



State Affairs Committee

Thursday, December 03, 2015
9:00 AM
Morris Hall (17 HOB)

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time: Thursday, December 03, 2015 09:00 am
End Date and Time: Thursday, December 03, 2015 11:00 am
Location: Morris Hall (17 HOB)
Duration: 2.00 hrs

Consideration of the following proposed committee bill(s):

PCB SAC 16-04 -- Municipal Election Dates

NOTICE FINALIZED on 11/25/2015 9:05AM by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAC 16-04 Municipal Election Dates

SPONSOR(S): State Affairs Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Toliver <i>LT</i>	Camechis <i>[Signature]</i>

SUMMARY ANALYSIS

Under current law, elections for members of a municipality's governing body are conducted during the general election in November of even-numbered years unless the governing body of the municipality adopts an ordinance to change the date. A municipality that changes its election date is authorized to provide for the orderly transition of office resulting from the date change.

The PCB expressly preempts to the state the authority to establish the dates of municipal elections and provides the exclusive method for establishing those dates. Any state law, municipal charter, or municipal ordinance that conflicts with the PCB is superseded to the extent of the conflict. As a result, a municipality will no longer have authority to unilaterally establish the date of its municipal elections.

The PCB requires the date of municipal elections to be established in accordance with one of the following options:

Option 1: All municipal elections in a county may be held on the same date as the general election in November of each even-numbered year or on the first Tuesday after the first Monday in November of each odd-numbered year, or both, as determined by the supervisor of elections (SOE);

or

Option 2: All municipal elections in a county may be held on one alternative fixed date each year if the SOE and all municipalities within the county agree to the date and each municipality within the county adopts the date by ordinance. Each ordinance must also provide the dates for qualifying for the election and the date on which the elected officers' terms of office commence.

The dates for municipal elections may be selected under either Option 1 or Option 2, but not both.

The provisions of the PCB that establish the method of selecting municipal election dates do 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 PCB 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 PCB provides that the terms of incumbent elected municipal officers affected by the change in election dates will be extended to the next municipal election.

Lastly, the PCB repeals s. 101.75, F.S., which allows a municipality to change its municipal 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 PCB does not appear to have a fiscal impact on the state, but it may reduce or increase elections costs for certain municipalities and result in municipalities paying the costs of conforming municipal charters or ordinances. While the PCB may require some municipalities to expend funds, article VII, section 18, of the Florida Constitution explicitly exempts election laws from the county/municipality "mandates" provision within that section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Article VI, section 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, section 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,¹ 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.² 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.³

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.⁴ The ordinance may also provide for the orderly transition of office resulting from the date changes.

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.⁵ 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.⁶

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.⁷ 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.⁸ 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.⁹

A municipality pays for the printing and delivery of ballots and instruction cards for a municipal election.¹⁰

Effect of the Bill

The PCB expressly preempts to the state the authority to establish the dates of municipal elections and provides the exclusive method for establishing those dates. Any general law, special law, local law, municipal

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

² Section 100.3605(1), F.S.

³ *Id.*

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

⁵ Section 101.75(3), F.S.

⁶ Section 101.75(1), F.S.

⁷ Section 100.361, F.S.

⁸ Section 100.361(4), F.S.

⁹ *Id.*

¹⁰ Section 101.21, F.S.

charter, or municipal ordinance that conflicts with the municipal election date provisions in the PCB is superseded to the extent of the conflict. As a result, a municipality will no longer have authority to unilaterally establish the date of its elections.

The PCB requires the date of municipal elections to be established in accordance with one of the following options:

Option 1: All municipal elections in a county may be held on the same date as the general election in November of each even-numbered year or on the first Tuesday after the first Monday in November of each odd-numbered year, or both, as determined by the supervisor of elections (SOE);

or

Option 2: All municipal elections in a county may be held on one alternative fixed date each year if the SOE and all municipalities within the county agree to the date and each municipality within the county adopts the date by ordinance. Each ordinance must also provide the dates for qualifying for the election and the date on which the elected officers' terms of office commence.

Municipal elections may be scheduled pursuant to either Option 1 or Option 2, but not both. If municipal elections within a county are conducted under Option 1, an SOE may choose to conduct elections for some municipalities in the county at the general election and conduct elections for other municipalities on the first Tuesday after the first Monday in November of an odd-numbered year, or the SOE may choose to conduct all municipal elections in the county on one of those dates. For example, if there are 10 cities in a county, the SOE may conduct elections for three municipalities at the general election and conduct elections for the other seven municipalities at the November election in odd-numbered years. Or, the SOE may choose to conduct elections for all 10 municipalities at the general election. Under Option 2, all of the municipalities within a county may select any one date each year on which to conduct their elections, but all of the municipalities in the county must conduct their elections on the agreed upon date each year. In other words, Option 2 does not allow municipalities within a county to select multiple election dates each year.

The provisions of the PCB that establish the method of selecting municipal 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 PCB 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 PCB 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 PCB.

Lastly, the PCB repeals s. 101.75, F.S., which allows a municipality to change its municipal 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.

B. SECTION DIRECTORY:

Section 1 amends s.100.3605, F.S., to require election dates for municipal officers to be held on a certain date.

Section 2 amends s. 100.361, F.S., to allow municipal recall elections to be held concurrently with a municipal election.

Section 3 repeals s. 101.75, F.S., relating to changes in municipal election dates for cause.

Section 4 amends s. 166.021, F.S., to remove the authorization for a municipality to choose election dates for its candidates and to change terms of office as necessitated by a change in election dates.

Section 5 creates an unnumbered section of law to extend the term of an incumbent elected municipal officer as a result of changes made by this act.

Section 6 provides an effective date of January 1, 2017.

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: The PCB may increase expenditures for municipalities that are required to amend their charters or adopt ordinances to modify existing election dates. In addition, the costs of conducting elections may decrease or increase for certain municipalities.

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 PCB 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 PCB; however, Art. VII, section 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: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to dates of elections for municipal
 3 office; amending s. 100.3605, F.S.; requiring
 4 municipal elections to be held on a certain date as
 5 determined by the supervisor of elections; allowing
 6 municipalities within a county to elect to hold their
 7 elections on a different date provided certain
 8 requirements are met; providing that the provisions do
 9 not affect the manner in which vacancies in municipal
 10 office are filled or recall elections for municipal
 11 officers are conducted; preempting to the state
 12 authority to set dates of municipal elections;
 13 establishing an exclusive method of setting dates for
 14 municipal elections; superseding conflicting laws and
 15 local provisions; amending s. 100.361, F.S.; allowing
 16 municipal recall elections to be held concurrently
 17 with a municipal election; repealing s. 101.75, F.S.,
 18 relating to changes in municipal election dates for
 19 cause; amending s. 166.021, F.S.; removing the
 20 authorization for a municipality to choose election
 21 dates for its candidates and to change terms of office
 22 as necessitated by a change in election dates;
 23 extending the term of an incumbent elected municipal
 24 officer as a result of changes made by this act;
 25 providing an effective date.
 26

27 Be It Enacted by the Legislature of the State of Florida:

28
 29 Section 1. Subsection (2) of section 100.3605, Florida
 30 Statutes, is amended to read:

31 100.3605 Conduct of municipal elections.-

32 (2)(a) Notwithstanding any law, municipal charter
 33 provision, or municipal ordinance to the contrary, all elections
 34 for municipal office within a county shall be held:

35 1. On the same date as the general election or on the
 36 first Tuesday after the first Monday in November of each odd-
 37 numbered year, or both, as determined by the supervisor of
 38 elections; or

39 2. On one alternative fixed date each year if the
 40 supervisor of elections and all municipalities within the county
 41 agree to the alternative fixed date. Before municipal elections
 42 may be conducted pursuant to this subparagraph, each
 43 municipality within the county must adopt the alternative fixed
 44 date by ordinance. In addition, each ordinance must provide the
 45 dates for qualifying for the election and the date on which the
 46 elected officers' terms of office commence ~~The governing body of~~
 47 ~~a municipality may, by ordinance, change the dates for~~
 48 ~~qualifying and for the election of members of the governing body~~
 49 ~~of the municipality and provide for the orderly transition of~~
 50 ~~office resulting from such date changes.~~

51 (b) This subsection does not affect the manner in which
 52 vacancies in municipal office are filled or recall elections for

53 municipal officers are conducted.

54 (c) The Legislature expressly preempts to the state the
 55 authority to establish the dates of elections for municipal
 56 office. Notwithstanding any general law, special law, local law,
 57 municipal charter, or municipal ordinance to the contrary, this
 58 subsection provides the exclusive method for establishing the
 59 dates of elections for municipal office in this state. Any
 60 general law, special law, local law, municipal charter, or
 61 municipal ordinance that conflicts with this subsection is
 62 hereby superseded to the extent of the conflict.

63 Section 2. Subsection (4) of section 100.361, Florida
 64 Statutes, is amended to read:

65 100.361 Municipal recall.—

66 (4) RECALL ELECTION.—If the person designated in the
 67 petition files with the clerk, within 5 days after the last-
 68 mentioned notice, his or her written resignation, the clerk
 69 shall at once notify the governing body of that fact, and the
 70 resignation shall be irrevocable. The governing body shall then
 71 proceed to fill the vacancy according to the provisions of the
 72 appropriate law. In the absence of a resignation, the chief
 73 judge of the judicial circuit in which the municipality is
 74 located shall fix a day for holding a recall election for the
 75 removal of those not resigning. Any such election shall be held
 76 not less than 30 days or more than 60 days after the expiration
 77 of the 5-day period last-mentioned and at the same time as any
 78 other general, municipal, or special election held within the

79 period; but if no such election is to be held within that
 80 period, the judge shall call a special recall election to be
 81 held within the period aforesaid.

82 Section 3. Section 101.75, Florida Statutes, is repealed.

83 Section 4. Subsection (4) of section 166.021, Florida
 84 Statutes, is amended to read:

85 166.021 Powers.—

86 (4) The provisions of this section shall be so construed
 87 as to secure for municipalities the broad exercise of home rule
 88 powers granted by the constitution. It is the further intent of
 89 the Legislature to extend to municipalities the exercise of
 90 powers for municipal governmental, corporate, or proprietary
 91 purposes not expressly prohibited by the constitution, general
 92 or special law, or county charter and to remove any limitations,
 93 judicially imposed or otherwise, on the exercise of home rule
 94 powers other than those so expressly prohibited. However,
 95 nothing in this act shall be construed to permit any changes in
 96 a special law or municipal charter which affect the exercise of
 97 extraterritorial powers or which affect an area which includes
 98 lands within and without a municipality or any changes in a
 99 special law or municipal charter which affect the creation or
 100 existence of a municipality, the terms of elected officers and
 101 the manner of their election except for the selection of
 102 ~~election dates and qualifying periods for candidates and for~~
 103 ~~changes in terms of office necessitated by such changes in~~
 104 ~~election dates,~~ the distribution of powers among elected

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105 officers, matters prescribed by the charter relating to
106 appointive boards, any change in the form of government, or any
107 rights of municipal employees, without approval by referendum of
108 the electors as provided in s. 166.031. Any other limitation of
109 power upon any municipality contained in any municipal charter
110 enacted or adopted prior to July 1, 1973, is hereby nullified
111 and repealed.

112 Section 5. To provide for an orderly transition of office,
113 the terms of incumbent elected municipal officers shall be
114 extended until the next municipal election held in accordance
115 with this act.

116 Section 6. This act shall take effect January 1, 2017.