

STORAGE NAME: h1293a.ca

DATE: April 4, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

BILL #: HB 1293

RELATING TO: Volusia County (Nonpartisan Election of School Board Members)

SPONSOR(S): Representative Lynn and Others

COMPANION BILL(S): SB 1078 (i), HB 1351 (i), HB 871 (c), and SB 1076 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 7 NAYS 0
 - (2) ELECTION REFORM
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill amends the Volusia County Charter to require school board members elected after January 1, 1995, to be elected on a nonpartisan basis in the manner established in the Charter. The bill ratifies the referendum election held in Volusia County on November 8, 1994, approving the nonpartisan election of school board members, as well as all acts and proceedings held in connection with the referendum.

The attached Economic Impact Statement indicates eliminating the need for a second primary for school board races would reduce the cost of elections when a second primary is not necessary for any other elected office.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

CONSTITUTIONAL PROVISION/SCHOOL DISTRICTS

Article IX, Section 4 subsection (a), State Constitution, provides that:

(a) Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors for appropriately staggered terms of four years, as provided by law.

STATUTORY PROVISIONS/SCHOOL DISTRICTS

Several statutory provisions govern the election of school district board members. These provisions are summarized below.

Section 100.041(3), Florida Statutes, provides:

(3)(a) School board members shall be elected at a general election for terms of 4 years. The term of office of a school board member and of a superintendent of schools shall begin on the second Tuesday following the general election in which such member or superintendent is elected.

(b) In each school district which has five school board members, the terms shall be arranged so that three members are elected at one general election and two members elected at the next ensuing general election.

Section 230.04, Florida Statutes, provides:

The school board in each district shall be composed of not less than five members. Each member of the school board shall be a qualified elector of the district in which she or he serves, shall be a resident of the school board member residence area from which she or he is elected, and shall maintain said residency throughout her or his term of office.

Section 230.061, Florida Statutes, provides for the establishment of five- or seven-member districts. For five-member boards, five residence areas equal in population as nearly as practicable are authorized. This section also provides a procedure for the school board to make changes it deems necessary in the boundaries of any school board member residence area of the district.

Section 230.08, Florida Statutes, which provides for the partisan election of school board members, provides:

Each political party holding a primary election during any election year shall nominate one nominee for membership on the school board from each school board member residence area from which a member is to be elected. The nomination from

each school board member residence area shall be by vote of the qualified electors of the entire district.

Section 230.10, Florida Statutes, provides:

The election of members of the school board shall be by vote of the qualified electors of the entire district. Each candidate for school board member shall, at the time he or she qualifies, be a resident of the school board member residence area from which the candidate seeks election. Each candidate who qualifies to have her or his name placed on the ballot of the general election shall be listed according to the school board member residence area in which she or he resides. Each qualified elector of the district shall be entitled to vote for one candidate from each school board member residence area. The candidate from each school board member residence area who receives the highest number of votes in the general election shall be elected to the school board.

Section 230.105, Florida Statutes, is known as "The School District Local Option Single-Member Representation Law of 1984." This section provides an alternate procedure for the election of district school board members to provide for single-member representation.

CONSTITUTIONAL PROHIBITED SUBJECTS/SCHOOL BOARD MEMBERS

Section 11 of Article III of the Florida Constitution lists a number of subjects which may not be addressed in any special act or general bill of local application. This list includes prohibitions on local bills pertaining to 20 wide-ranging topics, including the:

election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies.

In Kane v. Robbins 556 So.2d 1381 (Fla. 1989), the Florida Supreme Court ruled that this prohibition included local bills or general bills of local application pertaining to the election of school board members, and held invalid a special act providing for school board members in Martin County to be elected on a nonpartisan basis.

However, in School Board of Palm Beach County v. Winchester 565 So.2d 1350 (Fla. 1990), the Court ruled that Article III, section 11(a)1, Florida Constitution, did not apply to charter counties. The Court upheld a special act providing for the nonpartisan election of Palm Beach County School Board members, even though the act was passed several years before Palm Beach County became a charter county.

CURRENT STATUS OF ELECTION OF VOLUSIA COUNTY SCHOOL MEMBERS

Article IX of chapter 70-966, Laws of Florida, as amended by chapter 70-967, Laws of Florida, provides provisions governing elections. Section 904 of chapter 70-967, Laws of Florida, requires elections for all officers be on a nonpartisan basis. Section 901.1(3) of chapter 70-967, Laws of Florida, provides:

(3) In the event that more than two candidates have qualified for any single seat under the chartered government, a primary election shall be held at the time of the first state primary election prior to the general election and providing no candidate

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receives a majority of the votes cast, the two candidates receiving the highest vote shall be placed on the ballot for election at the time of the general election.

At the request of the Volusia County School Board, the Volusia County Council proposed an amendment to section 904 of the Volusia County Charter (chapter 70-966, Laws of Florida), as authorized by the act, providing for the members of the Volusia County School Board to be elected on a non-partisan basis in all elections held after January 1, 1995. The Charter amendment was approved by the referendum election held in Volusia County on November 8, 1994.

Don L. Quinn, Chairman of the Volusia County Republican Executive Committee, filed a complaint against Volusia County and the School Board of Volusia County arguing that the amendment should be void because it was inconsistent with the Florida Constitution and the general laws of Florida. The plaintiffs maintained the Charter amendment unlawfully interferes with the uniform system of free public schools established by Article IX of the Florida Constitution, and is inconsistent with section 230.08, Florida Statutes, which provides for partisan election of school board members.

The Court of the 7th Judicial Circuit declared the amendment to be void because it is inconsistent with the Florida Constitution and the general law of the State of Florida. To avoid disrupting the 1996 election, the Final Judgement was made prospective and did not apply to the 1996 elections, which proceeded on a nonpartisan basis. The County of Volusia and the School Board of Volusia County have appealed the decision to the Fifth District Court of Appeal.

B. EFFECT OF PROPOSED CHANGES:

This bill amends the Volusia County Charter to require school board members elected after January 1, 1995, to be elected on a nonpartisan basis in the manner established in the Charter [section 901.1(3) of chapter 70-967, Laws of Florida]. The bill ratifies the referendum election held in Volusia County on November 8, 1994, approving the nonpartisan election of school board members, as well as all acts and proceedings held in connection with the referendum.

The bill also provides that this act shall not affect the power of the people of Volusia County to amend their charter in accordance the charter and the State Constitution. The bill provides all laws or portions of laws in conflict herewith are, to the extent of such conflict, hereby repealed (See "Amendments" section).

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Chapter 70-966, Laws of Florida, as amended by section 2 of Chapter 70-967, Laws of Florida.

D. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Chapter 70-966, Laws of Florida, as amended by section 2 of Chapter 70-967, Laws of Florida, is amended to revise section 904 of Article IX, relating to elections. the section requires all school board members elected after January 1, 1995, to be elected on a nonpartisan basis in the manner provided in section 901.1(3) of the County Charter.

Section 2. This section ratifies the referendum election held in Volusia County on November 8, 1994, approving the nonpartisan election of school board members, as well as all acts and proceedings held in connection with the referendum.

Section 3. This section provides that nothing in this act shall be construed to add or detract from the power of the people of Volusia County to amend their charter in accordance with the Charter and the provisions of section 1(c) of Article III of the State Constitution.

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Section 4. This section provides all laws or portions of laws in conflict herewith are, to the extent of such conflict, hereby repealed (See "Amendments" section).

Section 5. An effective date of becoming law is provided.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 9, 1997

WHERE? The News-Journal, Volusia County

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? Not Applicable

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

HOUSE RULE 92(a)

House Rule 92(a), provides that "if a committee determines that a local bill may be enacted into law under the authority of a local governing body, that committee shall not report the bill to the Clerk."

As noted in the "Present Situation," the voters of Volusia County approved by referendum vote an amendment to the County's Charter providing for the nonpartisan election of school board members. As previously discussed, the authority of a charter county to provide for nonpartisan elections of school board members is a central question of the current litigation.

While the authority of a charter county to provide for nonpartisan elections of school board members is debatable, the purpose of section 2 of the bill, ratification of the November 8, 1997, referendum, may not be accomplished locally.

HOUSE RULE 92(b)

House Rule 92(b), provides that "if a committee determines that a local bill provides only an exemption from general law, it shall be reintroduced as a general bill."

Section 1 of this bill creates an exemption from general law provisions providing for school board members to be elected on a partisan basis (section 230.08, Florida Statutes).

In addition to creating an explicit exception to general law, section 2 of the bill ratifies the referendum election held in Volusia County on November 8, 1994, approving the nonpartisan election of school board members, as well as all acts and proceedings held in connection with the referendum. Therefore, the bill appears to provide more than an exemption from general law.

RATIFICATION OF REFERENDUM

As discussed in the Present Situation section, the Charter amendment approved by the November 8, 1994, referendum currently is the subject of litigation. As noted, section 2 of the bill ratifies the referendum election, as well as all acts and proceedings held in connection with the referendum. It is unclear what effect, if any, this provision of the bill might have on the litigation.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 4, 1997, the Committee on Community Affairs passed HB 1293 with one amendment. The amendment strikes section 4 of the bill, which repeals all laws or portions of laws in conflict with this act, to the extent of such conflict., and inserts a new section 4. The new section 4 provides that in the event the provisions of this act conflict with other laws of portions of laws, the provisions of the act shall control.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

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