

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6009 Write-In Candidates

SPONSOR(S): Geller and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	12 Y, 0 N	Toliver	Harrington
2) Public Integrity & Ethics Committee			

SUMMARY ANALYSIS

The Florida Constitution sets forth residency requirements for legislators, county commissioners, justices and judges, and the governor, lieutenant governor, and members of the cabinet. The constitutional residency requirement for legislators, county commissioners, justices and judges has been interpreted by Florida courts to mean that residency within the district represented by the office sought is required at the time of election or at the time the candidate assumes office.

Current law provides a residency requirement for write-in candidates. Specifically, s. 99.0615, F.S., requires a write-in candidate to reside within the district represented by the office sought at the time of qualification. The Florida Supreme Court recently found the statute unconstitutional because it conflicts with the residency requirements within the Florida Constitution, which require residency at the time of election or when the candidate assumes office and not at the time of qualification.

This bill repeals s. 99.0615, F.S., which was found unconstitutional by the Florida Supreme Court.

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

Residency Requirements for Candidates

The Florida Constitution sets forth eligibility requirements, including residency requirements, for legislators,¹ county commissioners,² justices,³ judges,⁴ and the governor, lieutenant governor, and members of the cabinet.⁵

The Florida Constitution sets forth the following residency requirements:

- A legislator must be an elector and resident of the district in which elected, and must have resided in the state for two years prior to the election.⁶
- A county commissioner must be elected from the district from which he or she resides.⁷
- A justice or judge must reside in the territorial jurisdiction of the court from which elected.⁸
- The governor, lieutenant governor, and members of the cabinet must be an elector who has resided in the state for the seven years preceding the election.⁹

The Florida Constitution requires the governor, lieutenant governor, and members of the cabinet to meet residency requirements at the time of election.¹⁰ In addition, state courts have interpreted the Florida Constitution to establish specific dates by which residency requirements must be met for certain constitutional officers. Legislators¹¹ and county commissioners¹² must be residents of the district represented by the office sought at the time of election, while justices and judges must be residents at the time of assuming office.¹³ The Florida Supreme Court has held that the Legislature is prohibited from imposing any additional eligibility requirements upon candidates for these offices.¹⁴

Residency Requirements for Write-in Candidates

Section 99.0615, F.S., requires a write-in candidate to reside, at the time of qualification, within the district represented by the office.

In 2016, the Florida Supreme Court, in *Brinkmann v. Francois*,¹⁵ held that s. 99.0615, F.S., was unconstitutional because the timing of the residency requirement for write-in candidates conflicts with the timing of the residency requirement for county commission candidates as established in the Florida Constitution. The case involved a county commission primary where five candidates were on the ballot and an additional candidate, Mr. Francois, entered the race as a write-in candidate.¹⁶ Mr. Francois did not live in the district represented by the office sought at the time of filing his papers to qualify as a

¹ Article III, s. 15(c), FLA. CONST.

² Article VIII, s. 1(e), FLA. CONST.

³ Article V, s. 8, FLA. CONST.

⁴ *Id.*

⁵ Article IV, s. 5, FLA. CONST.

⁶ Article III, s. 15(c), FLA. CONST.

⁷ Article VIII, s. 1(e), FLA. CONST.

⁸ Article V, s. 8, FLA. CONST.

⁹ Article IV, s. 5(b), FLA. CONST.

¹⁰ Article IV, s. 5, Fla. Const.

¹¹ *Norman v. Ambler*, 46 So.3d 178, 183 (1st DCA 2010).

¹² *State v. Grassi*, 532 So.2d 1055, 1056 (Fla. 1988).

¹³ *Miller v. Mendez*, 804 So.2d 1243, 1247 (Fla. 2001).

¹⁴ *State v. Grassi*, 532 So.2d 1055 (Fla. 1988).

¹⁵ *Brinkmann v. Francois*, 184 So. 3d 504 (Fla. 2016).

¹⁶ *Id.*

write-in candidate.¹⁷ The court reasoned that s. 99.0615, F.S., imposed qualifications in contravention to those specified in the Florida Constitution and, therefore, the statute was unconstitutional.¹⁸

Effect of the Bill

The bill repeals s. 99.0615, F.S., which was found unconstitutional by the Florida Supreme Court.

B. SECTION DIRECTORY:

Section 1 repeals s. 99.0615, F.S., relating to write-in candidate residency requirements.

Section 2 provides an effective date of upon becoming a law.

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:

The bill appears to be exempt from the requirements of Art. VII, s. 18 of the State Constitution because it is an election law.

2. Other:

None.

¹⁷ *Id.*

¹⁸ *Id.*

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.