



BY DEMOCRAT AND CHRONICLE



Upfront mayoral control vote unlikely, experts, backers say

Brian Sharp – Staff writer

Local News – February 5, 2010 - 5:00am

Whether voters could — or should — have a direct say up front on a Rochester switch to mayoral control of schools is doubtful, say constitutional experts and those advocating reform.

The idea of a local referendum before any change is made has been floated for weeks. School board President Malik Evans is in favor.

But would it be binding? Could it even be placed on a ballot? And on whose authority?

“For the specific question you are looking at, there are a million interacting provisions” in state law, said James Gardner, a professor at the State University of New York at Buffalo law school and an expert in constitutional law.

Mayor Robert Duffy is seeking a five-year trial period for mayoral control of the Rochester School District, promising greater accountability and improved graduation rates. He has yet to present a plan or host a forum — but he did debate some opponents at a [forum on Thursday](#) — waiting on state legislation to be proposed first. Meanwhile, opponents have held forums, picketed and, in some areas, plan to go door-to-door making their case.

Schools are governed by state law, therefore any change in governance must come from the state. The change can be permanent, but lawmakers often choose to set a time limit after which a local referendum or legislative action is required to continue with the structure.

If it is a referendum that the people want, a spokesman for Gov. David Paterson said the New York state Constitution does not expressly prohibit it. But there are laws against advisory referenda, or using taxpayer money for votes that don't count.

“Somewhere there is a line where the Legislature can't sort of devolve its own authority onto the people,” said Gardner, director of UB's Jaeckle

Center for Law and Democracy. "I'm not sure where that line is."

When the state granted New York City mayoral control in 2002, the Legislature retained the authority to reaffirm the change and did so last year.

Detroit's experiment

If Rochester citizens got to vote on the matter first, experts say it would be a first nationally — unless Detroit beats us to it.

Detroit is thus far the only city whose voters rejected mayoral control when the time came for a referendum.

Michigan lawmakers conferred mayoral control on Detroit schools in 1999, and voters took it away in 2005.

It is now considering whether to have a referendum to put it back in place. Under mayoral control in Detroit, the mayor appointed the school board, except for one appointee by the governor. Members previously were elected. The board could hire the superintendent, or CEO, but the mayor could fire him or her. And the CEO was given broad authority to reconstitute schools, waive provisions of contracts and fire school principals and teachers.

The system lacked legitimacy, however, according to Wilbur Rich, author of several books on mayoral control and a political science professor at Wellesley College in Massachusetts. The public wasn't engaged in planning the change, and the appointed board was filled with "blue ribbon" experts who had no grass-roots connections. Unable to elect a board, many people thought they had lost access.

"That is very important, that notion of legitimacy, the sense the public has the belief this is not being rammed down their throats," Rich said. "In Detroit, this basically killed the whole process."

What people often fail to understand through all of this, Rich said, is that school systems are sub-governments of the state, not part of city government.

"(States) are willing to give mayors some control over the school district," he said, "but they can take it back whenever they want."

Five years later, mayoral control legislation has been drafted again but makes any change contingent on a local referendum. Michigan state Rep. LaMar Lemmons Jr., D-Detroit, the bill's sponsor, said it's critical that the state not be seen as meddling in or imposing on the local district.

Would a poll be better?

Whether New York's Legislature could legally craft a similar two-step process — with legislation contingent on a local referendum — is unclear, UB's Gardner said.

But it is clearly not desired. Ask Assemblyman David Gantt, D-Rochester, dean of the local delegation to Albany, and he will tell you there is no reason for a referendum. There wasn't one when the current school board system was put in place, he said.

"That's a stalling tactic," Gantt said of calls for a referendum this time. "I believe it's time for a change based upon what we just saw in the (state) audit. If you go back and look at other audits, you see the same kind of problems."

The state comptroller's audit, released last week, portrayed the school board as complacent in its oversight responsibilities and claimed that the district failed to adequately review contracts totaling millions of dollars, or document bonuses and raises to senior staff.

But is mayoral control the change that will make a difference, as City Councilman Dana Miller has asked, or is it change just because it is different?

For a true measure of public sentiment, a scientific poll is better than a referendum, said Kent Gardner, president of the Center for Governmental Research Inc. in Rochester.

To meet Duffy's timetable of wanting to take control by fall, a referendum would be off-cycle and likely would have limited polling places and hours.

The result could be low turnout that is more easily biased by lobbying, Kent Gardner said.

Duffy is equally skeptical of a referendum but also doubts that a poll would resolve anything. He insists the current system is "broken," and says nobody else has put forward an alternative plan to fix it.

"What we're asking for," Duffy said, "is just a test trial for a five-year period, not a permanent change, to measure the results of this process, to be held accountable. Because, right now, people have only one system to draw experience on — and I don't think anyone can argue that system been successful over the past 30-plus years."

BDSHARP@DemocratandChronicle.com

WHAT'S NEXT

City officials expect the state to introduce a bill this month to approve mayoral control for

Rochester that mirrors the system established in New York City, with strong roles for the mayor and City Council, and an appointed education advisory board.

COMING SUNDAY

The *Democrat and Chronicle* visits Washington, D.C., to see how its mayor and its chancellor are working to bring radical change to a 55,000-student school system that has been among the worst-performing in the country.

HOME

TOP

ABOUT / CONTACT

[News from USA TODAY](#)

[Shop for cars at Cars.com](#)

[Find an apartment at Apartments.com](#)

[Find a home at Homefinder.com](#)

Copyright © 2010 | [Democrat and Chronicle.com](#)