

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HJR 1461 Limiting the Terms of Office for Members of a District School Board
SPONSOR(S): Education & Employment Committee, Early Learning & Elementary Education Subcommittee, Garrison
TIED BILLS: None **IDEN./SIM. BILLS:** SJR 1642

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Secondary Education & Career Development Subcommittee	11 Y, 6 N	Wolff	Sanchez
2) Early Learning & Elementary Education Subcommittee	10 Y, 7 N, As CS	Wolff	Brink
3) Education & Employment Committee	13 Y, 7 N, As CS	Wolff	Hassell

SUMMARY ANALYSIS

The House joint resolution proposes an amendment to the Florida Constitution that would prohibit a school board member from appearing on a ballot for reelection if, by the end of his or her current term of office, the member will have served, or would have served if not for resignation, in that office for eight consecutive years. This proposal is similar to the term limits placed on elected state officials.

The proposed limitation would apply only to terms of office beginning on or after November 8, 2022, and is prospective, so that school board members reelected to a consecutive term prior to November 8, 2022, could serve another consecutive eight years before reaching the term limit.

Article XI, Section 1 of the Florida Constitution requires a joint resolution proposing a constitutional amendment be passed by three-fifths of the membership of each legislative house to be placed on the ballot.

Article XI, Section 5 of the Florida Constitution requires a proposed constitutional amendment be approved by at least sixty percent of those voting on the measure at a general election to amend the Florida Constitution.

The proposed constitutional amendment will go into effect on November 8, 2022, if approved.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

Present Situation

The Florida Constitution provides that “[i]n each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.”¹ This provision has been interpreted to allow qualifications to be established by statute.² Each district school board must operate, control, and supervise all free public schools within the school district and determine the rate of school district taxes within constitutional limits.³ There is currently no limit on the number of terms a school board member may serve.⁴

Florida’s Constitution establishes term limits for the following elected officials:⁵

- Florida Governor;
- Florida representatives;
- Florida senators;
- Florida Lieutenant Governor;
- Florida Cabinet members;
- U.S. representatives from Florida; and
- U.S. senators from Florida.

Term limits imposed by states for federal elected officials were held to be unconstitutional, and thus unenforceable, by the U.S. Supreme Court in 1995.⁶

The Florida Constitution states that none of these officials, except for the office of Governor which is governed by a slightly different provision, may appear on a ballot for reelection if, by the end of the current term of office, the person will have served or, but for resignation, would have served in that office for eight consecutive years.⁷ These term limits became effective in 1992 and were prospective, so that officials reelected to a consecutive term in 1992 could serve another consecutive eight years before reaching the term limit.⁸

The Florida Constitution prohibits a person from being elected to the office of Governor if the person served, or but for resignation would have served, as Governor or acting Governor for more than six years in two consecutive terms.⁹ The term limit provision for the office of Governor has been in the Florida Constitution since the 1968 revision.¹⁰ Prior to the 1968 revision, the Florida Constitution of 1885 restricted the Governor to a single four-year term.¹¹

¹ Art. IX, s. 4(a), Fla. Const.

² *Askew v. Thomas*, 293 So. 2d 40, 42 (Fla. 1974) upholding residency requirements for district school board members and holding that section 4(a) of article IX “does NOT address itself to Qualifications of the school district members” and, therefore, statutes imposing qualifications “remain intact and viable, unaffected by this new constitutional provision.” *See also Telli v. Broward County*, 94 So. 3d 504 (Fla. 2012) receding from prior opinions which held that article VI, section 4(b), Florida Constitution, listing the state elected offices with mandatory term limits, prohibited the imposition of term limits on other officials. The court held that “[i]nterpreting Florida’s Constitution to find implied restrictions on powers otherwise authorized is unsound in principle” and that “express restrictions must be found not implied.” *Id.* at 513.

³ Art. IX, s. 4(b), Fla. Const.

⁴ Art. IX, s. 4(a), Fla. Const.

⁵ Art. VI, s. 4(c), Fla. Const.

⁶ *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995). *See also Ray v. Mortham*, 742 So. 2d 1276 (Fla. 1999) (holding that term limits imposed on elected state officials were severable from provisions imposing term limits on elected federal officials).

⁷ Art. VI, s. 4(c), Fla. Const.

⁸ *See* Art. VI, s. 4, Fla. Const. (1992); Billy Buzzett and Steven J. Uhlfelder, *Constitution Revision Commission: A Retrospective and Prospective Sketch*, *The Florida Bar Journal* (April 1997), <https://www.floridabar.org/the-florida-bar-journal/constitution-revision-commission-a-retrospective-and-prospective-sketch> (last visited April 12, 2021).

⁹ Art. IV, s. 5(b), Fla. Const.

¹⁰ *See* Art. VI, s. 5(b), Fla. Const. (1968).

¹¹ *See* Art. IV, s. 2, Fla. Const. (1885).

Effect of Proposed Changes

The House joint resolution proposes amending the Florida Constitution to prohibit a school board member from appearing on a ballot for reelection if, by the end of his or her current term of office, the member will have served, or would have served if not for resignation, in that office for eight consecutive years. The proposed constitutional amendment, if passed, will go into effect on November 8, 2022.¹²

The resolution also provides that school board members' current terms will not count toward the proposed limitation. Only terms that begin on or after November 8, 2022, will count toward the proposed limitation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Article XI, Section 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections (division) within the Department of State is also required to provide each supervisor of elections with either booklets or posters displaying the full text of each proposed amendment.¹³

Accurate costs based on the current election cycle cannot be determined until the total number of amendments to be advertised is known. The cost to advertise the amendment and produce booklets would be paid from non-recurring General Revenue funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

¹² Art. XI, s. 5(e), Fla. Const.

¹³ Section 101.171, F.S.

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 15, 2021, the Education and Employment Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from HJR 1461 by substituting the proposed constitutional amendment prohibiting compensation for district school board members with a proposed constitutional amendment providing for term limits for district school board members.

The analysis is drafted to the committee substitute adopted by the Education & Employment Committee.