

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 57 County Commissioner Term Limits

SPONSOR(S): State Affairs Committee, Local Administration, Federal Affairs & Special Districts

Subcommittee, Salzman and others

TIED BILLS: IDEN./SIM. BILLS: CS/SB 438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	14 Y, 0 N, As CS	Roy	Darden
2) Ethics, Elections & Open Government Subcommittee	9 Y, 6 N	Skinner	Toliver
3) State Affairs Committee	13 Y, 7 N, As CS	Skinner	Williamson

SUMMARY ANALYSIS

Article VIII, s. 1 of the Florida Constitution provides the framework for county government in Florida, including requiring counties to be governed by a board of county commissioners and authorizing the adoption of county charters. Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the county voters.

The Florida Constitution does not set term limits for county commissioners, nor are term limits set by statute. As of January 1, 2024, 11 counties in Florida have adopted term limits as part of their county charter.

The bill provides that, notwithstanding any county charter provision to the contrary, a person may not appear on the ballot for reelection to the office of county commissioner if that person has served, or would have served but for resignation, in that office for eight consecutive years. The bill prohibits a person from qualifying or appearing on the ballot for a different district seat of the county commission or an at-large county commission seat of the county after his or her initial eight-year term of office until two years after the end date of his or her initial term. In counties where term limits are not imposed by a county charter as of July 1, 2024, the bill provides that the term limits provided in the bill apply to such counties and that service in a term of office that begins before November 8, 2022, may not be counted toward the limitation imposed by the bill.

The bill does not supersede any term limits imposed by a county charter that are more restrictive than the term limit imposed by the bill and does not authorize a person subject to such term limits to serve an additional eight consecutive years.

The bill requires a county whose charter authorizes county commissioners to serve longer than the limits imposed by the bill to hold a referendum election that coincides with the 2024 general election to determine whether the term limits imposed apply to such county. The bill provides that such referendum election must occur on November 5, 2024, and be conducted by the county supervisor of elections. It also prescribes the form of the ballot question for the referendum election.

The bill provides that if a county rejects the term limits during the referendum election, then the bill's term limits do not apply for that county.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

County Commissioners

Article VIII of the Florida Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties¹ and has the authority to create municipalities.²

Pursuant either to general or special law, a county government may be adopted by charter approved by the county voters.³ A county without a charter has such powers of self-government as provided by general⁴ or special law.⁵ A county with a charter has all powers of self-government not inconsistent with general law or special law approved by the county voters.⁶ The Florida Constitution provides unique authorization⁷ for specific home rule charters, including those of Duval⁸ and Miami-Dade Counties.⁹ Currently, 20 Florida counties have adopted charters.¹⁰

The Florida Constitution provides that each county, except as otherwise provided by a county charter, is governed by a board of county commissioners composed of five or seven members serving staggered four-year terms.¹¹ Each county must be divided into districts that are contiguous and as nearly equal in population as practicable, which are redrawn after each decennial census.¹² One commissioner must reside in each district as provided by law.¹³

¹ Art. VIII, s. 1(a), FLA. CONST.

² Art. VIII, s. 2(a), FLA. CONST.

³ S. 125.60, F.S.

⁴ Ch. 125, Part I, F.S.

⁵ Art. VIII, s. 1(f), FLA. CONST.

⁶ Art. VIII, s. 1(g), FLA. CONST.

⁷ Art. VIII, s. 6(e), FLA. CONST., incorporating by reference ss. 9, 10, 11, 24 from article VIII of the 1885 Constitution, states that these specific provisions respectively for Duval, Miami-Dade, Monroe, and Hillsborough Counties "shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article."

⁸ The consolidated government of the City of Jacksonville was created by ch. 67-1320, Laws of Florida, adopted pursuant to Art. VIII, s. 9, FLA. CONST. (1885).

⁹ In 1956, an amendment to the 1885 Florida Constitution provided Dade County with the authority to adopt, revise, and amend from time to time a home rule charter government for the county. The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status. Article VIII, s. 11(5) of the 1885 State Constitution, now incorporated by reference in art. VIII, s. 6(e), Fla. Const. (1968), further provided the Metropolitan Dade County Home Rule Charter, and any subsequent ordinances enacted pursuant to the charter, may conflict with, modify, or nullify any existing local, special, or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami Dade Charter can only be altered through constitutional amendment, general law, or County actions approved by referendum. *Chase v. Cowart*, 102 So. 2d 147, 149-50 (Fla. 1958).

¹⁰ Alachua, Brevard, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. The Local Government Formation Manual, Appendix C, p. 106, available at <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3227&Session=2023&DocumentType=General+Publications&FileName=2022+Local+Government+Formation+Manual.pdf> (last visited Jan. 20, 2024).

¹¹ Art. VIII, s. 1(e), FLA. CONST.

¹² *Id.*

¹³ *Id.*

The default method created by general law provides that each county has a five-member commission, with a commissioner representing each district elected at-large by all voters of the county.¹⁴ Subject to approval in a referendum of the county's voters, the commission may alternatively be structured as:

- A five-member board, with each member elected only by the qualified electors who reside in the same county commission district as the commissioner; or
- A seven-member board, with five members elected only by the qualified electors who reside in the same county commission district as the commissioner and two members elected at-large.¹⁵

Most counties use the default five-member board, elected at-large method, while 20 counties elect commissioners from single-member districts and seven counties use the seven-member board system.¹⁶

Terms of Office

The Florida Constitution establishes term limits for the following elected officials:

- Governor, Lieutenant Governor, and members of the state Cabinet.
- State representatives and senators.
- Federal representatives and senators from Florida.¹⁷

Term limits imposed by states for federal elected officials were held to be unconstitutional and, thus, unenforceable by the U.S. Supreme Court in 1995.¹⁸

The Florida Constitution states that none of these officials, except for the office of Governor, which is governed by a 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.¹⁹ These term limits became effective in 1992 and were prospective, so officials reelected to a consecutive term in 1992 could serve another consecutive eight years before reaching the term limit.²⁰

The Florida Constitution does not set term limits for county commissioners, nor are term limits set by statute. Charter counties have the authority to set their own term limits in their county charter.²¹ As of January 1, 2024, 11 counties in Florida imposed term limits within their county charter.²²

Effects of Proposed Changes

The bill provides that, notwithstanding any county charter provision to the contrary, a person may not appear on the ballot for reelection to the office of county commissioner if that person has served, or would have served but for resignation, in that office for eight consecutive years. The bill prohibits a person from qualifying for or appearing on the ballot for a different district seat of the county

¹⁴ S. 124.011(1), F.S.

¹⁵ S. 124.011(1)(a)-(b), F.S.

¹⁶ Fla. Association of Counties, County Districting, <https://www.fl-counties.com/county-districting> (last visited Jan. 16, 2024). On November 8, 2022, the voters of Alachua County approved an amendment to s. 2.2(A) the county charter and now require county commissioners to be elected only by the qualified electors within their respective districts. See ch. 2022-257, Laws of Fla.

¹⁷ Art. VI, s. 4(c), and Art. IV, s. 5(b), Fla. Const.

¹⁸ See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995) (holding that the U.S. Constitution prohibits states from imposing congressional qualifications in addition to those enumerated in the document itself). 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).

¹⁹ Art. VI, s. 4(c), Fla. Const.

²⁰ 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 Oct. 6, 2023).

²¹ The Florida Supreme Court in *Cook v. City of Jacksonville*, 823 So.2d 86, held that counties could not set term limits for constitutional officers, as doing so would create a disqualifying condition not set forth by the Florida constitution. *Telli v. Broward County*, 94 So.3d 504 (Fla. 2012) overruled *Cook* allowing charter counties to set their own term limits for constitutional officers, ruling that *Cook* undermined the ability of counties to govern themselves under the broad authority granted by home rule.

²² Fla. Association of Counties, County Term Limits Across the State, <https://www.fl-counties.com/county-term-limits-across-the-state/> (last visited Oct. 4, 2023). Brevard, Clay, Duval, Miami-Dade, Orange, Palm Beach, Sarasota and Volusia counties have 8-year term limits for County Commissioners, while Broward, Lee, and Polk counties have 12-year term limits.

commission or an at-large county commission seat of the county after his or her initial eight-year term of office until two years after the end date of his or her initial term. In counties where term limits are not imposed by a county charter as of July 1, 2024, the bill provides that the term limits provided in the bill apply to such counties and that service in a term of office that begins before November 8, 2022, may not be counted toward the limitation imposed by the bill.

The bill does not supersede any term limits imposed by a county charter that are more restrictive than the term limit imposed by the bill and does not authorize a person subject to such term limits to serve an additional eight consecutive years.

The bill requires a county whose charter authorizes county commissioners to serve longer than the limits imposed by the bill to hold a referendum election that coincides with the 2024 general election to determine whether the term limits imposed apply to such county. The bill requires such referendum election to occur on November 5, 2024, and be conducted by the county supervisor of elections in accordance with the Florida Election Code.²³ The ballot must be in substantially the following form:

COUNTY COMMISSIONER TERM LIMITS

Should the county prohibit county commissioners from serving longer than 8 consecutive years?

- () Yes.
- () No.

The bill provides that if a county rejects the term limits during the referendum election, then the bill's term limits do not apply for that county.

B. SECTION DIRECTORY:

- Section 1: Creates s. 124.012, F.S., relating to term limits of county commissioners.
- Section 2: Provides for the referendum election.
- Section 3: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill will likely have a negative fiscal impact on counties required to conduct a referendum. However, as the referenda will be conducted in conjunction with the general election on November 5, 2024, some cost savings may occur.

²³ Chapters 97-106, F.S., are cited as "The Florida Election Code." See s. 97.011, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for, nor requires, rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment increased the maximum number of consecutive years a county commissioner may serve from eight years to 12 years.

On February 14, 2024, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Revised the term limits for county commissioners from 12 consecutive years to eight consecutive years.
- Prohibited a person from qualifying for or appearing on the ballot for a different district seat of the county commission or an at-large county commission seat of the county after his or her initial eight-year term of office until two years after the end date of his or her initial term.
- Provided that the bill does not authorize a person subject to such term limits to serve an additional eight consecutive years.
- Required counties whose charter authorizes county commissioners to serve longer than the bill's term limits to hold a referendum election to determine whether the bill's term limits apply for that county.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.