

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HJR 785 Term Limits/County Officers

**SPONSOR(S):** Economic Affairs Committee, Wood

**TIED BILLS:** **IDEN./SIM. BILLS:** SJR 1070

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	8 Y, 7 N	Nelson	Hoagland
2) Economic Affairs Committee	11 Y, 1 N, As CS	Nelson	Tinker

### SUMMARY ANALYSIS

On December 12, 2011, the Florida Supreme Court agreed to hear an appeal from a Fourth District Court of Appeal ruling regarding the constitutionality of county charter term limits for county commissioners. Twenty of Florida's 67 counties operate under a charter, and 10 of these charters currently contain term limitations.

The CS for HJR 785 proposes an amendment to s. 1(e), Art. VIII of the State Constitution to authorize the imposition of term limits on county commissioners when provided for by county charter. This joint resolution provides that the amendment will be submitted to the Florida voters for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

The Division of Elections of the Department of State has estimated the cost for advertising this constitutional amendment to be \$76,739.22.

To be placed on the ballot, the joint resolution must be approved by three-fifths of the membership of each house.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Florida County Government

Article VIII of the State Constitution contains provisions relating to Florida's counties and municipalities, with s.1 specific to the county form of government. That section requires the state to be divided by law into political subdivisions called "counties." Counties may be created, abolished or changed by law, with provision for the payment or apportionment of public debt. Pursuant to general or special law, a county government may be established by charter, which must be adopted, amended or repealed only upon a vote of the electors of the county in a special election called for that purpose.

The Florida Constitution recognizes two types of county government in Florida: charter and non-charter. Sections 1(f) and (g), Art. VIII of the State Constitution, respectively, provide as follows:

**NON-CHARTER GOVERNMENT.** Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

**CHARTER GOVERNMENT.** Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

In addition, a special constitutional provision provides unique authorization for the Miami-Dade County home rule charter.<sup>1</sup> The most significant distinction between charter and non-charter county power is the fact that the State Constitution provides a direct constitutional grant of the power of self-government to a county upon charter approval, whereas a non-charter county has "such power of self-government as is provided by general or special law." As such, charter counties possess greater home rule authority than non-charter counties.

##### County Constitutional Officers

A charter county may provide for the selection of constitutional officers, and abolish any county office when its duties are transferred. Section 1 (d), Art. VIII of the State Constitution provides:

**COUNTY OFFICERS.** There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

##### County Commissioners

In a non-charter county, the county's governing body must be composed of a five or seven member board of county commissioners serving staggered terms of four years. If a county operates under a

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<sup>1</sup> See, s. 11 of Art.VIII of the State Constitution of 1885, as referenced in s. 6(e), Art.VIII of the State Constitution of 1968, as amended in January 1999.

county charter, the charter may vary the number of members serving on the county's governing body. Section 1 (e), Art. VIII of the State Constitution provides:

COMMISSIONERS. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

### Term Limits

The Florida Supreme Court held in *Cook v. City of Jacksonville*, 823 So.2d 86 (2002), that a charter county may not impose a "term limit" provision upon those county officer positions which are authorized by s. 1(d), Art. VIII of the State Constitution in that a term limit is a disqualification from election to office and that s. 4, Art. VI of the State Constitution provides the exclusive roster of those disqualifications, which may be permissibly imposed. That section provides term limits for Florida representatives and senators, the lieutenant governor, any office of the Florida cabinet, and U.S. Representatives and Senators from Florida.<sup>2</sup>

On December 12, 2011, the Florida Supreme Court agreed to hear an appeal from a Fourth District Court of Appeal case that overturned a 2010 Broward County trial court decision ruling that voter-imposed term limits for county commissioners were unconstitutional, based on previous Florida Supreme Court decisions. The West Palm Beach appeals court held that s. 1(e), Art. VII of the Florida Constitution grants voters in charter counties the home rule power to term limit their own commissioners.<sup>3</sup>

The Respondents in the Broward case (Broward County and its supervisor of elections) have argued that *Cook* addressed the constitutionality of term limits on s.1 (d) officers (i.e., county constitutional officers), and that section 1(e) (regarding county commissioners) was not at issue in *Cook*. Further, the Respondents have asserted that *Cook's* rationale for prohibiting term limits is inapplicable to county commissioners because, unlike section 1(d), section 1(e) grants charter counties broad power to structure their own governing bodies, noting the introductory language of that provision: "[e]xcept when otherwise provided by county charter."

Twenty of Florida's 67 counties currently operate under a charter: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Miami-Dade, Duval, Hillsborough, Lee, Leon, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia and Wakulla. Ten of these charters contain term limitations,<sup>4</sup> and several of these provisions have been challenged.<sup>5</sup>

### **Effect of Proposed Changes**

The CS for HJR 785 proposes an amendment to s. 1(e), Art. VIII of the State Constitution to authorize the imposition of term limits on county commissioners when provided for by county charter. The joint resolution provides that the amendment will be submitted to the Florida voters for approval or rejection

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<sup>2</sup> SECTION 4. Disqualifications.—(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

(b) No person may appear on the ballot for re-election to any of the following offices:

- (1) Florida representative,
- (2) Florida senator,
- (3) Florida Lieutenant governor,
- (4) any office of the Florida cabinet,
- (5) U.S. Representative from Florida, or
- (6) U.S. Senator from Florida

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.

<sup>3</sup> *Snipes v. Telli*, 2011 WL3477086 (Fla. App. 4 Dist.)

<sup>4</sup> Brevard, Broward, Clay, Duval, Hillsborough, Orange, Palm Beach, Polk, Sarasota and Volusia counties.

<sup>5</sup> For example, *In Re: The Matter of Sam Killebrew v. Lori Edwards* (the Polk County Supervisor of Elections), was filed in the Circuit Court of the Tenth Judicial Circuit on May 3, 2011. This lawsuit requests the court to declare the portions of the Polk County Charter providing term limits for county commissioners as unconstitutional and invalid.

at the next general election or at an earlier special election specifically authorized by law for that purpose.

**B. SECTION DIRECTORY:**

Not applicable to joint resolutions.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The Division of Elections of the Department of State is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county. The average cost per word to advertise an amendment is \$106.14. The estimated cost for advertising this constitutional amendment, as revised by the CS for HJR 785, is \$76,739.22.<sup>6</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

Local governments could experience various expenses related to the referendum process.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The Department of State normally is the defendant in lawsuits challenging proposed amendments to the Florida Constitution. The cost for defending these lawsuits has ranged from \$10,000 to \$150,000, depending on a number of variables.<sup>7</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

Section 1, Art. XI of the State Constitution provides the Legislature the authority to propose amendments to the constitution by joint resolution approved by three-fifths of the membership of each house. A proposed amendment must be submitted to the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State's office, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of

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<sup>6</sup> February 9, 2012, e-mail from W. Pierce Schuessler, Legislative Affairs Director, Department of State.

<sup>7</sup> Department of State Analysis for HB 785, dated December 20, 2011.

each house and limited to a single amendment, it is submitted at an earlier special election held more than 90 days after such filing.<sup>8</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 8, 2012, the Economic Affairs Committee adopted an amendment that limits the provisions of the bill to term limits for county commissioners.

This analysis is drafted to the Committee Substitute.

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<sup>8</sup> Section 5, Art. XI of the State Constitution.