

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SJR 612

SPONSOR: Senator Miller

SUBJECT: District School Board Members/Term Limits

DATE: March 22, 2003 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| 1. | <u>Matthews</u> | <u>O'Farrell</u> | <u>ED</u> | <u>Favorable</u> |
| 2. | <u> </u> | <u> </u> | <u>EE</u> | <u> </u> |
| 3. | <u> </u> | <u> </u> | <u>RC</u> | <u> </u> |
| 4. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| 5. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| 6. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |

I. Summary:

This joint resolution would impose term limits of twelve consecutive years on members of a district school board. The resolution, if adopted by the voters, would apply prospectively to a member elected subsequent to the general election in which the joint resolution was adopted. The resolution provides that resignation prior to completion of the 4-year term would count as a completed 4-year term for purposes of meeting the term limit.

This joint resolution would create s. 4(c), Art. IX of the State Constitution.

II. Present Situation:

Section 4(a), Art. IX of the State Constitution provides, in pertinent part, that school board members shall be chosen by a vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law. Currently, there are no term limits on members of a school board. Section 1001.35, F.S., provides that school board members shall be elected at the general election in November for terms of four years. Section 100.041(3), F.S., provides that school board members are elected at a general election for terms of four years and assume office beginning the second Tuesday after the general election. Additionally, s. 100.041(3), F.S., provides that in 5-member districts, the terms shall be arranged so that three members are elected at one general election and two members elected at the ensuing general election. Section 1001.362, F.S., provides an alternate procedure for the election of district school board members for single-member representation. It provides for staggered terms so that one more or one less than half of all the members elected from residence areas, and if applicable, one of the members elected at large from the entire district, are elected every 2 years.

There are 355 school board members. According to the Florida School Boards Association, approximately 80 percent of school board members serve eight years or less.

III. Effect of Proposed Changes:

If adopted, the constitutional amendment would limit a school board member to serving 12 consecutive years. Accordingly, the proposal does not create a lifetime ban from serving on a school board. According to the Florida School Boards Association, less than 20 percent of school board members would be subject to the term limits.

The proposed joint resolution provides that time served by a school board member prior to that member's election following the adoption of the joint resolution is not counted for purposes of calculating term limits. Therefore, the bill is prospective in application only.

The proposed joint resolution provides that if a district school board member resigns prior to completion of his or her term, the time served by that member would constitute one 4-year term of office for purposes of the term limit. This provision would prevent a member from serving more than 12 consecutive years by resigning prior to the twelfth year and then seeking reelection. However, it would not prevent an individual from serving 12 consecutive years and being reappointed to a position that is subsequently vacant.

The proposed joint resolution does not contain an effective date. Since the provision does not provide for a special election and in accordance with s. 5(a), Art. XI of the State Constitution, the joint resolution would be submitted to the voters at the next general election in November, 2004. Pursuant to s. 5(c), Art. XI of the State Constitution, the earliest effective date would be January 4, 2005. Accordingly, the first school board members subject to the joint resolution would be those members elected in November, 2006.

There are no known comprehensive studies indicating the effects and consequences of term limits in Florida. Traditionally, advocates of term limits have raised four (4) arguments in favor: (1) increase in voter participation, (2) increase in citizen involvement in government, (3) increase in the number of persons who run for office, and (4) politicians who remain in office too long are beholden to special interests. Opponents of term limits have raised similar arguments: (1) decrease in voter participation because of the belief a vote is not needed to remove a particular candidate, (2) increase in the number of inexperienced persons who run for office, and (3) politicians subject to term limits become beholden to special interests because they lose accountability with the electorate.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Right to Associate/Right to Cast Votes Effectively

The proposed constitutional amendment imposes a qualification on holding office. Although there is no constitutional right to vote per se, term limits implicate the right to associate for the advancement of political beliefs and the right of qualified voters to cast their votes effectively, which are rights protected by the First and Fourteenth Amendments. In reviewing whether the restrictions on candidacy are unconstitutional, the court must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments against the interest put forward by the state in justifying the burden of these rights. Burdick v. Takushi, 504 U.S. 428, 434, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992).

In Ray v. Mortham, 742 So.2d 1276 (Fla. 1999), the Florida Supreme Court upheld a citizen initiative that amended the Florida Constitution imposing term limits on certain elected officials. In reviewing the term limits against challenges raised under the First and Fourteenth Amendments, the Court opined that the interests of the state outweighed the alleged injury to the right to associate and vote. See id. at 1285-1286. According to the petition, the purpose of the amendment was to (1) increase voter participation, (2) increase citizen involvement in government, (3) and to increase the number of persons who will run for elective office. Id. at 1285. According to the Court, the voters expressed a belief that “politicians who remain in office too long may become preoccupied with re-election and become beholden to special interests and bureaucrats.” Id. The Court opined that it is not the function of the courts to agree or disagree with the purpose and rationale behind the term limits amendment. Id. Finally, the Court rejected an equal protection challenge alleging that the amendment diluted the votes of voters who reside in rural counties that do not have as many senators representing the counties’ interests as voters in urban counties. Id. at 1286 *citing* Anderson v. Celebreeze, 460 U.S. 780, 787, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983) (declining to apply an equal protection analysis on candidate qualification restrictions).

Staggered Terms/Disparate Voting

However, Ray v. Mortham, 742 So.2d at 1290, did not address the argument that the amendment disparately affects voters in odd-numbered districts because senators serving in odd numbered districts will be denied the right to run for reelection in the year 2000, while senators currently serving in even-numbered districts, who were not subject to reelection until 2002, would be allowed to serve until that time. This argument was not properly raised before the trial court. Id.

Under current law, school board elections are staggered. It remains unsettled in the instant proposal whether the court would find a constitutional violation based on disparate voting in districts where school board members are up for reelection in 2004.

Accuracy

A proposed amendment to the constitution implicitly requires that the proposed amendment be accurately represented on the ballot. *Armstrong v. Harris*, 773 So.2d 7, 12 (Fla. 2000), *cert. denied*, 532 U.S. 958 (2001), 121 S.Ct. 1487, 149 L.Ed.2d 374. Because voters will not have the actual text of the amendment before them in the voting booth when they vote, the accuracy requirement is of paramount importance for the ballot title and summary. *Id.* at 12-13. Although the Legislature is entitled to deference in the constitutional amendment procedure, the accuracy requirement applies to constitutional amendments arising out of the Legislature. *Id.* at 14. The purpose of the accuracy requirement is to assure the electorate is advised of the effect of the amendment. *See id.* at 16.

The ballot statement does not notify the voter that resignation by a district school board member would result in assessing a completed 4-year term to the member for purposes of calculating term limits even though the member never completed the 4-year term.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The proposed constitutional amendment does not appear to have a fiscal impact on the private sector other than displacement of term-limited school board members and the potential candidacy of individuals from the private sector.

C. Government Sector Impact:

The proposed constitutional amendment does not appear to have a fiscal impact on the state or county other than displacement of term-limited school board members.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
