



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER:

SUBJECT:

PETITIONER CONTACT:

REQUESTED ACTION:

SUMMARY EXPLANATION & BACKGROUND:

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CHARTER REVIEW COMMISSION AGENDA REPORT

SUMMARY EXPLANATION & BACKGROUND CONTINUED:

PROPOSAL TO AMEND BREVARD COUNTY CHARTER
TO ADD RECALL ELECTION OF SCHOOL BOARD MEMBERS

Blaise Trettis (proponent), member of the 2021-22 Brevard County Charter Review Commission, proposes that the following new SECTION 8.2 RECALL ELECTION OF SCHOOL BOARD MEMBERS be added to the Brevard County Charter:

SECTION 8.2 RECALL ELECTION OF SCHOOL BOARD MEMBERS

(1) APPLICATION; DEFINITION.— Any member of the school board may be removed from office by the electors of the school board residence area. Only electors from the school board residence area from which the school board member represents on the school board are eligible to sign the petition to recall that school board member and are entitled to vote in the recall election. Where used in this section, the term “district” shall be construed to mean the school board residence area from which a member of the school board is elected by the electors from such area or region. School board members may be removed from office pursuant to the procedures provided in this section.

(2) RECALL PETITION.—

(a) *Petition content.*—A petition shall contain the name of the school board member sought to be recalled and a statement of grounds for recall. The stated grounds for recall from office are limited solely to those specified in paragraph (d). If malfeasance is the stated ground for recall, then the statement of grounds may not exceed 200 words. If a vote or votes of the school board member sought to be recalled at a school board meeting or meetings is the stated ground for recall, then there is no numerical word limit to the statement of grounds. If more than one member of the school board is sought to be recalled, a separate recall petition shall be prepared for each member sought to be recalled.

(b) *Requisite signatures.*— The petition shall be signed by at least 5 percent of the total number of registered electors of the district as of the preceding general election. All signatures shall be obtained as provided in paragraph (e) within a period of 30 days and all signed and dated petition forms shall be filed at the same time no later than 30 days after the date on which the first signature is obtained on the petition.

(c) *Recall committee.*—Electors of the district making charges contained in the statement of grounds for recall, as well as those signing the recall petition, shall be designated as the recall committee. A specific person shall be designated in the petition as chair of the committee and this person shall act for the committee. The recall committee

and the school board member sought to be recalled are subject to the provisions of chapter 106.

(d) *Grounds for recall.*—The grounds for removal of a school board member shall , be limited to the following and must be contained in the petition:

1. Malfeasance;
2. Not more than 3 votes by the school board member on a motion or motions made at a school board meeting or meetings whether the meeting or meetings were a regularly scheduled meeting, special meeting, an emergency meeting or any other designation of school board meeting. In the petition, the words of the motion or motions made at the school board meeting or meetings shall be stated word-for-word as is reasonably determinable. The petition shall not contain the preamble to the motion or motions if any preamble preceded the motion or motions. The petition shall state the school board member's vote or votes on the motion or motions was yes or no.

(e) *Signature process.*—Only electors of the district are eligible to sign the petition. Each elector signing a petition shall sign and date his or her name in ink or indelible pencil. Each petition shall contain appropriate lines for each elector's original signature, printed name, street address, city, county, voter registration number or date of birth, and date signed. The form shall also contain lines for an oath, to be executed by a witness who is to verify the fact that the witness saw each person sign the counterpart of the petition, that each signature appearing thereon is the genuine signature of the person it purports to be, and that the petition was signed in the presence of the witness on the date indicated.

(f) *Filing of signed petitions.*—All signed petition forms shall be filed at the same time, no later than 30 days after the date on which the first signature is obtained on the petition. The person designated as chair of the committee shall file the signed petition forms with the Brevard County Clerk of Court, hereinafter referred to as "clerk." The petition may not be amended after it is filed with the clerk.

(g) *Verification of signatures.*—

1. Immediately after the filing of the petition forms, the clerk shall submit such forms to the county supervisor of elections. No more than 30 days after the date on which all petition forms are submitted to the supervisor by the clerk, the supervisor shall promptly verify the signatures in accordance with section 99.097 Florida statutes, and determine whether the requisite number of valid signatures has been obtained for the petition. The committee seeking verification of the signatures shall pay in advance to the supervisor of elections the sum of 10 cents for each signature checked or the actual cost of checking such signatures, whichever is less.

2. Upon filing with the clerk, the petition and all subsequent papers or forms required or permitted to be filed with the clerk in connection with this section must, upon request, be made available in alternative formats by the clerk.

3. If the supervisor of elections determines that the petition does not contain the requisite number of verified and valid signatures, the clerk shall, upon receipt of such written determination, so certify to the Brevard County Board of County Commissioners and file the petition without taking further action, and the matter shall be at an end. No additional names may be added to the petition, and the petition shall not be used in any other proceeding.

4. If the supervisor of elections determines that the petition has the requisite number of verified and valid signatures, then the procedures outlined in subsection (3) must be followed.

(3) RECALL PETITION AND DEFENSE.—

(a) *Notice.*—Upon receipt of a written determination that the requisite number of signatures has been obtained, the clerk shall at once serve upon the person sought to be recalled a certified copy of the petition. Within 5 days after service, the person sought to be recalled may file with the clerk a defensive statement of not more than 200 words.

(b) *Content and preparation.*—Within 5 days after the date of receipt of the defensive statement or after the last date a defensive statement could have been filed, the clerk shall prepare a document entitled Recall Petition and Defense. The Recall Petition and Defense shall consist of the recall petition, including copies of the originally signed petitions and counterparts. The Recall Petition and Defense must contain lines which conform to the provisions of paragraph (2)(e), and the defensive statement or, if no defensive statement has been filed, a statement to that effect. The clerk shall make copies of the Recall Petition and Defense which are sufficient to carry the signatures of 30 percent of the registered electors. Immediately after preparing and making sufficient copies of the Recall Petition and Defense, the clerk shall deliver the copies to the person designated as chair of the committee and take his or her receipt therefor.

(c) *Requisite signatures.*—Upon receipt of the Recall Petition and Defense, the committee may circulate them to obtain the signatures of 15 percent of the electors. All signatures shall be obtained and all signed petition forms filed with the clerk no later than 60 days after delivery of the Recall Petition and Defense to the chair of the committee.

(d) *Signed petitions; request for striking name.*—The clerk shall assemble all signed petitions, check to see that each petition is properly verified by the oath of a witness, and submit such petitions to the county supervisor of elections. Any elector who signs a recall petition has the right to demand in writing that his or her name be stricken from the

petition. A written demand signed by the elector shall be filed with the clerk, and, upon receipt of the demand, the clerk shall strike the name of the elector from the petition and place his or her initials to the side of the signature stricken. However, a signature may not be stricken after the clerk has delivered the Recall Petition and Defense to the supervisor of elections for verification of the signatures.

(e) *Verification of signatures.*—Within 30 days after receipt of the signed Recall Petition and Defense, the supervisor of elections shall determine the number of valid signatures, purge the names withdrawn, and certify whether 15 percent of the qualified electors of the district have signed the petitions. The supervisor of elections shall be paid by the persons or committee seeking verification the sum of 10 cents for each name checked.

(f) *Reporting.*—If the supervisor of elections determines that the requisite number of signatures has not been obtained, the clerk shall, upon receipt of such written determination, certify such determination to the Brevard County Board of County Commissioners and retain the petitions. The proceedings shall be terminated, and the petitions shall not again be used. If the supervisor of elections determines that at least 15 percent of the qualified electors signed the petition, the clerk shall, immediately upon receipt of such written determination, serve notice of that determination upon the person sought to be recalled and deliver to the Brevard County Board of County Commissioners a certificate as to the percentage of qualified electors who signed.

(4) **RECALL ELECTION.**— The chief judge of the judicial circuit in which the district is located shall fix a day for holding a recall election for the removal of the school board member or school board members. Any such election shall be held not less than 30 days or more than 60 days after the expiration of the 5-day period last-mentioned and at the same time as any other primary, general or special election held within the period; but if no such election is to be held within that period, the judge shall call a special recall election to be held within the period aforesaid.

(5) **BALLOTS.**—The ballots at the recall election shall conform to the following: With respect to each person whose removal is sought, the question shall be submitted: “Shall _____ be removed from the office of school board for Brevard County by recall?” Immediately following each question there shall be printed on the ballots the two propositions in the order here set forth:

“ (name of person) should be removed from office.”

“ (name of person) should not be removed from office.”

(6) **FILLING OF VACANCIES; SPECIAL ELECTIONS.**—

(a) When a school board member is removed from office by recall election, the school board member’s term of office expires when the Brevard County Canvassing Board

certifies the recall election results. When a school board member is removed from office by recall election candidates to succeed them for the unexpired terms shall be voted upon at a special election called by the chief judge of the judicial circuit in which the district is located not less than 30 days or more than 60 days after the expiration of the recall election. The qualifying period for purposes of this section shall be established by the chief judge of the judicial circuit after consultation with the clerk. Any candidate seeking election to fill the unexpired term of a recalled school board member shall reside in the district represented by the recalled school board member and qualify for office in the manner required by law. If Article IX, section 4 of the Florida Constitution provides that school board members are elected in a nonpartisan election, then each school board candidate receiving the highest number of votes for each office in the special district recall election shall be declared elected to fill the unexpired term of the recalled school board member. Candidates seeking election to fill a vacancy created by the removal of a school board member shall be subject to the provisions of chapter 106 Florida statutes.

(b) When a school board member is removed from office by recall election and Article IX, section 4 of the Florida Constitution provides that school board members are elected in a partisan election, candidates to succeed them for the unexpired terms shall be voted upon in a primary election called by the chief judge of the judicial circuit in which the district is located not less than 30 days or more than 60 days after the expiration of the recall election. The qualifying period for the primary election shall be established by the chief judge of the judicial circuit after consultation with the clerk. The general election following the primary election shall be conducted 4 weeks to the day after the primary election. Any candidate seeking election to fill the unexpired term of a recalled school board member shall reside in the district represented by the recalled school board member and qualify for office in the manner prescribed by law. Candidates seeking election to fill a vacancy created by the removal of a school board member shall be subject to the provisions of chapter 106 Florida statutes. If Article IX, section 4 of the Florida Constitution provides that school board members are elected by partisan election, then the procedure of this subsection for partisan primary election and partisan general election of school board members to fill vacancies caused by the recall election and removal of school board members may only be done starting in 2024 with the primary election held for such school board candidates on or after the date of the presidential primary election in 2024.

(7) **RETENTION OF PETITION.**—The clerk shall preserve in his or her office all papers comprising or connected with a petition for recall for a period of 4 years after they were filed.

(8) OFFENSES RELATING TO PETITIONS.—No person shall impersonate another, purposely write his or her name or residence falsely in the signing of any petition for recall or forge any name thereto, or sign any paper with knowledge that he or she is not a qualified elector of the district. No person shall employ or pay another to accept employment or payment for circulating or witnessing a recall petition.

1. REASON FOR PROPOSAL

Florida statutes do not provide for the recall election of school board members. Twenty-two states allow for the recall of school board members, but Florida does not. <https://news.ballotpedia.org/2021/08/04/22-states-allow-for-the-recall-of-school-board-members/>. However, since 1974 Florida statute section 100.361 has prescribed the procedure to be followed for the recall election of city council members, city mayor and county commissioners.

The above proposal to add recall election of school board members to the Brevard County Charter substantially tracks the language of section 100.361 Florida statutes. Proponent submits that the citizens of Brevard County should have the ability to recall and remove school board members from office. The need for procedure for recall of school board members became painfully clear in August 2021 when three Brevard County school board members voted to require every pre-K-12 student, employee, visitor, vendor, or other person to wear a face mask at all times while indoors on school property.

The school board's face mask requirement was voided only because Governor Ron DeSantis and the Florida Legislature passed a bill in special session in November 2021 which prohibits a district school board from requiring a student to wear a face mask. If Governor DeSantis were not the Governor of Florida, then Brevard County public school students could have had to wear face masks in school indefinitely as students are now ordered to do in states like California and New York. Currently in Florida there is no way to remedy such a situation except by voting-out of office, at the regular four year election cycle of the school board members, the school board members who voted for the face mask mandate. This could take four years because of the staggering of elections for school board members. The above proposal will give the people of Brevard County the ability to relatively quickly remove from office school board members because of their votes on important matters such as requiring students to wear face masks. The above proposal is a needed addition to the Brevard County Charter.

SERVICE OF PROPOSAL

This proposal was sent by e-mail on February 3, 2022 to the members of the Brevard County Charter Review Commission and to: Melissa Brandt at Melissa.Brandt@brevardfl.gov; Jim Liesenfelt at jim.liesenfelt@brevardfl.gov; and to Paul R. Gougelman, attorney for the Brevard County Charter Review Commission.