

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GAC 17-03 Elections  
**SPONSOR(S):** Government Accountability Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Accountability Committee		Toliver	Williamson

### SUMMARY ANALYSIS

The bill makes several changes to the Florida Election Code.

Current law allows municipalities to conduct their elections at a time of their choosing. The bill requires municipal elections to be held at one of four dates: at the general election, the first Tuesday after the first Monday in November in an odd-numbered year, or the first Tuesday after the first Monday in April in an odd-numbered or even-numbered year. The governing body of the municipality must choose on which of the dates to conduct its elections. The bill sets a format for runoff elections based on the four election dates and allows elected municipal officers to continue in office until the next municipal election held in accordance with the bill. The changes to municipal election dates do not take effect until July 1, 2020.

Current law requires a candidate for a state, district, county, or municipal position to resign from office if any part of the term will run concurrently with the office the candidate presently holds. The current resign-to-run provision does not apply to persons holding any federal office or seeking the office of President or Vice President. The bill requires state or local officers who qualify for federal public office to resign from the office they presently hold if the terms or any part thereof will run concurrently and sets the requirements for such resignations.

Current law only requires a ballot to indicate that a candidate is an incumbent when two or more candidates running for the same office in a primary election have the same or similar surnames. The bill requires that in any election the word "incumbent" must appear on the ballot beside the name of a candidate for reelection to public office when the office sought is not subject to term limits.

Current law allows candidates to qualify without party affiliation (NPA) despite being registered with a political party. The bill requires all candidates who qualify for office as an NPA candidate in partisan elections to be registered at the time of qualification as NPA. The bill also requires that an NPA candidate attest in writing that he or she is registered as NPA.

Current law requires a candidate to pay his or her qualification fee with a properly executed check. The bill allows a candidate to pay his or her qualification fee with a certified check as an alternative to paying with a properly executed check.

The bill may have a negative fiscal impact on the state and an indeterminate fiscal impact on local governments. See Fiscal Comments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Municipal Election Dates**

###### Current Situation

Article VI, s. 5(a) of the Florida Constitution requires a general election to be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective state and county officer whose term will expire before the next general election. Section 100.031, F.S., incorporates that constitutional provision into statute, but also requires a general election to be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective federal and district officer whose term will expire before the next general election.

Article VI, s. 6 of the Florida Constitution provides that registration and elections in municipalities must, and in other governmental entities created by statute may, be provided by general law. The Florida Election Code,<sup>1</sup> which is a collection of general laws, provides that it governs the conduct of municipal elections in the absence of an applicable special act, charter, or ordinance.<sup>2</sup> However, no act, charter, or ordinance may be adopted which conflicts with or exempts a municipality from any provision in The Florida Election Code that expressly applies to municipalities.<sup>3</sup>

Elections for municipal officers are conducted during the general election in November of even-numbered years unless the governing body of a municipality has adopted an ordinance to change the dates for qualifying and for the election of members of the governing body of the municipality.<sup>4</sup> The ordinance may also provide for the orderly transition of office resulting from the date changes.<sup>5</sup>

Section 101.75, F.S., allows the governing body of a municipality to move the date of any municipal election to a date concurrent with any statewide or countywide election provided the election date and dates for qualifying for the election are specifically provided for in the ordinance.<sup>6</sup> However, if the voting devices used in the county are not available to the municipality during the statewide or countywide election, the municipality may provide that its election will be held 30 days before or after the statewide or countywide election.<sup>7</sup>

Any member of the governing body of a municipality may be removed from office by the electors of the municipality provided certain requirements are met.<sup>8</sup> If the requirements are met but the municipal officer does not resign his or her office, a municipal recall election is held for the removal of that officer.<sup>9</sup> A municipal recall election is held in conjunction with a general or special election if such an election is held during the defined timeframe for conducting a recall election.<sup>10</sup>

A municipality pays for the printing and delivery of ballots and instruction cards for a municipal election.<sup>11</sup>

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<sup>1</sup> Chapters 97-106, F.S., are known as "The Florida Election Code."

<sup>2</sup> Section 100.3605(1), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 100.3605(2), F.S.; *see also* s. 166.021(4), F.S.

<sup>5</sup> Section 100.3605(2), F.S.

<sup>6</sup> Section 101.75(3), F.S.

<sup>7</sup> Section 101.75(1), F.S.

<sup>8</sup> Section 100.361, F.S.

<sup>9</sup> Section 100.361(4), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 101.21, F.S.

### Effect of the Bill

The bill expressly preempts to the state the authority to establish the dates of elections of municipal officers. The bill requires the governing body of a municipality to choose one of the following four dates on which to hold elections for municipal office:

- The general election in November of each even-numbered year; or
- The first Tuesday after the first Monday in November of each odd-numbered year; or
- The first Tuesday after the first Monday in April of an even-numbered year; or
- The first Tuesday after the first Monday in April of an odd-numbered year.

If a municipal charter or ordinance requires the municipality to conduct its election in a runoff format, the bill requires the municipality to choose one of following options:

	<b>Initial Election</b>	<b>Runoff Election</b>
<b>Option 1</b>	Primary Election (Tuesday, 10 weeks prior to General Election)	General Election
<b>Option 2</b>	Tuesday 10 weeks before the first Tuesday after the first Monday in November of odd-numbered years	First Tuesday after the first Monday in November of odd-numbered years
<b>Option 3</b>	Tuesday 10 weeks before the first Tuesday after the first Monday in April of even-numbered years	First Tuesday after the first Monday in April of even-numbered years
<b>Option 4</b>	Tuesday 10 weeks before the first Tuesday after the first Monday in April of odd-numbered years	First Tuesday after the first Monday in April of odd-numbered years

The bill does not require a municipality to alter or amend its charter. Any municipal charter provision that conflicts with the bill is automatically superseded without further action by the municipality. Likewise, any ordinance that conflicts with the bill is automatically superseded without any further action of the municipality.

The provisions of the bill that establish the method of selecting municipal officer election dates does not affect the manner in which vacancies in municipal office are filled or the manner in which recall elections for municipal officers are conducted. However, the bill allows municipal recall elections to be held concurrently with municipal elections provided the municipal election occurs during a specific time period.

In order to provide for an orderly transition of office, the bill provides that the terms of incumbent elected municipal officers affected by the change in election dates will be extended to the next municipal election held in accordance with the provisions of the bill.

The bill also repeals s. 101.75, F.S., which allows a municipality to change municipal officer election dates in order to hold its elections concurrently with a statewide or countywide election or, if the voting devices for a statewide or countywide election are not available, to hold its elections 30 days before or after the statewide or countywide election.

The bill specifies that this portion of the bill is effective on July 1, 2020.

### **Resign-to-Run**

#### Current Situation

Current law requires state, district, county, or municipal public officers<sup>12</sup> to resign if that officer qualifies as a candidate for another office and the terms run concurrently.<sup>13</sup> The resignation must be in writing

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<sup>12</sup> Section 99.012(1)(a), F.S., defines the term "officer" to mean a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the Florida Constitution or laws of the state. With  
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and once proffered it is irrevocable.<sup>14</sup> The resignation must be submitted<sup>15</sup> at least 10 days prior to first day of qualification for the office sought and is effective on the date the officer would take office, if elected, or the date the officer's successor is required to take office, whichever is earlier.<sup>16</sup> However, the resign-to-run provision does not apply to persons holding any federal office or seeking the office of President or Vice President.<sup>17</sup>

#### Effect of the Bill

The bill requires state or local officers who qualify for federal public office to resign from the office they presently hold if the terms or any part thereof run concurrently. The resignation must be in writing and once proffered is irrevocable. The bill requires the resignation to be submitted no later than the date upon which the officer qualifies for office. The resignation is effective on the date the officer takes office, if elected, or the date the officer's successor is required to take office, whichever is earlier. Any resignation of an elected officer under these provisions results in the office held becoming vacant upon the effective date of the resignation.

The person to whom the candidate must submit his or resignation varies according to the office held. If the officer is an elected district, county, or municipal officer, the resignation must be submitted to the officer before whom the officer initially qualified. If the officer is an appointed district, county, or municipal officer, the resignation must be submitted to the person or authority which appointed him or her. Any person holding public office that is not a district, county, or municipal officer must submit his or her resignation to the Governor.

The bill also contains an automatic resignation provision that becomes effective if an officer, subject to the bill's provisions, qualifies for federal public office without submitting the required resignation. In that instance, the resignation is irrevocable and effective immediately upon qualification. The Department of State must notify the appropriate authority of the resignation.

### **Incumbency Designation**

#### Current Situation

Current law requires the word "incumbent" to appear next to an incumbent candidate's name only when two or more candidates running for the same office on a primary election ballot have the same or similar surname.<sup>18</sup>

#### Effect of the Bill

The bill requires that in any election, the word "incumbent" must appear on the ballot beside the name of a candidate for reelection to public office when the office sought is not subject to term limits.<sup>19</sup>

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respect to a municipality, the term "officer" means a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the Florida Constitution, state laws, or municipal charter.

<sup>13</sup> Section 99.012(3), F.S.

<sup>14</sup> Section 99.012(3)(b), F.S.

<sup>15</sup> See s. 99.012(3)(e), F.S.

<sup>16</sup> Section 99.012(3)(d), F.S.

<sup>17</sup> Section 99.012(7), F.S.

<sup>18</sup> Section 101.151(4)(b), F.S.; Fla. Admin. Code R. 1S-2.032(9)(d).

<sup>19</sup> The Florida Constitution places term limits of eight consecutive years on the following offices: Florida Representative, Florida Senator, Florida Lieutenant Governor; and any office of the Florida Cabinet. Art. VII, s. 4(b), Fla. Const. Additionally, the Florida Supreme Court has upheld the ability of charter counties to enact term limits on their officers. *See Telli v. Broward Cnty*, 94 So. 3d 504 (Fla. 2012). As such, persons running for reelection for an office subject to term limits will not have the term "incumbent" appear next to their name on the ballot.

## Candidates Qualifying with No Party Affiliation

### Current Situation

A candidate in a partisan election is currently allowed to run without party affiliation regardless of whether that candidate is personally registered with a political party. Candidates running for office without party affiliation do not participate in the primary election. As such, a candidate registered with a political party is able to avoid the primary election and be placed on the general election ballot as a No Party Affiliated (NPA) candidate even though that candidate is registered with a political party.<sup>20</sup>

### Effect of the Bill

The bill requires a person seeking to qualify as an NPA candidate to be personally registered as NPA and attest to such in writing at the time of qualification.

## Payment of Candidate Qualification Fee

### Current Situation

Current law requires a person seeking to become a candidate for public office to either pay a qualification fee or qualify by petition.<sup>21</sup> If the person opts for the former, he or she must pay the qualification fee with a "properly executed check drawn upon the candidate's campaign account."<sup>22</sup> If the check is returned by the bank for any reason, the filing officer must immediately notify the candidate.<sup>23</sup> The candidate then has until the end of the qualification period<sup>24</sup> to pay the fee with a cashier's check purchased from funds of the campaign account.<sup>25</sup>

The Florida Supreme Court, in *Wright v. City of Miami Gardens*,<sup>26</sup> recently declared the statutory requirement that a candidate has until the end of the qualification period to rectify a check returned by a bank unconstitutional. In that case, a candidate for mayor of the City of Miami Gardens had the check he used to pay his qualification fee returned by the bank due to banking error. The candidate was not notified of the bank's erroneous action in time to remedy the defective instrument. The candidate was thereafter disqualified and his name withheld from the ballot. The Court held that the statute "unconstitutionally erects a barrier that is an unnecessary restraint on one's right to seek elective office" and severed the portion of the 2011 law that created that process. In so doing, the court reverted the statute back to its pre-2011 form, which allows a candidate 48 hours, notwithstanding the end of the qualification period, after notification of the returned check to pay the qualification fee with a cashier's check.<sup>27</sup>

### Effect of the Bill

The bill allows a candidate to pay his or her qualification fee with a certified check.

## B. SECTION DIRECTORY:

Section 1 amends s. 99.012, F.S., relating to restrictions on individuals qualifying for public office.

Section 2 amends s. 99.021, F.S., relating to the form of a candidate's oath.

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<sup>20</sup> Section 99.0955(1), F.S.

<sup>21</sup> Section 99.061, F.S.

<sup>22</sup> Sections 99.051(7)(a)1. and 105.031(5)(a)1., F.S.; The Division of Elections in the Department of State has interpreted that phrase to prohibit the use of cashier's checks. See 2016 State Qualification Handbook, Division of Elections, Department of State, at pg. 5. available at <http://dos.myflorida.com/media/695458/state-qualifying-handbook.pdf> (last visited March 20, 2017).

<sup>23</sup> Section 99.061(7)(a)1., F.S.

<sup>24</sup> Section 99.061(1)-(2), F.S.

<sup>25</sup> Section 99.061(7)(a)1., F.S.

<sup>26</sup> *Wright v. City of Miami Gardens*, 200 So. 3d 765 (Fla. 2016).

<sup>27</sup> *Id.*

Section 3 amends s. 99.061, F.S., relating to the method of qualifying for nomination or election to federal, state, county, or district office.

Section 4 amends s. 99.063, F.S., relating to candidates for Governor and Lieutenant Governor.

Section 5 amends s. 99.0955, F.S., relating to NPA candidates.

Section 6 amends s. 100.3605, F.S., relating to the conduct of municipal elections, effective July 1, 2020.

Section 7 amends s. 100.361, F.S., relating to municipal recall elections.

Section 8 amends s. 101.151, F.S., relating to specifications of ballots.

Section 9 repeals s. 101.75, F.S., relating to municipal elections.

Section 10 amends s. 105.031, F.S., relating to qualification of candidates in nonpartisan elections.

Section 11 amends s. 121.121, F.S., making a conforming change.

Section 12 creates an unnumbered section of law requiring the terms of incumbent elected municipal officers to be extended to the next municipal election held in accordance with this bill.

Section 13 provides an effective date of July 1, 2017, except as otherwise expressly provided.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

There may be a minimal fiscal impact associated with the rulemaking process that the Department of State, Division of Elections will have to engage in to implement some of the changes in the bill.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The bill may have an indeterminate fiscal impact on local governments as it may decrease or increase the cost of conducting elections for certain municipalities. The bill does not require municipalities to amend their charters because all conflicting provisions are automatically superseded.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

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

This bill may require some municipalities to spend funds or take action requiring the expenditure of funds in order to comply with the new election date requirements created by the bill; however, Art. VII, s. 18 of the Florida Constitution explicitly exempts election laws from the county/municipality mandates provision within that section.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The Department of State may be required to revise forms, incorporated in rule by reference, relating to the candidate oath for NPA candidates; however, it does not require any additional rulemaking authority for the Department of State.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.