

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 438

INTRODUCER: Rules Committee; Community Affairs Committee; and Senator Ingolia

SUBJECT: Term Limits

DATE: February 28, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Biehl</u>	<u>Roberts</u>	<u>EE</u>	Favorable
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
3.	<u>Biehl</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 438 requires each county that does not have 8-year term limits for county commissioners as of July 1, 2024, to hold a referendum at the 2024 general election to determine whether to adopt such term limits. If adopted, the term limits apply prospectively, beginning at the 2026 general election. Any county commissioner who is subject to the new 8-year term limits must, after completing 8 consecutive years of service, sit out for two years before again running for a county commission seat, including a different district seat or an at-large seat.

The bill also:

- Prohibits future referendums related to term limits of county commissioners, except that a county which rejects the referendum at the 2024 general election may, at any general election in the future, again put to the voters the question of 8-year term limits for county commissioners.
- Specifies that an existing statutory prohibition against the use of public funds by local governments to advocate for or against a ballot issue applies to a referendum conducted pursuant to the bill's provisions.
- Provides applicability language related to sitting county commissioners in counties with existing 12-year term limits.

The bill takes effect July 1, 2024.

II. Present Situation:

Term Limits in Florida's Constitution

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

- Florida Governor;
- Florida representatives;
- Florida senators;
- Florida Lieutenant Governor;
- Florida Cabinet members;
- U.S. representatives from Florida; and
- U.S. senators from Florida.¹

Term limits imposed by states for federal elected officials were held to be unconstitutional, and thus unenforceable, by the U.S. Supreme Court in 1995.²

The Florida Constitution states that none of the specified 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.³ 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.⁴

The Florida Constitution does not address the number of terms a county commissioner may serve.

County Commissioner Terms of Office

The Florida Constitution provides that each board of county commissioner shall consist of five or seven members serving staggered terms of four years. After each decennial census, the board of county commissioners divides the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner in each district must be elected as provided by law.⁵

The statutes implementing the constitutional provisions specify:

- County commissioners may be elected at-large in some counties and from single-member districts in other counties.⁶

¹ Article VI, s. 4(c), FLA. CONST. *See also* art. IV, s. 5(b), FLA. CONST.

² *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).

³ Article VI, s. 4(c), FLA. CONST.

⁴ *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 January 12, 2024).

⁵ Article VIII, s. 1(e), FLA. CONST.

⁶ Section 124.011, F.S.

- For single-member districts, each commissioner from an odd-numbered district is elected at the general election in each year the number of which is a multiplier of four. Each commissioner from an even-numbered district is elected at the general election in each even-numbered year the number of which is not a multiple of four.⁷

Neither the Florida Constitution nor the Florida Statutes currently provide term limits for county commissioners. Currently, 20 Florida counties have adopted charters,⁸ some of which specify term limits for their county commissioners.⁹

County Authority Relating to Term Limits

A county with a charter has all powers of self-government not inconsistent with general law or special law approved by the county voters,¹⁰ and may therefore adopt term limits for its county commissioners in the absence of any general law to the contrary.¹¹

Non-charter counties, however, do not have inherent authority to adopt term limits for county commissioners and may do so only if authorized or required by general law.¹²

Use of Public Funds by Local Governments

Current law provides that a local government¹³ or a person acting on behalf of local government may not expend or authorize the expenditure of, and a person or group may not accept, public funds¹⁴ for a political advertisement or any other communication sent to electors concerning an issue, referendum, or amendment, including any state question, that is subject to a vote of the electors.¹⁵

III. Effect of Proposed Changes:

The bill creates s. 124.012, F.S., to require the following counties to hold a referendum at the 2024 general election to determine whether to adopt 8-year term limits for county commissioners:

- Non-charter counties;

⁷ Section 100.041(2)(a), F.S.

⁸ See Florida Association of Counties, *Charter County Information*, available at <https://www.fl-counties.com/about-floridas-counties/charter-county-information/> (last visited January 12, 2024).

⁹ The charter for the consolidated City of Jacksonville/Duval County, for example, limits the consecutive service of its county commissioners to three terms (charter available at https://www.fl-counties.com/themes/bootstrap_subtheme/sitefinity/documents/duval.pdf (last visited January 12, 2024)).

¹⁰ Article VIII, s. 1(g), FLA. CONST.

¹¹ Article III, s. 11 (a)(1) of the Fla. Const. prohibits special laws pertaining to election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies. Laws creating term limits are considered laws pertaining to election of officers.

¹² See Attorney General Opinion 2019-03, *Non-charter county may not term-limit commissioners*, April 1, 2019.

¹³ Section 106.113(1)(a), F.S., defines “local government” to mean a county, municipality, school district, or other political subdivision in this state; and any department, agency, board, bureau, district, commission, authority, or similar body of a county, municipality, school district, or other political subdivision of this state.

¹⁴ Section 106.113(1)(b), F.S., defines “public funds” to mean all moneys under the jurisdiction or control of the local government.

¹⁵ Section 106.113, F.S.

- Charter counties whose charter does not impose term limits on county commissioners as of July 1, 2024; and
- Charter counties whose charter, as of July 1, 2024, imposes term limits longer than 8 consecutive years.

Charter counties with existing 8-year term limits are not required to hold the referendum.

The bill specifies implementing provisions for counties that adopt 8-year term limits pursuant to the bill, including:

- Clarification that existing statutory provisions governing decennial redistricting will still apply; and
- A requirement that a county commissioner who completes 8 years of consecutive service must then sit out for 2 years before running for another county commission seat, including a different district seat or at-large seat.

In a county without existing term limits which adopts new 8-year term limits pursuant to this bill, for sitting commissioners, the bill provides that service in a term that begins before the 2026 general election will not count toward the new term limits. So, depending on how each commissioner's term is staggered, he or she would have either 8 or 10 more years after the 2026 general election.

The bill provides for applicability of its provisions to charter counties with existing 12-year term limits. Specifically, in a charter county with existing 12-year term limits which adopts 8-year term limits pursuant to this bill, a sitting commissioner will be able to serve out however much time remains in his or her 12 years. The 12 years will neither be cut short nor extended by the change to 8-year term limits. A county commissioner who is first elected after the 2024 general election will be subject to the 8-year term limits.

The bill also:

- Prohibits future referendums related to term limits of county commissioners, except that a county which rejects the referendum at the 2024 general election may, at any general election in the future, again put to the voters the question of 8-year term limits for county commissioners.
- Specifies that s. 106.113, F.S., an existing statutory prohibition against the use of public funds by local governments to advocate for or against a ballot issue, applies to a referendum conducted pursuant to the bill's provisions.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires certain counties to conduct a referendum election; however, an exception may apply because laws concerning elections are exempt.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Counties required to include the referendum required by the bill in the November general election will incur costs associated with administration of that provision.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 124.012, Florida Statutes, and two unnumbered sections of law.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on February 26, 2024:

The committee substitute removes the imposition of 8-year term limits and instead requires all counties without existing 8-year term limits to put the issue on the ballot at the 2024 general election. The committee substitute also:

- Prohibits future referendums related to term limits of county commissioners, except that a county which rejects the referendum at the 2024 general election may, in the future, again put to voters the question of 8-year term limits for county commissioners.
- Retains from the underlying bill provisions implementing the 8-year term limits for counties whose voters approve them, and clarifies that existing statutory provisions governing decennial redistricting will still apply.
- Provides separate ballot language for counties with existing 12-year term limits to make clear that the question is whether they should be reduced to 8 from 12 years.
- Specifies that an existing prohibition against the use of public funds by local governments to advocate for or against a ballot issue applies to a referendum conducted pursuant to the bill's provisions.
- Adds applicability language related to certain sitting county commissioners with existing term limits.

CS by Community Affairs on February 6, 2024:

The committee substitute provides that term limits imposed by the bill apply to counties in which term limits are not imposed by a county charter as of July 1, 2024, and that service of a term of office commenced prior to November 5, 2024, may not be counted towards the limitations. The committee substitute further provides that the bill does not supersede a more restrictive county charter term limit, and does not authorize a person subject to such more restrictive limitations to serve an additional 8 consecutive years.

The committee substitute also provides that a county whose charter authorizes county commissioners to serve longer than term limits imposed by the bill shall hold a referendum election coinciding with the 2024 general election to determine whether limits imposed by the bill shall apply to the county. The committee substitute provides the form for such referendum election.

- B. **Amendments:**

None.