a candidate or state officer is complying with residency requirements. Newly created s. 99.0125, F.S., applies to all candidate residence requirements regardless of whether the office sought is partisan.³³ Newly created s. 111.015, F.S., applies to residence requirements once a person assumes office. Both new sections establish statutory guidance for determining whether a candidate or officer is a resident of the geographic area. Specifically, the bill states that a person may have only one domicile and that the address of a person’s domicile must be used to determine whether the residence requirement is satisfied. The building claimed as the 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. The bill provides a non-exhaustive list of factors that may be considered in determining whether a residence requirement is satisfied. Those factors are:

- A formal declaration of domicile in the public records of the county;

²⁸ Art. IV, s. 5(b), FLA CONST.

²⁹ Sections 14.01, 16.01, 17.02, and 19.23, F.S.

³⁰ Section 114.03, F.S.

³¹ *State v. Grassi*, 532 So. 2d 1055, 1056 (Fla. 1988), quoting, *State ex. rel Askew v. Thomas*, 293 So.2d 40, 42 (Fla. 1974).

³² *State v. Grassi*, 532 So. 2d 1055 (Fla. 1988).

³³ Historically, courts have been reluctant to insert themselves into the political realm of whether a member can occupy a seat. Article III, s. 2, Fla. Const., provides that “Each house of the Legislature is the sole judge of the qualifications, election, and returns of its members...” As such, complaints concerning residence of a member of the Legislature should be sent to each house pursuant to its rules. Those complaints would be governed by Florida’s Constitution, the Joint Rules of the Florida Legislature, and the rules of the respective house.

- A statement, whether oral or written, indicating the intention to establish a place as his or her domicile;
- Whether he or she transferred the title to his or her previous residence;
- The address at which he or she claims a homestead exemption;
- An address at which he or she has purchased, rented, or leased property;
- The address where he or she plans to build a new home;
- The amount of time that he or she spends at property he or she owns, leases, or rents;
- Proof of payment for, and usage activity of, utilities at property owned by the candidate or public officer;
- The address at which he or she receives mail and correspondence;
- The address provided to register his or her dependent children for school;
- The address of his or her spouse or immediate family members;
- The physical address of his or her employment;
- Previous permanent residency in a state other than Florida or in another country, and the date his or her residency was terminated;
- The address on his or her voter information card or other official correspondence from the supervisor of elections providing proof of voter registration;
- The address on his or her valid Florida driver license issued under s. 322.18, F.S., valid Florida identification card issued under s. 322.051, F.S., or any other license required by law;
- The address on the title to, or a certificate of registration of, his or her motor vehicle;
- The address listed on filed federal income tax returns;
- The location where his or her bank statements and checking accounts are registered;
- A request made to a federal, state, or local government agency to update or change his or her address; and
- Whether he or she has relinquished a license or permit held in another jurisdiction.

Additionally, the bill provides that active duty military members do not automatically establish or abandon domicile in the state of Florida solely by virtue of where he or she is stationed. However, the bill does not impair the right of active duty military members to establish a new domicile.

Further, the bill clarifies that the governor and members of the cabinet are not required to establish a new domicile in Tallahassee when they're elected, for purposes of meeting statutory residency requirements.

Finally, the bill clarifies that it does not apply to members of the Legislature in accordance with s. 2, Article III of the State Constitution. That provision states that "Each house shall be the sole judge of the qualifications, elections, and returns of its members..."³⁴ On March 4, 2014, the opening day of the legislative session, the Senate and House of Representatives adopted Joint Rule Seven, Qualifications of Members, which establishes residency requirements for the members of the Legislature.

The bill takes effect January 1, 2015.

³⁴ FLA. CONST. Article III, s. 2.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The issue might be raised that this legislation imposes additional residency requirements on candidates which are not required by the State Constitution. The Florida Supreme Court held in *State v. Grassi*³⁵ that the Legislature is prohibited from imposing any additional qualifications on a candidate beyond what is required in the State Constitution. In response, it could be asserted that this bill only codifies existing case law and that the bill does not actually place any residency requirements on a candidate; it provides factors that may be considered in determining whether a candidate or public officer satisfies a residency requirement.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³⁵ *State v. Grassi*, 532 So. 2d 1055 (Fla. 1988).

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 99.0125, and 111.015.

This bill amends the following sections of the Florida Statutes: 14.01, 16.01, 17.02, 19.23, and 114.03.

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

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

CS/CS/CS by Rules on April 9, 2014:

The committee substitute differs from the prior committee substitute in that it clarifies that the governor and cabinet members need not be domiciled in Tallahassee.

CS/CS by Judiciary on March 25, 2014:

The CS/CS contains a new provision in section 3 which provides that “In accordance with s. 2, Article III of the State Constitution, this act does not apply to members of the Legislature.”

CS by Ethics and Elections on March 3, 2014:

The committee substitute clarifies that active duty military members do not automatically establish or abandon domicile in the state of Florida *solely* by virtue of where he or she is stationed.

B. Amendments:

None.