

STORAGE NAME: h0871a.ca
DATE: March 27, 1997

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

BILL #: HB 871

RELATING TO: Volusia County (School Board Elections)

SPONSOR(S): Representative Kosmas and Others

COMPANION BILL(S): SB 1076 (i) and HB 1293 (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 requires the members of the Volusia County School Board to be elected on a nonpartisan basis. General law provisions provide for school board members to be elected in partisan elections. The bill provides for the filing of qualification papers, which may not contain any reference to political party affiliation, and provides provisions regulating elections of school board members in Volusia County.

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 does not affect the term of office of any person serving on the Volusia County School Board on the effective date of this act.

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 ANALYSIS:

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

At the request of the Volusia County School Board, the Volusia County Council proposed an amendment to 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 requires the members of the Volusia County School Board to be elected on a nonpartisan basis. The bill provides for the filing of qualification papers, which may not contain any reference to political party affiliation, and provides provisions regulating elections of school board members in Volusia County.

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 does not affect the term of office of any person serving on the Volusia County School Board on the effective date of this act.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

None.

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 ANALYSIS:

Section 1. This section requires the members of the Volusia County School Board to be elected on a nonpartisan basis. Except as otherwise provided in this act, provisions of law regulating elections of school board members are applied to Volusia School Board members.

The section requires persons seeking election to the Volusia County School Board to file qualification papers with the supervisor of elections. Such papers may not contain any reference to political party affiliation. The name of an unopposed candidate may not appear on the ballot, and the candidate is deemed to have voted for himself or herself at the general election. In instances where two candidates, neither of whom is a write-in candidate, qualify in a school-board-member residence area, the names of both candidates are to be placed on the ballot at the general election

In instances where more than two candidates, none of whom is a write-in candidate, qualify in a school-board-member residence area, the name of each candidate is to be placed on ballot at the first primary election. If a candidate receives a majority of the votes cast in the primary election, then that candidate's name shall not appear on any other ballot unless a write-in candidate has qualified for the office. An unopposed candidate is deemed to have voted for himself or herself at the general election.

If no candidate receives a majority of the votes cast for the office in the primary election, the names of the two candidates receiving the highest number of votes is to be placed on the general election ballot. If more than two candidates receive an equal and highest number of votes, the name of each of these candidates must be placed on the general election ballot. In a contest where a tie for second place occurs and the candidate placing first did not receive a majority of the votes cast, the name of the candidate placing first and the names of the candidates tying for second must be placed on the general election ballot. The candidate receiving the highest number of votes cast in the general election is elected to the office. However, if the general election results in a tie, the outcome shall be decided by lot.

STORAGE NAME: h0871a.ca

DATE: March 27, 1997

PAGE 8

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 this act does not affect the term of office of any person serving on the Volusia County School Board on the effective date of this act.

Section 4. An effective date of January 1, 1998, is provided.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 4, 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). The bill

STORAGE NAME: h0871a.ca

DATE: March 27, 1997

PAGE 9

also includes regulations for the election of school board members in Volusia County that differ from general law provisions.

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:

None.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:
Prepared by:

Legislative Research Director:

Thomas L. Hamby, Jr.

Jenny Underwood Dietzel