

Meeting Date
06/23/2022



2021-2022

Charter Review Commission Agenda Report

AGENDA	
Section	
Item No.	Proposal #1

SUBJECT: AMEND THE HOME RULE CHARTER OF BREVARD COUNTY TO MAKE IT EVEN MORE CLEAR THAT A SUPERMAJORITY VOTE OF THE BOARD OF COUNTY COMMISSIONERS WHICH IMPOSES AN AD VALOREM TAX INCREASE WHICH EXCEEDS THE CHARTER CAP AMOUNT DOES NOT BECOME THE BASELINE AMOUNT OF TAXATION IN THE FOLLOWING YEARS.

Petitioner:

Blaise Trettis

Requested Action:

Blaise Trettis, member of the 2021-22 Charter Review Commission, proposes that the following underlined words be added to section 2.9.3.1 (c) and section 2.9.3.1 (d) of the Brevard County Charter.

Summary Explanation & Background:

Add to Section 2.9.3.1 (c) and 2.9.3.1 (d) Limitations on growth in ad valorem tax revenues.

(c) Notwithstanding paragraphs (a) and (b) of this subsection, the Board of County Commissioners may impose an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), if a supermajority of the Board concurs in a finding that such an excess is necessary because of emergency or critical need. The finding shall set forth the ultimate facts upon which it is based, and shall be valid for a single budget year. If a supermajority of the Board of County Commissioners imposes an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), then the next year's calculation of the allowable increase in ad valorem tax revenue permissible under paragraph (a) and (b) shall use the revenues received in the prior year when there was no exceedance of the limitation on growth in ad valorem tax revenue in paragraphs (a) and (b).

In calculating the allowable increase in ad valorem revenues over the ad valorem revenues budgeted for the previous year under paragraphs (a) and (b) of this subsection, the Board of County Commissioners shall exclude from the anticipated revenues ad valorem tax revenues for the previous year which exceeded the limitation on the rate of growth in ad valorem tax revenue of paragraphs (a) and (b) and all revenue changes from the following kinds of property not appearing on the previous year's roll: (1) new construction; (2) additions to or demolitions in whole or in part of existing construction; (3) changes in the value of improvements that have undergone renovation to an extent of not less than 100% increase in assessed value (as measured from the last year of assessment prior to commencement of renovation); and (4) in the case of municipal service taxing units or districts, any properties added since the previous year's roll by reason of boundary changes.

Exhibits Attached: **See Attached Proposal**

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Department: Charter Review Commission

PROPOSAL TO AMEND BREVARD COUNTY CHARTER TO MAKE IT EVEN MORE
CLEAR THAT A SUPERMAJORITY VOTE OF THE BOARD OF
COUNTY COMMISSIONERS WHICH IMPOSES AN AD VALOREM TAX INCREASE
WHICH EXCEEDS THE CHARTER CAP AMOUNT DOES NOT BECOME THE
BASELINE AMOUNT OF TAXATION IN FOLLOWING YEARS.

Blaise Trettis, member of the 2021-22 Brevard County Charter Review Commission, proposes that the following underlined words be added to section 2.9.3.1.(c) and section 2.9.3.1.(d) of the Brevard County Charter:

- (c) Notwithstanding paragraphs (a) and (b) of this subsection, the Board of County Commissioners may impose an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), if a supermajority of the Board concurs in a finding that such an excess is necessary because of emergency or critical need. The finding shall set forth the ultimate facts upon which it is based, and shall be valid for a single budget year. If a supermajority of the Board of County Commissioners imposes an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), then the next year's calculation of the allowable increase in ad valorem tax revenue permissible under paragraph (a) and (b) shall use the revenues received in the prior year when there was no exceedance of the limitation on growth in ad valorem tax revenue in paragraphs (a) and (b).
- (d) In calculating the allowable increase in ad valorem revenues over the ad valorem revenues budgeted for the previous year under paragraphs (a) and (b) of this subsection, the Board of County Commissioners shall exclude from the anticipated revenues ad valorem tax revenues for the previous year which exceeded the limitation on the rate of growth in ad valorem tax revenue of paragraphs (a) and (b) and all revenue changes from the following kinds of property not appearing on the previous year's roll: (1) new construction; (2) additions to or demolitions in whole or in part of existing construction; (3) changes in the value of improvements that have undergone renovation to an extent of not less than 100% increase in assessed value (as measured from the last year of assessment prior to commencement of renovation); and (4) in the case of municipal service taxing units or districts, any properties added since the previous year's roll by reason of boundary changes.

1. ACTION OF BOARD OF COUNTY COMMISSIONERS NECESSITATING PROPOSAL

On July 23, 2019, a supermajority of the Board of County Commissioners (Board) approved the imposition of ad valorem tax increase in the next fiscal year 2019-20 for law enforcement municipal services taxing units which exceeded the rate increase limitation of section 2.9.3.1. (b) of the Brevard County Charter, commonly known as the Charter cap.

In the county's following fiscal year 2020-21, the Board of County Commissioners took the position that the excess ad valorem revenue of 2019-20 established the baseline for purposes of calculating the following year's budget, thereby causing the supermajority critical need/emergency finding of 2019-20 and its excess taxation in excess of the Charter cap to remain in place in perpetuity.

In December 2019, then Clerk of Court Scott Ellis sued the Board of County Commissioners seeking a court order which would prohibit the Board from using the 2019-20 critical need ad valorem tax revenue as the baseline revenue for fiscal year 2020-21. *See* Brevard County Circuit Court case number 05-2019-CA-058736-XXXX-XX.

The Circuit Court did not decide the merits of the case. The Circuit Court dismissed the lawsuit, ruling that Clerk of Court Scott Ellis did not have legal standing to sue the Board. Because of the dismissal on procedural grounds, the merits of the lawsuit was not decided.

2. ORIGIN OF THE LANGUAGE OF PROPOSAL

Though the lawsuit by former Clerk of Court Ellis was eventually dismissed, the Board of County Commissioners, through the County Attorney, argued the merits of the lawsuit in the Circuit Court. The Board argued that the Brevard County Charter does not prohibit the Board from using ad valorem tax revenue which exceeds the Charter cap as the baseline ad valorem revenue for the next fiscal year. The Board argued that for former Clerk of Court Ellis to prevail in the lawsuit, the wording of the Brevard County Charter would need to be amended by Charter amendment to add language to sections 2.9.3.1.(c) and 2.9.3.1.(d). In the lawsuit, the Board advised the Court of the language which the Board argued would be needed to be added to sections 2.9.3.1.(c) and 2.9.3.1.(d) to make it perfectly clear that the ad valorem tax revenue which exceeds the Charter cap amount cannot be used as the baseline ad valorem tax revenue amount for the following year. The Board argued as follows that this language would need to be added to the Charter:

“Lastly, as will be discussed *infra*, the Plaintiff has failed to plead any imminent and probable conduct warranting an injunction, as the Plaintiff has an alternative adequate remedy at law, namely a charter amendment . . . Thus, the Brevard County Charter is clear and precise as to what items shall be excluded from the anticipated revenue changes. Moreover, Section 2.9.3.1(d) of the Brevard County Charter contains no language stating that ad valorem tax revenues for the previous year must be reduced by any increase in revenues received over the Charter Cap as proposed by the

Plaintiff. More importantly, the Brevard County Charter does not state in the event the Charter Cap is exceeded under 2.9.3.1(c), the next year's calculation of the allowable increase shall use the revenues received in the prior year when there was no exceedance of the Charter Cap."

See Board's Motion to Dismiss Plaintiff's Complaint filed February 19, 2020 at pgs. 5, 11.

The proposed amendment by Blaise Trettis to the Brevard County Charter seeks amendment of the Brevard County Charter as suggested by the Board using the language suggested by the Board of County Commissioners.

3. REASON FOR PROPOSAL

On November 4, 2008, the Brevard County Charter was amended by a vote of the people to impose limitation on the annual growth in ad valorem tax revenue. As amended, the Charter caps annual ad valorem tax increase at the lesser of three percent or the percentage change in the Consumer Price Index unless a supermajority of the Board of County Commissioners makes a finding – valid for a single budget year – that an emergency or critical need necessitates exceeding this limitation. In making this 2008 amendment to the Charter, the people of Brevard County intended that the critical need/emergency tax revenue which exceeds the Charter cap is to last for only one budget year and not become the baseline ad valorem tax revenue for following years. The language of the 2008 amended Charter reflects this intent in the following italicized language in section 2.9.3.1.(c):

- (c) Notwithstanding paragraphs (a) and (b) of this subsection, the Board of County Commissioners may impose an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), if a supermajority of the Board concurs in a finding that such an excess is necessary because of emergency or critical need. *The finding shall set forth the ultimate facts upon which it is based, and shall be valid for a single budget year.*

The excess tax revenue imposed by a supermajority of the Board is dependent on the finding of facts of the Board of critical need or emergency which necessitates the excess taxation. By the language of section (c), when the finding of facts of the Board expires at the end of a single budget year, the Board's authority under section (c) to exceed the Charter cap ad valorem revenue expires in the absence of another finding of fact by the Board of critical need or emergency.

On July 23, 2019, a supermajority of the Board of County Commissioners approved the imposition of ad valorem tax increase in the next fiscal year 2019-20 for law enforcement municipal services taxing units which exceeded the rate increase limitation of section 2.9.3.1. (b) of the Brevard County Charter.

Despite the intent of the 2008 Charter cap amendment to limit the excess critical need/emergency taxation to one budget year, in fiscal years 2020-21 and 2021-22, the Board disregarded the intent of the 2008 amendment to the Charter by making the 2019-20 excess critical need/emergency tax revenue the baseline ad valorem tax revenue.

The Board of County Commissioners, in its litigation against former Clerk of Court Scott Ellis, has argued that the Charter must be amended to make it clear that critical need/emergency excess ad valorem tax revenue lasts for only one budget year in the absence of another supermajority vote of the Board to impose ad valorem taxes which exceed the Charter cap. The Board, in the litigation, has stated what language should be added to the Charter to make the Charter perfectly clear that the excess critical need/emergency taxation can only last one budget year. The above proposal by Blaise Trettis to amend sections 2.9.3.1.(c) and 2.9.3.1.(d) accepts the Board's suggestion to amend the Charter and uses the language suggested by the Board to do so.

SERVICE OF PROPOSAL

This proposal was sent by e-mail on January 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.

PROPOSAL TO REPEAL FROM CHARTER THE PANEL OF THREE ATTORNEYS WHO
REVIEW CHARTER AMENDMENT PROPOSALS BY CITIZEN PETITION AND BY
CHARTER REVIEW COMMISSION

Blaise Trettis (proponent), member of the 2021-22 Brevard County Charter Review Commission, proposes the following changes to sections 7.3.2 Amendment by petition; 7.3.2.2; 7.3.2.3; 7.3.2.4; 7.4 CHARTER REVIEW; 7.4.1 Independent review of proposed charter amendments; 7.4.2, in which strike-through of words constitutes the repeal of the words and underlined words are added words.

7.3.2 Amendment by petition

Amendments to this Charter may be proposed by a petition signed by at least four percent (4%) of the electors from each County Commission District, provided that any such amendment shall embrace but one subject and matter directly connected therewith and is not inconsistent with the Florida Constitution, general law, special law approved by vote of the electors, and this Charter. ~~in the manner set forth in subsections 7.3.2.1 through 7.3.2.4 below.~~³ The sponsor of an amendment shall, prior to obtaining signatures, submit the text of the proposed amendment to the Supervisor of Elections, with the proposed ballot summary and the form on which signature will be affixed. The procedures for initiative petitions set forth in Section 5.1.1 of this Charter shall thereafter be followed.

7.3.2.1

~~Each amendment shall embrace but one subject and matter directly connected therewith. The amendment shall not extend to existing budgets, existing debt obligations, existing capital improvement obligations, salaries of non-elected County officers and employees, the collection of taxes or rezoning of less than five per cent (5%) of the total land area of the County.~~

7.3.2.2

~~The sponsor of the measure shall register as a political committee as required by general law, and shall submit a petition setting forth the ballot title, substance and text of the proposed amendment to the Supervisor of Elections. The sponsor must then obtain the signatures on the petition of at least 1% of the electors from each County Commission district and then resubmit the signed petitions to the Supervisor of Elections for verification that the electors signing the petition are qualified voters. When the Supervisor of Elections has verified the signatures, the Supervisor shall report such verification to the Board of County Commissioners.~~

³ The wording of section 7.3.2 presented here is a combination of the amendment wording set forth in County Commission Corrected Resolutions 2000-268 and 2000-269, both of which received referendum approval. The precise language of the two resolutions as approved by the voters has been combined in this form by the editors in an attempt to preserve the actual text as well as the intent and meaning of the text in both approved amendments.

7.3.2.3

~~Once the signatures are verified, the County Commission, at the county's expense, shall empanel a panel of three persons to determine whether the proposed amendment and ballot language embraces one subject only and is consistent with the Florida Constitution, general law and this Charter. The persons serving on the panel shall have demonstrated experience in Florida local government law and shall either be licensed to practice law in the State of Florida or have retired from a Florida law practice or the Florida judiciary within the past five years.~~

7.3.2.4.⁴

~~If at least two members of the panel find that the proposed amendment is consistent with the Florida Constitution, general law and this Charter, then such consistency shall be presumed and the petition shall be returned to the sponsor who must thereafter obtain enough signatures from electors in each county commission district to bring the total number of petition signatures to at least 4% of the qualified electors in each county commission district. The verification procedures for signatures on initiative petitions set forth in Section 5.1.1 of this Charter shall thereafter be followed.~~

~~Since this charter does not provide the Board, or the Petitioner with an avenue to determine whether proposed amendments are consistent with the State Constitution or general law, the proposed amendment will be governed by Section 1.3 and Section 1.6 of this charter, and the proposed amendment will be placed on the ballot for approval or rejection. The sponsor of an amendment shall, prior to obtaining signatures, submit the text of the proposed amendment to the Supervisor of Elections, with the proposed ballot summary and the form on which signature will be affixed. The procedures for initiative petitions set forth in Section 5.1.1 of this Charter shall thereafter be followed. The power to amend this Charter by initiative shall not extend to existing budgets, existing debt obligations, existing capital improvement programs, salaries of non-elected County officers and employees, the collection of taxes, or the rezoning of less than five percent (5%) of the total land area of the County.~~

Section 7.4 Charter Review

Not later than July 1 of the year 1997 and of every sixth year thereafter, the Board of County Commissioners shall appoint a Charter Review Commission to review the Charter of the County. Each Charter Review Commission shall consist of fifteen (15) persons, with not less than two (2) members residing in each Commission district. The Commission shall otherwise be appointed in the manner provided by law for the appointment of charter commissions in counties without charters. The Commission shall be funded by the Board of County Commissioners and shall be known as the "Brevard County Charter Review Commission." It shall, within one (1) year from the date of its first meeting, present, in ballot-ready language, to the Board of County

⁴ The editors have renumbered this subsection from (c), which is the designation given to this paragraph in County Commission Resolution 2000-268, to 7.3.2.4, which is referenced at the end of the first sentence of section 7.3.2 in Corrected Resolution 2000-268. This change corrects an apparent scrivener's error in the text of the original Corrected Resolution 2000-268 in which it appears that sub paragraph (c) should have been numbered as subsection 7.3.2.4.

~~Commissioners~~ Brevard County Supervisor of Elections for placement on the ballot its ~~recommendations~~ proposals for amendment of the Charter in in which each proposal embraces one subject and matter directly connected therewith and is not inconsistent with the Florida Constitution, general law, special law approved by vote of the electorate, and this Charter ~~its recommendation that no amendment is appropriate or shall inform the Supervisor of Elections that no proposals are made by the Charter Review Commission.~~ If amendment is to be ~~recommended~~ proposed, the Charter Commission shall conduct three (3) public hearings, at intervals of not less than ten (10) days, immediately prior to the transmittal of its recommendations to the ~~Board of County Commissioners~~ Supervisor of Elections. The ~~Board of County Commissioners~~ Supervisor of Elections shall schedule a referendum on the proposed charter amendments concurrent with the next general election. Notice of the election shall conform to the requirements set forth in the last paragraph of section 7.3.3. in this Charter. Passage of a proposed charter amendment shall require approval by a majority of the registered electors voting in the special election. The Charter Review Commission may remain in existence until the general election for purposes of conducting and supervising education and information on the proposed amendments.

~~7.4.1 Independent Review of Proposed Charter Amendments~~

~~1. For any proposed amendment sponsored by the County Commission or the Charter Review Commission, the County Commission, at the county's expense, shall empanel a panel of three persons to determine whether the proposed amendment and ballot language embraces one subject only and is consistent with the Florida Constitution, general law and this Charter. The persons serving on the panel shall have demonstrated experience in Florida local government law and shall either be licensed to practice law in the State of Florida or have retired from a Florida law practice or the Florida judiciary within the past five years.~~

~~2. If at least two members of the panel find that the proposed amendment embraces only one subject and is consistent with the Florida Constitution, general law and this Charter, the County Commission shall place the proposed charter amendment on the ballot for consideration at a referendum at a special election held concurrently with the next countywide election or at an earlier special election called for that purpose. Notice of the election shall conform to the requirements set forth in the last paragraph of section 7.3.3. in this Charter. Passage of a proposed charter amendment shall require approval by a majority of the registered electors voting in the special election.~~

~~7.4.21~~ Analysis of fiscal impact of proposed charter amendment

The Charter Review Commission shall obtain an analysis of the fiscal impact of a proposed charter amendment prior to transmittal of the proposed charter amendment to the ~~County Commission~~ Supervisor of Elections. (Newly adopted 11-2-10)

REASON FOR PROPOSAL

The Brevard County Charter provides that proposed changes to the Charter by citizen petition and by the Charter Review Commission shall be reviewed by a combination of three practicing attorneys or by combination of three active or retired attorneys or retired judges to determine whether the proposal embraces one subject and is consistent with the Florida Constitution, general law, and the Charter. The Board of County Commissioners chooses this three attorney panel and pays the lawyers for their legal opinions. If at least two of the three attorneys opine that the proposal is consistent with the Florida Constitution, general law and the Charter, then the County Commission presumably allows the proposal to be put on the ballot for vote by the electorate. Although not explicitly stated in the Charter, there is the inference that the Board of County Commissioners will not put on the ballot a proposal which fails to get at least two attorneys' "approval" of the proposal.

Proponent submits that the three attorney panel is undemocratic and is rife with conflict of interest and subject to abuse of the Charter revision process by the Board of County Commissioners. Of the nineteen charter counties in Florida, Brevard County is the only one which has this undemocratic panel of attorneys. In the other eighteen charter counties, citizen petition proposals and charter review commission proposals go to the ballot after they get enough valid petitions signed or get enough passing votes of the charter review commission without having to be reviewed and approved by a panel of attorneys.

The conflict of interest that the three attorney panel can have is exemplified by the pending proposal before the Charter Review Commission of proposal 1, the "charter cap" language in the Charter. At least four Brevard County Commissioners are opposed to the proposal to change the charter cap language as proven by the Board's on-going lawsuit in Brevard Circuit Court against Clerk of Court Rachel Sadoff. The Board's position in the lawsuit is that a supermajority vote of the Board to exceed the charter cap ad valorem taxation amount results in perpetual taxation that exceeds the charter cap limitation. The proposal before the Charter Review Commission in proposal 1 is aligned completely with the Clerk of Court's position in her lawsuit against the Board.

The Board of County Commissioners has incentive, motive, to prevent the charter cap proposal from getting placed on the ballot – especially considering that the charter cap was approved by 73% of the electorate in 2008 and that its placement on the 2022 general election ballot will likely result in overwhelming passage. However, under the Charter language, it will be the Board of County Commissioners who will choose the three attorneys to opine whether the proposal will get their approval for placement on the ballot. These three lawyers will be paid by the Board and will know what result is wished by their employer, the Board of County Commissioners, in regard to proposal 1, the charter cap proposal. The conflict of interest of the Board and of the three lawyers is blatant. It would be likely that the three lawyers chosen for the three lawyer panel have been paid for legal work for the Board in the past and would like to continue the business arrangement. If a lawyer or lawyers chosen by the Board for the veto panel has not done legal work previously for the Board, then the lawyer or lawyers would likely want to start such a business arrangement with the Board. These financial, business, conflicts of interest hardly make the three attorney panel an "independent review" panel as it is called in the title to section 7.4.1.

The potential for abuse of fairness and public confidence in county government in this unseemly process is not mitigated by the wording of the Charter section 7.4.1.(2) which says that the Board “shall” place the proposal on the ballot if at least two lawyers approve the proposal. There is case law which holds that the word “shall” can be interpreted to mean “may” or be “discretionary” or “permissive”. See, for example, *Walker v. Bentley*, 678 So. 2d 1265 (Fla. 1996); *Rich v. Ryals*, 212 So. 2d 641 (Fla. 1968); *White v. Means*, 280 So. 2d 20 (Fla. 1st DCA 1973); *Lomelo v. Mayo*, 204 So. 2d 550 (Fla. 1st DCA 1967).

The Board of County Commissioners could rely on the above case law in deciding to not place a proposal on the ballot even when two or three lawyers approve the proposal, taking the position that the Board’s decision to place the proposal on the ballot is discretionary to the Board. If one were to doubt that the Board of County Commissioners would actually take the position that the word “shall” means “may” to keep a proposal from being placed on the ballot, then one should remember the great lengths that the Board took in 1999 to keep county commissioner term limits from being placed on the ballot. The history is described in Commission attorney Paul Gougelman’s January 22, 2022 memorandum on county commissioner term limits. In 1999, the Board of County Commissioners rejected a term limit ballot proposal after 16,000 signatures were gathered to place the issue before the voters. A Home Rule Charter Committee had to sue the Board in Circuit Court to force the issue to be placed on the ballot. The electorate approved the term limit proposal by 77%.

The language of section 7.4.1. infers that the Board of County Commissioners will not or cannot place a proposal on the ballot if only one or none of the three lawyers approved the proposal. However direct this inference is, it is only an inference. The section does not say that the Board of County Commissioners cannot place a proposal on the ballot when it gets approval of only one lawyer. Thus, when the Board of County Commissioners agrees with a proposal and wants the proposal on the ballot, the Board of County Commissioners could decide that the inference can be overcome by the Board’s decision to put the proposal on the ballot even though only one or none of three lawyers approves the proposal. Contrarily, if a proposal approved by just one lawyer is a proposal that the Board of County Commissioners does not want to go to the ballot, then the Board of County Commissioners could refuse to place the proposal on the ballot based on the inference in section 7.4.1. The result from all scenarios described above is that the Board of County Commissioners could act as the gatekeeper to the ballot of all proposals, allowing proposals of which it approves to go to the ballot but preventing proposals of which it disapproves from being placed on the ballot. As stated previously, none of the other 18 charter counties in Florida vests such authority in the Board of County Commissioners over Charter Review Commission and citizen petition proposals.

To prevent the Board of County Commissioners from having authority to decide which proposals are to be allowed to be placed on the ballot, proponent submits that the three attorney panel should be repealed in Brevard County’s Charter. Proponent submits that the proposals of the Charter Review Commission and by citizen petition should bypass the Board of County Commissioners entirely, as is done in the Sarasota County¹ Charter, and instead be given to the Brevard County Supervisor of Elections for placement on the ballot

¹ The Sarasota County Charter reads in relevant part at section 7.1: “Changes proposed under subsections (i), (ii), or (iii) shall be submitted to the voters at a special election to be held within sixty

Incorrect legal standard of review is in Charter. At sections 7.3.2.3; 7.3.2.4 and 7.4.1, the incorrect legal standard for permissible powers of charter self-government is included in the Charter. These three sections say that the three attorney panel is to determine if the proposed amendment “is consistent with the Florida Constitution, general law and this Charter.” Florida Constitution Article VIII, section 1(g) states the permissible scope of powers of county 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.”

Proponent submits that the Charter’s incorrect standard of legal review to be applied by the three lawyer panel is good reason to repeal the incorrect sections of the Charter. Proponent submits that there is a meaningful difference between the incorrect legal standard “consistent with” in the Charter and the correct legal standard of “not inconsistent with” set forth in the Constitution. “Consistent with” means showing steady conformity in character; whereas “not inconsistent with” means compatible with another part or not containing incompatible elements. The erroneous legal standard should be deleted from the Charter. It is noteworthy that section 7.3.1. Amendment by the Board of County Commissioners is the only Charter amendment method which states correctly the legal standard of review set forth in Article VIII, section 1(g), Florida Constitution, in that it correctly has the “not inconsistent with” language.

Fallibility of attorneys’ opinions. The Charter language makes the opinions of the three attorneys prone to error because there is no level of confidence or level of certainty or burden of persuasion that must be met by the attorney. If the Charter said that the attorneys’ opinion must be substantiated, predicated, on clear and convincing weight of legal authority, then the attorneys’ opinion could be considered with a good degree of reliability. But the Charter does not contain any degree of certainty that the attorneys must have to reach their opinions. The result is that the attorneys have no legal standard to reach to come to their opinions, which leads to subjective opinion predicated on indefinite legal concepts. For example, it may be not difficult for an attorney to identify Florida statutes which conflict with a Charter amendment proposal. But when a Charter amendment proposal does not conflict with state law but instead is in addition to state statutes, then the legal analysis applied in this scenario is somewhat complex and prone to resulting subjective opinion of the lawyer. The proneness to error of the reviewing lawyer and the free reign in their opinions because of the absence of a standard of certainty in the Charter should result in the repeal of the three attorney panel from the Charter.

Charter Commission has authority to retain additional attorneys, if it chooses, making three attorney panel not needed. Section 7.4 CHARTER REVIEW states, in part,

(60) days after filing of the proposed changes with the Supervisor of Elections, and such changes if approved at the election by the majority vote, shall become a part of this Charter. Changes proposed under subsection (iv) and filed with the Supervisor of Elections shall be submitted to the voters at a referendum election to be held concurrently with the next countywide election, and such changes, if approved at the election by a majority vote, shall become a part of the Charter. (Amended 9/10/2002.)”

that: “The Commission shall be funded by the Board of County Commissioners and shall be known as the ‘Brevard County Charter Review Commission.’” Proponent submits that the above language in the Charter authorizes the Charter Review Commission to hire lawyers in addition to Commission lawyer Paul Gougelman to apply the correct legal analysis to a proposed amendment. This spending authority of the Commission renders obsolete the three attorney panel of lawyers chosen by the Board of County Commissioners. The Commission’s ability to hire additional lawyers negates the conflict of interest and abuse of process that exists in the three attorney panel of lawyers hired and chosen by the Board of County Commissioners. For this reason the three attorney panel in the Charter should be repealed.

SERVICE OF PROPOSAL. This proposal was sent by e-mail by Blaise Trettis on February 25, 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.



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER:

SUBJECT:

PETITIONER CONTACT:

REQUESTED ACTION:

SUMMARY EXPLANATION & BACKGROUND:

Staff Contact:

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Brevard County Charter Amendment - Right to Clean Water

Executive Summary

Brevard County residents and organizations respectfully request members of the Charter Review Commission (CRC) to consider amending the charter to ensure present and future generations are able to protect themselves and their interests from harm. The “Right to Clean Water” proposal creates a local cause of action for equitable (declaratory or injunctive) relief, which may include a “polluter pays” form of restorative relief. As the proposal’s ultimate design will depend on the will of the CRC members and public comments, [Attachment 1](#) is provided as a skeletal framework. [Attachment 2](#) provides the legal basis and argument that the County has the authority to enact this measure and that state preemption language found in Fla. Stat. 403.412 (9)(a) does not apply.

This proposal starts off with the premise: **Brevard County has the power and duty to protect itself and its residents, businesses, visitors and economy from legalized harm.**

Legalized harm is caused by the action or inaction of federal and state governments, be it erratic definitions of health, harm, public interest, various scientific standards or environmental impact considerations or requirements; poor staffing, budgeting or resourcing decisions; substandard design or enforcement of basin management action plans or nutrient load limits; continued permitting of substandard or inappropriately located onsite septic systems; inappropriate use of fertilizers, herbicides; etc. Waters such as the Indian River Lagoon have suffered from and continue to be impacted by substandard but legal government harm. Missing from the current system is **the ability to effectively challenge such continued or planned harm**. We believe it is the people’s inherent right to question and stop such practices to better protect themselves, their families, their businesses, and their communities.

The problem isn’t a lack of strong environmental laws in Florida, nor is it due to a string of illegal pollution. The problem *set* is systemic and more like death by 1,000 papercuts, which is comprehensively difficult and expensive to remedy for large water bodies such as the Indian River Lagoon, much less to fully restore. To make sense of our hundreds-of-millions of taxpayer dollar investment, we must be able to establish a stopgap – a “do no (more) harm” mandate, and allow individuals, businesses and nonprofits to engage in the litigation to arrive at a better system. Courts will rule in equity, considering what’s possible, what harm is preventable, and declare certain actions or policies of inaction to be in violation of the Right to Clean Water. Courts may award declaratory or injunctive relief, to either prevent harm or, if sufficient evidence is presented, to restore waters to their condition just before the harm occurred. Outside of attorney’s fees and court costs (which can be awarded to prevailing plaintiffs), any money that changes hands will be applied (earmarked) directly to the restoration of waters. Courts have the power to ensure government agencies do what the law says they should do.

A no-cost, apolitical solution to restore ecological balance for all to enjoy is a win-win opportunity. The only opponents to such a measure will be those who benefit and wish to continue to benefit from exacting harm on Brevard’s shared natural resources under the current system, and their banner will likely point to some property rights fear. This proposal only strikes at legalized “rights” to pollute or otherwise irresponsibly degrade waters, infringing on the rights and substantial interests of everyone else. This proposal provides Brevard County a way to pivot back to good while balancing all competing interests through courts of equity, justice and fairness.

Please consider this proposal and the hope it may bring those living, working and playing in Brevard County. It presents a chance for our leaders to show all other communities and states that it’s possible to have a thriving economy AND a thriving ecology, balanced for present and future generations, due to a small systemic tweak to establish and ensure a Right to Clean Water.

With esteem and anticipation,

(Please see a separate page for the current list of signatories.)

Recommended insertion in Article 5 of the Brevard County Charter, "Powers Reserved to the People,"

Section 5.7 - Right to Clean Water

5.7.1. To protect substantial individual, group, economic, and environmental interests, residents that live in and governmental and nongovernmental organizations that operate in Brevard County have the right to clean water against any form of governmental harm and to seek enforcement and equitable relief from a violation of this right in a court of competent jurisdiction. Attorney's fees and costs of litigation shall be awarded to prevailing plaintiffs.

5.7.2. Definitions

Clean water means waters that are free of further governmental harm. The intent of this Section is to achieve waters that are safe for fish and native wildlife and human recreation and, for public drinking water sources, for human consumption; that have sufficient habitats, water filtering, and nutrient cycling to support thriving populations and diverse communities of native fish and wildlife; that have natural flow regimes, to include recharging groundwater, as possible; and that have other intact ecological processes and functions that support healthy aquatic ecosystems, as pertinent to the waters at issue.

Governmental harm means any law, regulation, rule, policy, or permit that, by action or inaction, negatively affects the health or safety of humans, fish or wildlife by either the pollution or degradation of waters. Water pollution includes the introduction of pathogens, contaminants, or toxins into waters. Degradation of waters includes, but is not limited to, chemical, biological or physical stressors that contribute to unnatural water levels or nutrient loads; that remove, fragment or degrade habitat; that disturb vegetation or soil near shorelines; that introduce exotic or invasive species; that obstruct or divert natural flow; and that overexploit native species.

Waters includes the aquatic ecosystems of all naturally occurring water bodies in the jurisdiction of Brevard County whether fresh, brackish, saline, tidal, surface, ground, or underground, and, for the purpose of this Section, includes all natural tributaries and artificial conveyances which impact these water bodies, whether in or outside the jurisdiction of Brevard County.

5.7.3. Harm prohibited. It shall be unlawful and a violation of this Section for any governmental entity to harm or threaten to harm waters of Brevard County by action or inaction.

5.7.4. Authority. The right to clean water is created pursuant to the Florida Constitution, Article II, Section 7(a), and general laws found in Florida Statutes Chapters 120, 376, 403, and elsewhere, which allow for the questioning of agency decisions and which direct the abatement of water pollution; the conservation and protection of waters; the liability of responsible parties to fund costs of removal, containment, and abatement of pollution and, when feasible, the restoration of damaged waters to their pre-damaged condition; that responsible parties bear the costs and not the public; and the ability for any person, natural or corporate, or governmental agency or authority to enforce against and remedy violations of substantial rights to clean water. Brevard County finds this right, enforceable through civil action for equitable relief, to provide a responsible and fair balance of competing rights and interests to shared waters.

5.7.5. Severability and conflicts. This Section should be interpreted, to the greatest extent possible, to be in harmony with any superior state or federal law governing the same rights and conduct. To the extent any provision of this Section of the Charter impermissibly conflicts with any superior state or federal law governing the same conduct, such provision shall be severable and all other provisions shall remain fully enforceable.

5.7.6. Effective date. This Section shall become effective upon passage, which is the date certified by the Supervisor of Elections, and shall not require further enabling legislation by the Brevard County Board of County Commissioners.

Does Brevard County have the legal authority to amend its charter to establish and enforce the right to clean water?

Brevard County has “all powers of self-government not inconsistent with general law” “in the common interest of the people of the county,” to include “all implied powers necessary or incident to carrying out such powers enumerated.”

- Florida Constitution, Article VIII, Section 1(g) - “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.”
- Florida Statutes Section 125.01 “Powers and duties.— (1) The legislative and governing body of a county shall have the power to carry on county government. **To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to...**(j) Establish and administer programs of...conservation, flood and beach erosion control, air pollution control, and navigation and drainage and cooperate with governmental agencies and private enterprises in the development and operation of such programs. (k)1. Provide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, and conservation programs....(w) **Perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law...**(3)(a) **The enumeration of powers herein may not be deemed exclusive or restrictive, but is deemed to incorporate all implied powers necessary or incident to carrying out such powers enumerated...**”

Is the right to clean water inconsistent or otherwise conflict with general law? No. In fact, it directly supports general law which contains a comprehensive scheme of water conservation and protection, as guided by constitutionally-established policy and clear statutory standards with robust amounts of legislative intent and guidance. State agencies may have the regulatory authority to control pollution and degradation of waters in accordance with legislation, but it is a legislative and chartered government function to determine standards of and enforcement measures against harm.

- Florida Constitution: Article II, Section 7(a) - “**It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.**”
- In Chapter 376:
 - “The discharge of pollutants into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state in the manner defined by ss. 376.011-376.21 is prohibited.”
 - “Any person discharging pollutants as prohibited by s. 376.041 shall immediately undertake to contain, remove, and abate the discharge to the department’s satisfaction...”
 - “Because it is the intent of ss. 376.011-376.21 to provide the means for rapid and effective cleanup and to minimize cleanup costs and damages, any responsible party who permits or suffers a prohibited discharge or other polluting condition to take place within state boundaries shall be liable to the fund for all costs of removal, containment, and abatement of a prohibited discharge, unless the responsible party is entitled to a limitation or defense under this section...”

- “The Legislature finds that extensive damage to the state’s natural resources is the likely result of a pollutant discharge and that it is essential that the state adequately assess and recover the cost of such damage from responsible parties. It is the state’s goal to recover the costs of restoration from the responsible parties and to restore damaged natural resources to their predischARGE condition. In many instances, however, restoration is not technically feasible. In such instances, the state has the responsibility to its citizens to recover the cost of all damage to natural resources. To ensure that the public does not bear a substantial loss as a result of the destruction of natural resources, the procedures set out in this section shall be used to assess the cost of damage to such resources. Natural resources include coastal waters, wetlands, estuaries, tidal flats, beaches, lands adjoining the seacoasts of the state, and all living things except human beings.”

- In Chapter 403:

- “The department [of Environmental Protection] shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to...[a]pprove and promulgate current and long-range plans developed to provide for air and water quality control and pollution abatement” and to “[e]xercise general supervision of the administration and enforcement of the laws, rules, and regulations pertaining to air and water pollution.”

- “The department shall adopt rules to reasonably limit, reduce, and eliminate domestic wastewater collection and transmission system pipe leakages and inflow and infiltration.” Also, it is to “[i]ssue such orders as are necessary to effectuate the control of air and water pollution and enforce the same by all appropriate administrative and judicial proceedings...Adopt a comprehensive program for the prevention, control, and abatement of pollution of the air and waters of the state, and from time to time review and modify such program as necessary....Develop a comprehensive program for the prevention, abatement, and control of the pollution of the waters of the state...Establish and administer a program for the restoration and preservation of bodies of water within the state...Perform any other act necessary to control and prohibit air and water pollution, and to delegate any of its responsibilities, authority, and powers, other than rulemaking powers, to any state agency now or hereinafter established...The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.”

- “The pollution of the air and waters of this state constitutes a menace to public health and welfare; creates public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of air and water.

- It is declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality thereof for public water supplies, for the propagation of wildlife and fish and other aquatic life, and for domestic, agricultural, industrial, recreational, and other beneficial uses and to provide that no wastes be discharged into any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water.

- It is declared to be the public policy of this state and the purpose of this act to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. In accordance with the public policy established herein, the Legislature further declares that the citizens of this state should be afforded reasonable protection from the dangers inherent in the release of toxic or otherwise hazardous vapors, gases, or highly volatile liquids into the environment.

- It is declared that local and regional air and water pollution control programs are to be supported to the extent practicable as essential instruments to provide for a coordinated statewide program of air and water pollution prevention, abatement, and control for the securing and maintenance of appropriate levels of air and water quality.

- It is hereby declared that the prevention, abatement, and control of the pollution of the air and waters of this state are affected with a public interest, and the provisions of this act are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

- The Legislature finds and declares that control, regulation, and abatement of the activities which are causing or may cause pollution of the air or water resources in the state and which are or may be detrimental to human, animal, aquatic, or plant life, or to property, or unreasonably interfere with the comfortable enjoyment of life or

property be increased to ensure conservation of natural resources; to ensure a continued safe environment; to ensure purity of air and water; to ensure domestic water supplies; to ensure protection and preservation of the public health, safety, welfare, and economic well-being; to ensure and provide for recreational and wildlife needs as the population increases and the economy expands; and to ensure a continuing growth of the economy and industrial development.

- The Legislature further finds and declares that the public health, welfare, and safety may be affected by disease-carrying vectors and pests. The department shall assist all governmental units charged with the control of such vectors and pests. Furthermore, in reviewing applications for permits, the department shall consider the total well-being of the public and shall not consider solely the ambient pollution standards when exercising its powers, if there may be danger of a public health hazard.

- It is the policy of the state to ensure that the existing and potential drinking water resources of the state remain free from harmful quantities of contaminants. The department, as the state water quality protection agency, shall compile, correlate, and disseminate available information on any contaminant which endangers or may endanger existing or potential drinking water resources. It shall also coordinate its regulatory program with the regulatory programs of other agencies to assure adequate protection of the drinking water resources of the state..."

- (This is a non-exhaustive list of legislative intent and state policy regarding the matter of harm caused by the pollution and degradation of Florida waters.)

Does general law restrict local governments from creating a cause of action? No. Though still novel, there is no constitutional or statutory language or judicial doctrine that restricts chartered counties from exercising their powers of self-government to create a more stringent standard against certain harm or a civil action to enforce it.

- [Orange County's Charter Amendment for the Right to Clean Water of 2020](#) for example.
- The existence of frustratingly narrow citizen causes of action (such as in Fla. Stat. 403.412) does not equate to a restriction against local governments from creating their own (more effective) causes of action.

Does general law preempt a local enactment of the right to clean water? No. Brevard County's right to clean water is able to "coexist" with the state's regulatory scheme of water protection and conservation without frustrating the purpose of relevant general laws.

- <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/>
- While the state cause of action in Fla. Stat. 403.412 enables suits against violations of "any laws, rules, or regulations for the protection of the air, water, and other natural resources of the state," this proposal looks to the right to protect substantial interests from harms caused by substandard laws, regulations, rules, policies and permits. Two distinct matters at issue, both aimed to protect and conserve waters in accordance with general law..
- The only point of foreseeable "frustration" will likely be within governmental entities that may be liable for harming Brevard County waters. I.e., they may not be thrilled about having to better comply with general law.

Does the "rights of nature preemption" pertain? No. While it was designed and enacted in direct response to Orange County's Charter Amendment, it does not apply here.

- The "state preemption" at issue is found in [Fla. Stat. 403.412 \(9\)\(a\)](#) which reads: "*A local government regulation, ordinance, code, rule, comprehensive plan, charter, or any other provision of law may not recognize or grant any legal rights to a plant, an animal, a body of water, or any other part of the natural environment that is not a person or political subdivision as defined in s. 1.01(8) or grant such person or political subdivision any specific rights relating to the natural environment not otherwise authorized in general law or specifically granted in the State Constitution.*"

- As to the pertinent part (a person's right TO clean water), by plain meaning, persons and political subdivisions already have the preexisting and enforceable, substantive, "specific rights" related to the natural environment to expect:
 - The performance of government duties to specifically serve the public health and safety where the environment is concerned (see Fla. Stat. 381.006).
 - The performance of government duties to serve the general welfare and other interests of the people where the environment is concerned (see Fla. Stat. Title XXVIII and Chapter 403).
- Specific rights relating to the natural environment have been specifically granted in the State Constitution as noted above (see Florida Constitution Art II, Section 7a); the right to expect that the whole of state government would implement, enforce and comply with its clear mandates:
 - "It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources."
- Specific rights relating to the natural environment also exist in Fla. Stat. 403.412, the right to file suit against "any person, natural or corporate, or governmental agency or authority" that violates "any laws, rules, or regulations for the protection of the air, water, and other natural resources of the state." See also Fla. Stat. 120.56 which is often used in environmental litigation ("Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority."). [See also Florida Wildlife Federation v. STATE, ETC. 390 So. 2d 64 \(1980\):](#)
 - **"We hold that by enacting section 403.412 the legislature created a new cause of action, giving the citizens of Florida new substantive rights** not previously possessed. This statute sets out an entirely new cause of action. By providing that the manner in which a potential plaintiff is affected must be set out, the statute ensures that the minimum requirements of standing-injury and interest in redress-will be met. As a new cause of action, the statute is substantive law. Substantive law has been defined as "that part of the law which creates, defines, and regulates rights, or that part of the law which courts are established to administer." State v. Garcia, 229 So. 2d 236, 238 (Fla. 1969). **By the enactment of section 403.412(2)(a) the citizens of Florida have been given the capacity to protect their rights to a clean environment-a right not previously afforded them directly."**
- As can be observed, the word, "right," can have multiple meanings depending on context. It is unclear which context was intended in this subsection, whether the "specific right" was to be substantive or procedural, whole or derivative, fundamental, positive or negative. Surely, it cannot be construed to mean all "specific rights relating to the natural environment," as it would have catastrophic effects on Brevard County's home rule authority to enact any measure pertaining to the natural environment (which, again, is vague enough to include anything that might impact anything not human-made). The Florida Supreme Court has said, "a statutory provision will not be construed in such a way that it renders meaningless or absurd any other statutory provision," citing Amente v. Newman, 653 So.2d 1030, 1032 (Fla.1995) ("if possible, the courts should avoid a statutory interpretation which leads to an absurd result."). So, if the absurdity is accounted for, what "specific rights relating to the natural environment" remain?
- The right to clean water is a measure of self-defense and protection against government harm. It, too, would be an absurd result to construe the preemption to restrict local government's abilities and home rule powers to protect the substantial interests of its residents and businesses. As such an absurdity is unfortunately a current reality in Florida and yet to be fully challenged and resolved in the courts, if the CRC prefers to name this proposal "the right against government harm," "civil action against government harm," or "the ability of the people to protect themselves," there are work-arounds.

Is the “rights of nature preemption” constitutional? Until it is challenged in court and determined otherwise, it is presumed to be constitutional. There are, however, multiple facial and as-applied problems that will likely render the preemption unconstitutional and eventually severed and removed from the statute.

- Florida’s Vagueness Doctrine. What is a right? What makes a right specific versus general? What relates and does not relate to the natural environment? As noted above, it is unclear what this apparent prohibition applies to, which is a problem.
- “A statute or ordinance is void for vagueness when, because of its imprecision, it fails to give adequate notice of what conduct is prohibited. Thus, it invites arbitrary and discriminatory enforcement. Art. I, § 9, Fla. Const.; *Southeastern Fisheries*. As the United States Supreme Court has noted: ‘Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute “abut[s] upon sensitive areas of basic First Amendment freedoms,” it “operates to inhibit the exercise of [those] freedoms.” Uncertain meanings inevitably lead citizens to “steer far wider of the unlawful zone” . . . than if the boundaries of the forbidden areas were clearly marked.’” *Wyche v. State*, 619 So. 2d 231 (1993).
- Here, it is unknown and inconceivable how or why this preemption solves a local inconsistency with the state constitution or state statute, or otherwise serves the public interest pursuant to state police powers to protect public health, safety and welfare. At issue is the local implementation of rights enforcement, outside of “regulatory” pollution control functions or processes, despite both pertaining to clean water. To carry through the state’s presumed claim to “all things natural or environmental,” it again meets the absurd assertion that people do not have rights to protect themselves, their families, their homes or their community from government harm.
- An excerpt from an article published in the Florida Bar Journal, linked above, relates: “Cases in which the courts have found express state preemption are rare. Taxation is one of the areas in which there has been an explicit finding of express preemption. Based on the constitutional protections afforded local governments, any ambiguity on the issue of express preemption should be resolved in favor of the local government. Such a presumption is consistent with the voters’ intent to provide broad home rule powers to cities and charter counties so that they may protect the welfare of their citizens. Accordingly, Florida courts have usually bowed to the voters’ intent that local governments should be able to act barring a clear directive by the state not to allow the action.” Again, the only preemption that would bar Brevard County from amending its charter to provide for the creation and enforcement of the right to clean water, whether the right is granted to persons, political subdivisions, waters or other natural elements or systems – would prohibit the right to not be harmed, and would be unconscionable. All things considered, the preemption should be challenged and removed from Florida law.

Recommended insertion in Article 5 of the Brevard County Charter, "Powers Reserved to the People,"

Section 5.7 - Right to Clean Water

5.7.1. ~~Harm prohibited.~~ It shall be unlawful and a violation of this Section for any state executive governmental entity to harm or threaten to harm waters of Brevard County by action or inaction. To protect substantial individual, group, economic, and environmental interests in clean water, residents who live in and governmental and nongovernmental organizations that operate in Brevard County have the right to clean water ~~against any form of governmental harm~~ and to seek ~~enforcement and~~ equitable relief from a violation of this right in a court of competent jurisdiction. Attorney's fees and costs of litigation ~~shall~~ may be awarded to prevailing plaintiffs.

5.7.2. Definitions

Clean water means waters that are free of further governmental harm. The intent of this Section is to achieve waters that are safe for fish and native wildlife and human recreation and, for public drinking water sources, for human consumption; that have sufficient habitats, water filtering, and nutrient cycling to support thriving populations and diverse communities of native fish and wildlife; that have natural flow regimes, to include recharging groundwater, as possible; and that have other intact ecological processes and functions that support healthy aquatic ecosystems, as pertinent to the waters at issue.

Governmental harm means any law, regulation, rule, policy, order, or permit that, by action or inaction of the State of Florida or its executive agencies, negatively affects the health or safety of humans, fish or wildlife by ~~either~~ the pollution or degradation of waters, in breach of their duties under constitutional or general law. Water pollution includes the introduction of pathogens, contaminants, or toxins into waters. Degradation of waters includes, but is not limited to, chemical, biological or physical stressors that contribute to unnatural water levels or nutrient loads; that remove, fragment or degrade habitat; that disturb vegetation or soil near shorelines; that introduce exotic or invasive species; that obstruct or divert natural flow; and that overexploit native species.

Waters includes the aquatic ecosystems of all naturally occurring water bodies in the jurisdiction of Brevard County whether fresh, brackish, saline, tidal, surface, ground, or underground, and, for the purpose of this Section, includes all natural tributaries and artificial conveyances which impact these water bodies, whether in or outside the jurisdiction of Brevard County.

5.7.3. ~~(pasted to 5.7.1)~~

5.7.4. ~~Authority.~~ The right to clean water is created pursuant to the Florida Constitution, Article II, Section 7(a), and general laws found in Florida Statutes Chapters 120, 376, 403, and elsewhere, which allow for the questioning of agency decisions and which direct the abatement of water pollution; the conservation and protection of waters; the liability of responsible parties to fund costs of removal, containment, and abatement of pollution and, when feasible, the restoration of damaged waters to their pre-damaged condition; that responsible parties bear the costs and not the public; and the ability for any person, natural or corporate, or governmental agency or authority to enforce against and remedy violations of substantial rights to clean water. ~~Brevard County finds this right, enforceable through civil action for equitable relief, to provide a responsible and fair balance of competing rights and interests to shared waters.~~

5.7.5. ~~Severability and conflicts.~~ This Section should be interpreted, to the greatest extent possible, to be in harmony with any superior state or federal law governing the same rights and conduct. ~~To the extent any provision of this Section of the Charter impermissibly conflicts with any superior state or federal law governing the same conduct, such provision shall be severable and all other provisions shall remain fully enforceable.~~

5.7.6. ~~Effective date.~~ This Section shall become effective upon passage, which is the date certified by the Supervisor of Elections, and shall not require further enabling legislation by the Brevard County Board of County Commissioners.



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER:

SUBJECT:

PETITIONER CONTACT:

REQUESTED ACTION:

SUMMARY EXPLANATION & BACKGROUND:

Staff Contact: Melissa Brandt
Telephone Number: (321) 301-4438
Email Address: Melissa.Brandt@brevardfl.gov



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

SUMMARY EXPLANATION & BACKGROUND CONTINUED:

**PROPOSAL TO REPEAL ARTICLE 8. SCHOOL BOARD OF BREVARD COUNTY
AND SECTION 8.1. ELECTION OF SCHOOL BOARD MEMBERS**

Blaise Trettis (proponent), member of the 2021-22 Brevard County Charter Review Commission proposes the repeal of ARTICLE 8. SCHOOL BOARD OF BREVARD COUNTY and repeal of SECTION 8.1. ELECTION OF SCHOOL BOARD MEMBERS as indicated below by the stricken words:

**ARTICLE 8
SCHOOL BOARD OF BREVARD COUNTY**

SECTION 8.1. ELECTION OF SCHOOL BOARD MEMBERS

~~Members of the School Board of Brevard County elected after January 1, 1999, shall be elected on a single-member representation basis as follows: The school district shall be divided into school board residence areas, one for each seat on the school board, the areas together covering the entire school district and being as nearly equal in population as is practicable, as provided by general law. Each school board member shall reside in one residential area at the time of qualifying for office and shall continue to reside in the area for which the member was elected throughout the term of office as a qualification to hold the office. School board members shall be nominated and elected only by the qualified electors who reside in the same residential area as the member. All members shall be elected for four-year terms, staggered. This provision shall not affect the members of the school board who are in office on January 1, 1999, who shall serve the remainder of their terms of office as if this provision had not been adopted. (Amd. 11-3-98)~~

1. REASON FOR PROPOSAL

Article 8. School Board of Brevard County and section 8.1. Election of School Board Members became part of the Brevard County Charter as a result of the vote of the electorate at the 1998 general election.

The question on the 1998 ballot and the vote result was as follows¹:

**PROPOSED CHARTER AMENDMENT NO. 4
SINGLE-MEMBER ELECTION OF SCHOOL BOARD MEMBERS**

Shall the Brevard County Charter be amended to provide that the school board members of Brevard County shall be elected to office from single-member residence areas by electors residing in each of those areas only?

YES
NO

County Charter Amendment 4 - Single-Member Election of School Board Members

Yes	80,304	58.51%
No	56,935	41.49%

¹ From email correspondence from Supervisor of Elections from March 15, 2022.

Proponent submits that the 1998 Article 8 amendment to the Charter was inconsistent with the Florida Constitution and general law and was consequentially legally invalid from its approval to today. Proponent submits that this invalid 1998 Charter amendment needs to be repealed so that school board elections in Brevard County will be conducted in accordance with section 1001.361 Florida Statute (2021) in which each qualified elector (i.e. registered voter) “shall be entitled to vote for one candidate from each district school board member residence area. The candidate from each district school board member residence area who receives the highest number of votes in the general election shall be elected to the district school board.” See s. 1001.361 Fla. Stat. (2021).

The 1998 Article 8 amendment to the Brevard County Charter was done contrary to Florida statutes. In 1998, section 230.10 Fla. Stat. (1998) provided that, “The election of members of the school board shall be by vote of the qualified electors of the entire district.” A school district is comprised of the entire county. See s. 230.061(1) Fla. Stat. (1998). Pursuant to Florida statutes, the school district (i.e. the entire county) can be divided into five single-member school board election residence areas if: 1) the school board adopts a formal resolution directing an election to place the proposition on the ballot or; 2) the electors of the school district petition to have the proposition placed on the ballot by getting not less than ten percent of the qualified electors to sign petitions for elections from single-member representation residence areas in which only electors of the residence area can vote for the school board candidates who reside in their residence area. See s. 230.105(3) Fla. Stat. (1998).

Florida statutes have never authorized Charter counties to create single-member school board elections by residence area by amendment of the county Charter. The two methods delineated above for creation of single-member school board election by residence area are the only methods authorized by Florida statutes.

The District School Boards statutes were re-numbered in an overhaul of the Florida statutes in the year 2002 when K-20 Governance was created in Chapter 1001 Florida statutes. See Ch. 2002-387, Laws of Fla. Although some technical language was added in this 2002 overhaul of K-20 Governance, the statutes were not substantively changed. The statute sections today which are substantively the same as the 1998 sections aforementioned are at s. 1001.34 Fla. Stat. (2021), s. 1001.36 Fla. Stat. (2021), s. 1001.361 Fla. Stat. (2021), s. 1001.362 Fla. Stat. (2021).

The 1998 Article 8 School Board of Brevard County amendment to the Charter was done contrary to Article VIII, section 1 (g) Florida Constitution, which reads in part: “(g) 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 1998 amendment to the Brevard Charter was also done contrary to s. 125.01 Fla. Stat. which provides that county government shall have the power to carry on county government to the extent not inconsistent with general or special law.

2. The Opinion of Brevard County Charter Review Commission Attorney Paul Gougelman.

Commission attorney Paul Gougelman, in his March 13, 2022 memorandum to the commission, has opined that Article 8 of the Brevard County Charter is not consistent with the Florida Constitution or general law. Attorney Gougelman’s opinion at paragraphs 5 and 6 at page 2, says:

“5) Per Ms. Schmitt: Article 8 of the Charter provides for school board members to be elected from single member districts. Is Article 8 legal? What can the County do and not do with regard to school board? ANSWER: More likely than not, were this issue submitted to a court of law, the court would find that the inclusion in the County Charter of language providing for the election of school board members from single-member districts is not consistent with the Florida Constitution or general law. See Analysis, Section II.D. and III., below.

6) Per Mr. Trettis: What is the effect of a local bill presented by State Rep. Fine regarding providing for single member school board electoral districts? ANSWER: The legislation did not pass the Florida Legislature. As a result, the Charter’s Article 8 providing for single-member School Board district elections appears inconsistent general law. See Analysis, Section II.D., below.”

3. Preemption by the Legislature of the Creation of Single-Member School Board Elections by Residence Area.

Proponent submits that the Florida Legislature has preempted Charter counties from creating single-member school board elections by residence area in the county Charter because the legislature’s statute specifically delineates the two ways in which single member school board elections by residence area can be created. See s. 230.105(3) Fla. Stat. (1998); s. 1001.362(3) Fla. Stat. (2021). Proponent submits that the legislature’s specificity in its single member school board election scheme and the legislature’s pervasiveness in this specific subject matter of the creation of single-member school board election by residence area is compelling evidence of the legislature’s intent to preempt from the counties the authority to create single-member school board elections by residence area and there are strong public policy reasons to find that the creation of single-member school board elections by residence area has been preempted by the legislature. See *Tallahassee Memorial Regional Medical Center v. Tallahassee Medical Center, Inc.* 681 So. 2d 826, 831 (Fla 1st DCA 1996), accord, *D’Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017). The public policy which is advanced by legislative preemption is the statewide uniformity that results from preemption. For example, s. 1001.362(3) Fla. Stat. (2021) requires that only a majority of a county’s electorate is needed to vote to create single-member school board elections by residence area. Conversely, a county Charter could impose the requirement that 60% of the electorate must vote “yes” to create single-member school board elections by residence area – just as amendments to the Florida Constitution must attain 60% “yes” vote to pass. See Article XI, section 5 (e) Florida Constitution.

Judicial rules of statutory rules of construction support the argument that the legislature has preempted counties from creating, by charter amendment, single-member school board elections by residence area. It is a general principle of statutory construction that the mention of one thing implies the exclusion of another. The Latin phrase for this statutory rule of construction is *expressio unius est exclusio alterius*. See *Moonlit Waters Apartments, Inc. v. Cauley*, 666 So. 2d 898 (Fla. 1996); *Thayer v. State*, 335 So. 2d 815 (1976); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341 (Fla. 1952). Where a statute enumerates the things on which it is to operate, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned. *Thayer v. State*, *supra*. In other words, when a statute expressly describes a particular situation in which something should apply, an inference must be drawn that what is not included by specific reference was intended to be excluded. *Gay v. Singletary*, 700 So. 2d 1220 (Fla. 1997).

Applying the above rule of statutory construction to s. 1001.362(3) Fla. Stat. (2021), proponent submits that the legislature intended to exclude Charter amendment as a means to create single-member school board elections by residence area as demonstrated by the legislature's specific enumeration in s. 1001.362(3) that resolution of the school board and citizen petition followed by majority vote of the electorate of the entire county are the two exclusive methods for creation of single-member school board election by residence area.

There is language in s. 1001.361 Fla. Stat. (2021) which arguably expressly preempts a county's authority to create single-member school board elections by residence area: "1001.361 **Election of board by districtwide vote.** Notwithstanding any provision of local law or any county charter (emphasis added), the election of members of the district school board shall be by vote of the qualified electors of the entire district in a nonpartisan election as provided in chapter 105."

Proponent submits that in the above language the legislature explicitly prevents county Charters from changing districtwide school board elections to single member elections by residence area as was done in the 1998 amendment to the Brevard County Charter in Article 8 of the Charter.

4. School Board Election Results are Subject to Successful Legal Challenge in Brevard County.

Proponent submits that section 8.1. of the Brevard County Charter makes school board election results subject to successful legal challenge in Brevard County. A school board candidate who loses election for school board, or any Brevard County registered voter, can file a well-founded lawsuit in Circuit Court challenging the winning candidate's lawful authority to assume office of school board on the grounds that the winning candidate was not elected by the electors of the entire district (i.e. the entire county). See s. 1001.361 Fla. Stat. (2021), s. 1001.30 Fla. Stat. (2021) "Each county shall constitute a school district and shall be known as the school district of _____ County, Florida." The losing candidate's lawsuit or the registered voter's lawsuit, likely a petition for writ of quo warranto, will argue that Article 8.1. of the Brevard County Charter which purportedly creates single-member school board elections by residence area, was unlawfully created in 1998; that it is inconsistent with Article VIII, section 1 (g) of the Florida Constitution and is inconsistent with s. 1001.362 (3) Fla. Stat. (2021). Proponent submits that the losing candidate, or registered voter, will likely prevail in their lawsuit; that the Circuit Court will rule that the winning candidate was not elected validly by law because he or she was not elected by the electorate of the entire school district, i.e., the entire county. Proponent submits that a new, district wide (i.e. countywide) election may be ordered by the Circuit Court at significant cost to the taxpayers of Brevard County. Proponent submits that this bad outcome should be avoided in future years by the repeal of Article 8 and Article 8, section 8.1. of the Brevard County Charter.

5. Argument for Districtwide (i.e., county-wide) Election of School Board Members

In addition to the legal argument above for repeal of Article 8 of the Charter, proponent submits that the electors of Brevard County should have the opportunity to re-visit the 1998 vote to create single-member school board elections by residence area. This is because of the nationwide focus on the importance of school boards in the modern era of face mask mandates by school boards like that of the Brevard School Board, the teaching of critical race theory in school, and transgender policy of the Brevard School Board which, from kindergarten through 12th grade: 1) permits boys to dress as girls; 2) requires all school employees to call

“transgender” boys pronouns “she, her, hers” and “transgender” girls to be called “he, him, his”; 3) requires all school employees to call K-12 students by the name that they want to be called. For example, 7 year old Johnathan must be called Rebecca if the child says so; 4) requires schools to issue identification badges which use this false name of the child; 5) forces schools to allow boys to use the girls’ toilets, girls’ locker rooms, and girls’ shower; 6) forces schools to allow girls to use the boys’ toilets, boys’ locker rooms, and boys’ showers; 7) requires all school employees to not inform the students’ parents or guardian that the student, while at school, assumes the identity, mannerism, dress, pronouns, of the opposite sex. This part of the Brevard Public School transgender policy violates the Parental Rights in Education Act passed by the 2022 Florida Legislature; 8) provide website information to students to help them to decide to “transition” to the opposite sex.

With the above policy decisions made by school boards, including the Brevard County School Board, proponent submits that the electors of Brevard County are likely to vote to repeal Article 8 of the Charter so that the electors can again vote in every school board residence area race to vote-out of office the school board members who have adopted the policies described above.

Repeal of Article 8 is also supported by s. 1001.363 Fla. Stat. (2021) which says, “Each district school board of each district shall represent the entire district. Each member of the district school board shall serve as the representative of the entire district, rather than as the representative of a district school board member residence area.” When the electors of Brevard County are informed of this districtwide representation required by Florida law, the electors are likely to vote for the repeal of Article 8.

Service of Proposal.

This proposal was sent by e-mail delivery on March 23, 2022, to the members of the 2021-22 Brevard County Charter Review Commission; commission attorney Paul R. Gougelman; Brevard County government employees Melissa Brandt and Jim Liesenfelt.



These guidelines were established to ensure the safety of every student is met, including our students who identify as or are perceived to be lesbian, gay, bisexual, transgender, or questioning (LGBTQ). We believe through these guidelines we can serve every student with excellence as the standard.

Gender Expression

External appearance of one's gender identity, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.


Gender Identity

One's innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.


Sexual Orientation

One's emotional, romantic, or sexual attraction to others.

LGBTQ+ Student/School Support

 Lisa Elam, Content Specialist,
Bullying and Harassment
Prevention

 Elam.lisa@brevardschools.org

 (321) 633-1000 Ext: 11526


Anti-Bullying Resources

speakouthotline.org
1-800-423-TIPS

24-Hour Information and Crisis Hotline

thetrevorproject.org
1-866-488-7386
Text: START to 678678

Sources of Strength Support

 Janean Knight, Resource Teacher,
Student Services

 Knight.Janean@brevardschools.org

LGBTQ+ District Guidance



Action 1: Dress Code

All students may dress and present in ways that are consistent with their gender identity and expression, while still abiding by the Brevard Public Schools dress code, including at any school sponsored events and functions. This includes dances, graduation, JROTC, etc. The full-dress code can be found in Board Policy 5511 or within the code of student conduct.



Action 2: Names and Pronouns

All students are to be referred to by the gender pronoun and name consistent with their gender identity in verbal and written communication, i.e., in class, at assemblies, on school ID badges, and all other unofficial documents such as honor roll certificates and yearbook. Only "official" documents must use a student's legal name. Official documents include registration, report cards, diploma, standardized tests, student cum files, ISP/s/S504 Plans, before and after school registration documents.



Action 3: Restrooms/Locker Rooms

All students are allowed to access locker rooms and restrooms that are consistent with their gender identity or be provided appropriate accommodations. If accommodations are desired, decisions should be student driven and with district support on a case-by-case basis.



Action 4: School Events and Functions

All students may bring same-gender dates to any school sponsored event or function. This includes dances, graduation, JROTC, etc. All students shall be allowed to participate in school traditions, however if the tradition includes gender separated components, then all students may participate in a manner consistent to their gender identity.



Action 5: Interscholastic Athletics

In accordance with the SB 1021. Section 1006.205 (Fairness in Women's Sports Act), interscholastic, intercollegiate, intramural, or club athletic teams that are sponsored by a public secondary school must be expressly designated based on the biological sex at birth of team members; a statement of a student's biological sex on the student's official birth certificate is considered to have correctly stated the student's biological sex at birth.

Action 6: Clubs



All students have the right to form and participate in a GSA (Gay-Straight Alliance) or any LGBTQ+ related organization, including student named and generated clubs, as they would with any other club.

Action 7: Confidentiality/Identity



All LGBTQ+ students have the right to decide when and to whom their gender identity and sexual orientation is shared. School mental health providers and trusted adults are encouraged to support students in determining a safe and affirming learning environment.

Action 8: Pride



All faculty, staff, and students are afforded the same rights and protections under district, state, and federal policy. It is imperative that students, school staff, and other adults feel safe, included, and empowered on our school campuses, and at school related events and functions.

*Action items are subject to change as determined by changes to statutes and law.

Non-Discrimination Policy

The School Board of Brevard County, Florida does not discriminate on the basis of race, color, national origin, sex (including sexual orientation, transgender status, or gender identity), disability (including HIV, AIDS, or sickle cell trait), pregnancy, marital status, age (except as authorized by law), religion, military status, ancestry, or genetic information or any other factor protected under applicable federal, state, or local law.

The district also provides equal access to its facilities to youth groups, as required by the Boy Scouts of America Equal Access Act. The School Board of Brevard County is in compliance with the Americans with Disabilities Act of 1990 (ADA) and the Amendment Act of 2008 (ADAA), the Florida Education Equity Act of 1984, Age Discrimination Act of 1967 and Section 504 of the Rehabilitation Act of 1973, Civil Rights Act of 1964 including: Title II, Title VI, and Title VII, United States Education Amendments of 1972 - Title IX, Age Discrimination in Employment Act (ADEA), and Individuals with Disabilities Act (IDEA).

Blaise Trettis

From: Carrie LeBeau
Sent: Tuesday, March 15, 2022 2:35 PM
To: Blaise Trettis
Subject: FW: records request

From: Records <records@votebrevard.gov>
Sent: Tuesday, March 15, 2022 2:34 PM
To: SOE <SOE@votebrevard.gov>; Carrie LeBeau <clebeau@pd18.net>
Cc: Records <records@votebrevard.gov>
Subject: RE: records request

Carrie,

I do not have actual ballots from that election, but this was the language that appeared on the 1998 General Election Ballot.

**PROPOSED CHARTER AMENDMENT NO. 4
SINGLE-MEMBER ELECTION OF SCHOOL BOARD MEMBERS**

Shall the Brevard County Charter be amended to provide that the school board members of Brevard County shall be elected to office from single-member residence areas by electors residing in each of those areas only?

YES
NO

And her were the results for that charter amendment.

County Charter Amendment 4 - Single-Member Election of School Board Members

Yes	80,304	58.51%
No	56,935	41.49%

Tim Bobanic, MFCEP

Director of IT and Election Systems
Brevard County Supervisor of Elections
(321) 633-2175 - Direct
(321) 633-2130 - Fax
tbobanic@votebrevard.gov

From: SOE <SOE@votebrevard.gov>
Sent: Tuesday, March 15, 2022 9:46 AM
To: Carrie LeBeau <clebeau@pd18.net>
Cc: Records <records@votebrevard.gov>
Subject: RE: records request

Your request has been received and will be responded to in a timely manner. Thank you.

The 1998 Florida Statutes

[Title XVI](#)
EDUCATION

[Chapter 230](#)
District School System

[View Entire Chapter](#)

230.10 Election of board by districtwide vote.--The election of members of the school board shall be by vote of the qualified electors of the entire district. Each candidate for school board member shall, at the time she or he qualifies, be a resident of the school board member residence area from which the candidate seeks election. Each candidate who qualifies to have her or his name placed on the ballot of the general election shall be listed according to the school board member residence area in which she or he resides. Each qualified elector of the district shall be entitled to vote for one candidate from each school board member residence area. The candidate from each school board member residence area who receives the highest number of votes in the general election shall be elected to the school board.

History.--s. 410, ch. 19355, 1939; CGL 1940 Supp. 892(73); s. 9, ch. 23726, 1947; s. 1, ch. 69-300; s. 2, ch. 88-334; s. 1223, ch. 95-147.

The 1998 Florida Statutes

[Title XVI](#)
EDUCATION

[Chapter 230](#)
District School System

[View Entire Chapter](#)

230.061 School board member residence areas.--

(1) For the purpose of nominating and electing school board members, each district shall be divided into at least five district school board member residence areas, which shall be numbered one to five, inclusive, and which shall, as nearly as practicable, be equal in population.

(a) For those school districts, which have seven school board members, the district may be divided into five district school board member residence areas, with two school board members elected at large, or the district may be divided into seven district school board member residence areas. In the latter case, the residence areas shall be numbered one to seven inclusive and shall be equal in population as nearly as practicable.

(b) For those school districts which have seven school board members, the number of district school board member residence areas shall be determined by resolution passed by a majority vote of the district school board. No district school board shall be required to change the boundaries of the district school board member residence areas in accordance with the provisions of this act prior to July 1, 1981.

(2) The school board of any district may make any change which it deems necessary in the boundaries of any school board member residence area of the district at any meeting of the school board; provided that such changes shall be made only in odd-numbered years and provided further, that no change which would affect the residence qualifications of any incumbent member shall disqualify such incumbent member during the term for which he or she is elected.

(3) Such changes in boundaries shall be shown by resolutions spread upon the minutes of the school board, and shall be recorded in the office of the clerk of the circuit court, and shall be published at least once in a newspaper published in the district within 30 days after the adoption of the resolution, or, if there be no newspaper published in the district, shall be posted at the county courthouse door for 4 weeks thereafter. A certified copy of this resolution shall be transmitted to the Department of State.

History.--s. 3, ch. 57-249; s. 1, ch. 59-232; ss. 10, 35, ch. 69-106; s. 1, ch. 69-300; ss. 1, 2, ch. 77-276; s. 1222, ch. 95-147.

Select Year: 1998 ▼ Go

The 1998 Florida Statutes

[Title XVI](#)
EDUCATION

[Chapter 230](#)
District School System

[View Entire Chapter](#)

230.105 Alternate procedure for the election of district school board members to provide for single-member representation.--

(1) This section shall be known and may be referred to as "The School District Local Option Single-Member Representation Law of 1984."

(2) District school board members shall be nominated and elected to office in accordance with the provisions of ss. 230.061 and 230.10, or as otherwise provided by law, unless a proposition calling for single-member representation within the residence areas of the district is submitted to and approved by a majority of the qualified electors voting on such proposition in the manner provided in subsection (3).

(a) If the school board is composed of five members, such proposition shall provide that the five members shall reside one in each of five residence areas, the areas together covering the entire district and as nearly equal in population as practicable, pursuant to s. 230.061, each of whom shall be nominated and elected only by the qualified electors who reside in the same residence area as the member.

(b) If the school board is composed of seven members, at the option of the school board, such proposition shall provide that:

1. Five of the seven members shall reside one in each of five residence areas, the areas together covering the entire district and as nearly equal in population as practicable, pursuant to s. 230.061, each of whom shall be nominated and elected only by the qualified electors who reside in the same residence area as the member, and two of the seven members shall be nominated and elected at large; or

2. All seven members shall reside one in each of seven residence areas, the areas together covering the entire district and as nearly equal in population as practicable, pursuant to s. 230.061, each of whom shall be nominated and elected only by the qualified electors who reside in the same residence area as the member.

(c) All members shall be elected for 4-year terms, but such terms shall be staggered so that, alternately, one more or one less than half of the members elected from residence areas and, if applicable, one of the members elected at large from the entire district are elected every 2 years. Any member may be elected to an initial term of less than 4 years if necessary to achieve or maintain such system of staggered terms.

(3) A proposition calling for single-member representation within the residence areas of the district shall be submitted to the electors of the district at any primary, general, or otherwise-called special election, in either manner following:

(a) The district school board may adopt a formal resolution directing an election to be held to place the proposition on the ballot.

(b) The electors of the school district may petition to have the proposition placed on the ballot by presenting to the school board petitions signed by not less than 10 percent of the duly qualified electors residing within the school district. The number of signatures required shall be determined by the supervisor of elections according to the number of registered electors in the district as of the date the petitioning electors register as a political committee as provided in subsection (4).

(4) The electors petitioning to have the proposition placed on the ballot shall register as a political committee pursuant to s. 106.03, and a specific person shall be designated therein as chair of the committee to act for the committee.

(5)(a) Each petition form circulated for single-member representation within the residence areas of a district where the school board is composed of five members shall include the wording: "As a registered elector of the school district of ____ County, Florida, I am petitioning for a referendum election to determine whether the five school board members of said district shall be elected from single-member residence areas by electors residing in each of those areas only."

(b) Each petition form circulated for single-member representation within the residence areas of a district where the school board is composed of seven members, none of whom are to be elected at large, shall include the wording: "As a registered elector of the school district of ____ County, Florida, I am petitioning for a referendum election to determine whether the seven members of said district shall be elected from single-member residence areas by electors residing in each of those areas only."

(c) Each petition form circulated for single-member representation within the residence areas of a district where the school board is composed of seven members, two of whom are to be elected at large, shall include the wording: "As a registered elector of the school district of ____ County, Florida, I am petitioning for a referendum election to determine whether five of the seven school board members of said district shall be elected from single-member residence areas by electors residing in each of those areas only, with the two remaining members being elected at large."

The petition shall also include space for the signature and address of the elector. Each signature obtained shall be dated when made and is valid for a period of 4 years following that date.

(6) Upon the filing of the petitions with the district school board by the chair of the committee, the school board shall submit the petitions to the supervisor of elections for verification of the signatures. Within a period of not more than 30 days, the supervisor of elections shall determine whether the petitions contain the required number of valid signatures. The supervisor of elections shall be paid by the committee seeking verification the sum of 10 cents for each name checked.

(7) If it is determined that the petitions have the required signatures, the supervisor of elections shall certify the petitions to the district school board, which shall adopt a resolution requesting that an election date be set to conform to the earliest primary, general, or otherwise-called special election that occurs not less than 30 days after certification of the petitions. If it is determined that the petitions do not contain the required signatures, the supervisor of elections shall so notify the district school board, which shall file the petitions without taking further action, and the matter shall be at an end. No additional names may be added to the petitions, and the petitions may not be used in any other proceeding.

(8) No special election may be called for the sole purpose of presenting the proposition to the vote of the electors.

(9) Any district adopting any of the propositions set forth in this section may thereafter return to the procedures otherwise provided by law by following the same procedure outlined in subsection (3).

(10) No school board member elected prior to or at the election which approves any revision as permitted herein shall be affected in his or her term of office. The resolution adopted by the school board under paragraph (3)(a) or subsection (7) which presents the proposed revision to the electorate for approval shall specify an orderly method and procedure for implementing the revision contemplated in the resolution.

History.--s. 1, ch. 84-113; s. 43, ch. 85-80; s. 1224, ch. 95-147; s. 2, ch. 97-190.

system must be managed, controlled, operated, administered, and supervised as follows:

(1) **DISTRICT SYSTEM.**—The district school system shall be considered as a part of the state system of public education. All actions of district school officials shall be consistent and in harmony with state laws and with rules and minimum standards of the state board. District school officials, however, shall have the authority to provide additional educational opportunities, as desired, which are authorized, but not required, by law or by the district school board.

(2) **DISTRICT SCHOOL BOARD.**—In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.

(3) **DISTRICT SCHOOL SUPERINTENDENT.**—Responsibility for the administration and management of the schools and for the supervision of instruction in the district shall be vested in the district school superintendent as the secretary and executive officer of the district school board, as provided by law.

(4) **SCHOOL PRINCIPAL OR HEAD OF SCHOOL.**—Responsibility for the administration of any school or schools at a given school center, for the supervision of instruction therein, and for providing leadership in the development or revision and implementation of a school improvement plan required by s. 1001.42(18) shall be delegated to the school principal or head of the school or schools in accordance with rules established by the district school board.

History.—s. 38, ch. 2002-387; s. 25, ch. 2004-41; s. 8, ch. 2008-108.

1001.33 Schools under control of district school board and district school superintendent.—Except as otherwise provided by law, all public schools conducted within the district shall be under the direction and control of the district school board with the district school superintendent as executive officer.

History.—s. 39, ch. 2002-387; s. 28, ch. 2003-391; s. 9, ch. 2006-74.

A. District School Boards

- 1001.34 Membership of district school board.
- 1001.35 Term of office.
- 1001.36 District school board member residence areas.
- 1001.361 Election of board by districtwide vote.
- 1001.362 Alternate procedure for the election of district school board members to provide for single-member representation.
- 1001.363 District school board members to represent entire district.
- 1001.364 Alternate procedure for election of district school board chair.
- 1001.365 Votes by district school board chair and district school board members.
- 1001.37 District school board members shall qualify.
- 1001.371 Organization of district school board.
- 1001.372 District school board meetings.

- 1001.38 Vacancies; how filled.
- 1001.39 District school board members; travel expenses.
- 1001.395 District school board members; compensation.
- 1001.40 District school board to constitute a corporation.
- 1001.41 General powers of district school board.
- 1001.42 Powers and duties of district school board.
- 1001.4205 Visitation of schools by an individual school board or charter school governing board member.
- 1001.421 Gifts.
- 1001.43 Supplemental powers and duties of district school board.
- 1001.432 Inspirational message.
- 1001.44 Career centers.
- 1001.451 Regional consortium service organizations.
- 1001.452 District and school advisory councils.
- 1001.453 Direct-support organization; use of property; board of directors; audit.

1001.34 Membership of district school board.

(1) Each district school board shall be composed of not less than five members. Each member of the district school board shall be a qualified elector of the district in which she or he serves, shall be a resident of the district school board member residence area from which she or he is elected, and shall maintain said residency throughout her or his term of office.

(2) A district school board may modify the number of members on its board by adopting a resolution that establishes the total number of members on the board, which may not be less than five, and the number of members who shall be elected by residence areas or elected at large. The resolution must specify an orderly method and procedure for modifying the membership of the board, including staggering terms of additional members as necessary. If the resolution is adopted, the district school board shall submit to the electors for approval at a referendum held at the next primary or general election the question of whether the number of board members should be modified in accordance with the resolution adopted by the district school board. If the referendum is approved, election of additional school board members may occur at any primary, general, or otherwise-called special election.

History.—s. 41, ch. 2002-387; s. 15, ch. 2014-39.

1001.35 Term of office.—District school board members shall be elected at the general election in November for terms of 4 years.

History.—s. 42, ch. 2002-387.

1001.36 District school board member residence areas.—

(1) For the purpose of electing district school board members, each district shall be divided into at least five district school board member residence areas, which shall be numbered one to five, inclusive, and which shall, as nearly as practicable, be equal in population.

(a) For those school district school board divided into five district areas, with two district large, or the district school board member case, the residence seven inclusive and nearly as practicable.

(b) For those school district school board school board member determined by resolution of district school board.

(2) Any district school that it deems necessary school board member the district school board shall be made only in change that would affect any incumbent member during the term.

(3) Such changes resolutions spread upon school board, shall be of the circuit court, and in a newspaper published after the adoption of newspaper published the county courthouse certified copy of this to the Department of State.

History.—s. 43, ch. 2002-387.

1001.361 Election

Notwithstanding any charter, the election of board shall be by vote of entire district in a not chapter 105. Each candidate member shall, at the residence of the district area from which the candidate who qualifies on the ballot shall be school board member resides. Each qualified entitled to vote for a school board member from each district school who receives the highest election shall be elected.

History.—s. 44, ch. 2002-387.

1001.362 Alternate district school board single-member representation

(1) This section shall be as "The School District Representation Law of

(2) District school to office in accordance 1001.36 and 1001.36

(a) For those school districts, which have seven district school board members, the district may be divided into five district school board member residence areas, with two district school board members elected at large, or the district may be divided into seven district school board member residence areas. In the latter case, the residence areas shall be numbered one to seven inclusive and shall be equal in population as nearly as practicable.

(b) For those school districts which have seven district school board members, the number of district school board member residence areas shall be determined by resolution passed by a majority vote of the district school board.

(2) Any district school board may make any change that it deems necessary in the boundaries of any district school board member residence area at any meeting of the district school board, provided that such changes shall be made only in odd-numbered years and that no change that would affect the residence qualifications of any incumbent member shall disqualify such incumbent member during the term for which he or she is elected.

(3) Such changes in boundaries shall be shown by resolutions spread upon the minutes of the district school board, shall be recorded in the office of the clerk of the circuit court, and shall be published at least once in a newspaper published in the district within 30 days after the adoption of the resolution, or, if there be no newspaper published in the district, shall be posted at the county courthouse door for 4 weeks thereafter. A certified copy of this resolution shall be transmitted to the Department of State.

History.—s. 43, ch. 2002-387.

1001.361 Election of board by districtwide vote.

Notwithstanding any provision of local law or any county charter, the election of members of the district school board shall be by vote of the qualified electors of the entire district in a nonpartisan election as provided in chapter 105. Each candidate for district school board member shall, at the time she or he qualifies, be a resident of the district school board member residence area from which the candidate seeks election. Each candidate who qualifies to have her or his name placed on the ballot shall be listed according to the district school board member residence area in which she or he resides. Each qualified elector of the district shall be entitled to vote for one candidate from each district school board member residence area. The candidate from each district school board member residence area who receives the highest number of votes in the general election shall be elected to the district school board.

History.—s. 44, ch. 2002-387.

1001.362 Alternate procedure for the election of district school board members to provide for single-member representation.—

(1) This section shall be known and may be referred to as "The School District Local Option Single-Member Representation Law of 1984."

(2) District school board members shall be elected to office in accordance with the provisions of ss. 1001.36 and 1001.361, or as otherwise provided by

law, unless a proposition calling for single-member representation within the residence areas of the district is submitted to and approved by a majority of the qualified electors voting on such proposition in the manner provided in subsection (3).

(a) If the district school board is composed of five members, such proposition shall provide that the five members shall reside one in each of five residence areas, the areas together covering the entire district and as nearly equal in population as practicable, pursuant to s. 1001.36, each of whom shall be elected only by the qualified electors who reside in the same residence area as the member.

(b) If the district school board is composed of seven members, at the option of the school board, such proposition shall provide that:

1. Five of the seven members shall reside one in each of five residence areas, the areas together covering the entire district and as nearly equal in population as practicable, pursuant to s. 1001.36, each of whom shall be elected only by the qualified electors who reside in the same residence area as the member, and two of the seven members shall be elected at large; or

2. All seven members shall reside one in each of seven residence areas, the areas together covering the entire district and as nearly equal in population as practicable, pursuant to s. 1001.36, each of whom shall be elected only by the qualified electors who reside in the same residence area as the member.

(c) All members shall be elected for 4-year terms, but such terms shall be staggered so that, alternately, one more or one less than half of the members elected from residence areas and, if applicable, one of the members elected at large from the entire district are elected every 2 years. Any member may be elected to an initial term of less than 4 years if necessary to achieve or maintain such system of staggered terms.

(3) A proposition calling for single-member representation within the residence areas of the district shall be submitted to the electors of the district at any primary, general, or otherwise-called special election, in either manner following:

(a) The district school board may adopt a formal resolution directing an election to be held to place the proposition on the ballot.

(b) The electors of the school district may petition to have the proposition placed on the ballot by presenting to the school board petitions signed by not less than 10 percent of the duly qualified electors residing within the school district. The number of signatures required shall be determined by the supervisor of elections according to the number of registered electors in the district as of the date the petitioning electors register as a political committee as provided in subsection (4).

(4) The electors petitioning to have the proposition placed on the ballot shall register as a political committee pursuant to s. 106.03, and a specific person shall be designated therein as chair of the committee to act for the committee.

(5)(a) Each petition form circulated for single-member representation within the residence areas of a district where the school board is composed of five

members shall include the wording: "As a registered elector of the school district of ____ County, Florida, I am petitioning for a referendum election to determine whether the five school board members of said district shall be elected from single-member residence areas by electors residing in each of those areas only."

(b) Each petition form circulated for single-member representation within the residence areas of a district where the district school board is composed of seven members, none of whom are to be elected at large, shall include the wording: "As a registered elector of the school district of ____ County, Florida, I am petitioning for a referendum election to determine whether the seven members of said district shall be elected from single-member residence areas by electors residing in each of those areas only."

(c) Each petition form circulated for single-member representation within the residence areas of a district where the school board is composed of seven members, two of whom are to be elected at large, shall include the wording: "As a registered elector of the school district of ____ County, Florida, I am petitioning for a referendum election to determine whether five of the seven district school board members of said district shall be elected from single-member residence areas by electors residing in each of those areas only, with the two remaining members being elected at large."

The petition shall also include space for the signature and address of the elector. Each signature obtained shall be dated when made and is valid for a period of 4 years following that date.

(6) Upon the filing of the petitions with the district school board by the chair of the committee, the district school board shall submit the petitions to the supervisor of elections for verification of the signatures. Within a period of not more than 30 days, the supervisor of elections shall determine whether the petitions contain the required number of valid signatures. The supervisor of elections shall be paid by the committee seeking verification the sum of 10 cents for each name checked.

(7) If it is determined that the petitions have the required signatures, the supervisor of elections shall certify the petitions to the district school board, which shall adopt a resolution requesting that an election date be set to conform to the earliest primary, general, or otherwise-called special election that occurs not less than 30 days after certification of the petitions. If it is determined that the petitions do not contain the required signatures, the supervisor of elections shall so notify the district school board, which shall file the petitions without taking further action, and the matter shall be at an end. No additional names may be added to the petitions, and the petitions may not be used in any other proceeding.

(8) No special election may be called for the sole purpose of presenting the proposition to the vote of the electors.

(9) Any district adopting any of the propositions set forth in this section may thereafter return to the procedures otherwise provided by law by following the same procedure outlined in subsection (3).

(10) No district school board member elected prior to or at the election that approves any revision as permitted herein shall be affected in his or her term of office. The resolution adopted by the district school board under paragraph (3)(a) or subsection (7) which presents the proposed revision to the electorate for approval shall specify an orderly method and procedure for implementing the revision contemplated in the resolution.

History.—s. 45, ch. 2002-387.

1001.363 District school board members to represent entire district.—Each district school board of each district shall represent the entire district. Each member of the district school board shall serve as the representative of the entire district, rather than as the representative of a district school board member residence area.

History.—s. 46, ch. 2002-387.

1001.364 Alternate procedure for election of district school board chair.—

(1) The district school board chair shall be elected in accordance with the provisions of s. 1001.371 unless a proposition calling for the district school board chair to be elected as an additional school board member by districtwide vote is submitted to and approved by a majority of the qualified electors voting on such proposition in the manner provided in subsection (2).

(2) A proposition calling for the district school board chair to be elected by districtwide vote shall be submitted to the electors of the school district at any primary, general, or otherwise-called special election in either of the following manners:

(a) The district school board may adopt a formal resolution directing that the proposition be placed on the ballot; or

(b) The electors of the school district may petition to have the proposition placed on the ballot by presenting to the district school board petitions signed by not less than 10 percent of the duly qualified electors residing within the school district. The number of signatures required shall be determined by the supervisor of elections according to the number of registered electors in the school district as of the date the petitioning electors register as a political committee as provided in subsection (3).

(3) The electors petitioning to have the proposition placed on the ballot shall register as a political committee pursuant to s. 106.03, and a specific person shall be designated therein as chair of the committee to act for the committee.

(4) Each petition form circulated shall include the following wording:

As a registered elector of the school district of ____ County, Florida, I am petitioning for a referendum election to determine whether the district school board chair shall be elected by districtwide vote.

The petition shall also include space for the signature and address of the elector. Each signature obtained

shall be dated when made and is valid for a period of 4 years after that date.

(5) Upon the filing of the petitions with the district school board by the chair of the committee, the district school board shall submit the petitions to the supervisor of elections for verification of the signatures. Within a period of not more than 30 days, the supervisor of elections shall determine whether the petitions contain the required number of valid signatures. The supervisor of elections shall be paid by the committee seeking verification the sum of 10 cents for each name checked.

(6) If it is determined that the petitions have the required signatures, the supervisor of elections shall certify the petitions to the district school board, which shall adopt a resolution requesting that an election date be set to conform to the earliest primary, general, or otherwise-called special election that occurs not less than 30 days after certification of the petitions. If it is determined that the petitions do not contain the required signatures, the supervisor of elections shall so notify the district school board, which shall file the petitions without taking further action, and the matter shall be at an end. No additional names may be added to the petitions, and the petitions may not be used in any other proceeding.

(7) No special election may be called for the sole purpose of presenting the proposition to the vote of the electors.

(8) Any district adopting any of the propositions set forth in this section may thereafter return to the procedures otherwise provided by law by following the same procedure outlined in subsection (3).

(9) If a proposition calling for the election of the district school board chair is submitted to the electors of the school district at any primary, general, or otherwise-called special election, the qualified electors voting on such proposition shall be paid by the committee seeking verification the sum of 10 cents for each name checked.

(10) The vice chair shall be elected by the majority vote of the electors as provided in s. 106.03.

(11) This section shall be amended by charter 800,000 and 900,000 to read: "The supervisor of elections shall be paid by the committee seeking verification the sum of 10 cents for each name checked."

History.—s. 2, ch. 2006-25

1001.365 Votes and district school board chair.—The district school board shall elect a chair and a vice chair from among its members acting in any capacity, action taken by the district school board shall prevail. For purposes of this section, the district school board chair and district school board vice chair shall be elected by the majority vote on which the electors have a population of 100,000 or more. This section applies only to those districts that have a population of 100,000 or more according to the last decennial census.

History.—s. 3, ch. 2006-256



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER:

SUBJECT:

PETITIONER CONTACT:

REQUESTED ACTION:

SUMMARY EXPLANATION & BACKGROUND:

Staff Contact:

Melissa Brandt

Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

SUMMARY EXPLANATION & BACKGROUND CONTINUED:

Section 2.7 Vacancies and Suspensions

A vacancy in the office of County Commissioner arising from the death, resignation or removal of such official shall, ~~if one year or less remains in the term of office, be filled by appointment of the Governor~~ unless otherwise required by the State Constitution or general law, be filled by a special election; provided, a vacancy created by recall shall be filled as provided in Section 5.2 of this Charter. ~~Unless otherwise required by the State Constitution or general law, if more than one year remains in the term of office at the time the vacancy occurs, the vacancy shall be filled by a special election.~~ The Board of County Commissioners, after first consulting with the Supervisor of Elections, shall by resolution fix the time period for candidate qualifying, the date of the election, and the date of any runoff election. There shall be a minimum of thirty (30) days between the close of qualifying and the date of the election, and between the election and any runoff election. Such special elections shall otherwise be governed by the applicable provisions of general law. If less than one hundred twenty (120) days remains in the term of office at the time the vacancy occurs, the vacancy shall be filled by appointment of the Board of County Commissioners.

Appointment process: The county commissioners shall advertise for interested applicants that qualify for the requirements of the vacant office. The applications must be submitted within 2 weeks of the advertisement of the vacancy. A Special Commission meeting shall be scheduled to occur 1 week following the application deadline. Applicants and members of the public shall be permitted to comment during the public comment portion of the appointment agenda item of the Special Meeting. Each commissioner will review the applicants and score them from one to ten. Staff will tabulate the ranking scores of the applicants and fill the vacancy with the applicant receiving the highest total number ranking. In the event of multiple applicants receiving the

highest ranking, the County Commissioners will vote as a board on the remaining applicants by simple majority. The effective date of office shall be immediately following the vote.



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE: June 23, 2022

AGENDA ITEM NUMBER: Proposal 10 -Public Hearing 2

SUBJECT:

Amend the last sentence of Section 7.3.3 of the Brevard County Charter

PETITIONER CONTACT:

Marie Rogerson; Charter Review Commission Member - District 2

REQUESTED ACTION:

Proposal to amend the last sentence of Section 7.3.3 for clarity and to reflect the need for greater consensus before changing the County Charter.

SUMMARY EXPLANATION & BACKGROUND:

Section 7.3.3 - Sentence Amended as follows:

Passage of proposed amendments shall require ~~approval of a majority of electors voting said election.~~ approval by a vote of at least sixty percent of the electors voting on the measure. it shall be effective as an amendment to or revision of the Charter on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.

Staff Contact:

Melissa Brandt

Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER:

SUBJECT:

PETITIONER CONTACT:

REQUESTED ACTION:

SUMMARY EXPLANATION & BACKGROUND:

Staff Contact:

Melissa Brandt

Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

SUMMARY EXPLANATION & BACKGROUND CONTINUED:



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER:

SUBJECT:

PETITIONER CONTACT:

REQUESTED ACTION:

SUMMARY EXPLANATION & BACKGROUND:

Staff Contact:

Melissa Brandt

Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

SUMMARY EXPLANATION & BACKGROUND CONTINUED:



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER:

SUBJECT:

PETITIONER CONTACT:

REQUESTED ACTION:

SUMMARY EXPLANATION & BACKGROUND:

Staff Contact:	Melissa Brandt
Telephone Number:	(321) 301-4438
Email Address:	Melissa.Brandt@brevardfl.gov

AMENDED PROPOSAL 19

Blaise Trettis (proponent), member of the 2021-22 Brevard County Charter Review Commission, proposes the following amendment to correct the scrivener's error in section 5.2 Recall and to add school board members to the list of county officers subject to recall as provided by general law. Additional numbers and words are underlined; deleted numbers and words are stricken-through.

Section 5.2. Recall

The County Commissioners shall be subject to recall as provided by general law. Any elected County officer named in Section ~~4.2~~ 4.1.1. of this Charter and school board members may be recalled in the manner provided by general law for removal of a County Commissioner of a charter county. A successor to the unexpired term of any recalled commissioner, ~~or elected County officer, or school board member,~~ shall be elected in the manner provided by general law for filling of vacancies in office after recall in charter counties.

REASON FOR PROPOSAL

As explained by Commission attorney Paul Gougelman in his April 24, 2022 memorandum Recall issue; Constitutional Officers, in 2010 there was a scrivener's error in which the reference in Section 5.2 to Section 4.2 was mistakenly not changed to Section 4.1.1. Attorney Gougelman wrote that, "Fixing this glitch is easy." Attorney Gougelman's example of how to correct the scrivener's error is the correction made changing 4.2 to 4.1.1.

As an aside, proponent's research reveals that the following eight charter counties provide for the recall of county constitutional officers: 1) Brevard, § 5.2; 2) City of Jacksonville (i.e. Duval County), which expressly includes recall of school board members in addition to any officer elected in any consolidated government, § 15.01; 3) Orange, § 604; 4) Hillsborough, § 9.08; 5) Clay, § 3.2; 6) Miami-Dade, § 8.02; 7) Columbia, § 6.2; 8) Sarasota, § 6.3.

The amended proposal adds school board members to all of the other county constitutional officers subject to recall election in the manner provided by general law for removal of a county commissioner; i.e., sheriff, tax collector, supervisor of elections, property appraiser, clerk of the circuit court.

Proponent emphasizes that Amended Proposal 19 (i.e. this proposal) is completely different from school board recall proposal 2 by proponent which was withdrawn from the Commission's consideration by 6-5 vote at the May 12, 2022 meeting of the Charter Review Commission. The defeated proposal 2 was six typed single-spaced pages in length and most importantly included only malfeasance as the statutory ground available for recall listed in § 100.361(2)(d) Fla. Stat. and included up to three votes on motions of school board members as grounds for recall. Contrarily, this Amended Proposal 19 merely consists of adding these three words to the 5.2 Recall section of the Brevard County Charter: "school board members".

Proponent submits that the best argument in support of Amended Proposal 19 is the following excerpts from Commission attorney Paul Gougelman's May 12, 2022 letter to the

Florida Attorney General seeking an Attorney General Opinion on whether the Brevard County Charter may be amended to add a provision permitting a recall of school board members:

ISSUE: May the Brevard County Charter be amended to add a provision permitting a recall of Brevard County School Board Members? Would such a provision be violative of Article VIII, Section 1(g) of the Florida Constitution which provides that, “[c]ounties 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”?

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II

Recall in Florida - The Florida Recall Statute

As noted above, the only provision in Florida law for recall elections is Section 100.361, Florida Statutes. The statute specifies that it applies to the governing body of either a charter county or a municipality. §100.361(1), Fla.Stat.⁵ Furthermore, the statute is intended to provide a uniform statewide process for recall,⁶ and the statute automatically applies to all municipalities and charter counties whether or not they have adopted recall provisions in their charters or by ordinance.⁷ In essence, the Legislature sought to deal with the problem existent at that time, namely providing a uniform process for the recall of city councilmembers (and charter county commissioners).

The process was intended to be difficult. Most importantly, recall is only permitted in one of seven circumstances: Malfeasance;⁸ Misfeasance;⁹ Neglect of duty; Drunkenness; Incompetence; Permanent inability to perform official duties; and Conviction of a felony involving moral turpitude.¹⁰ §100.361(2)(d), Fla.Stat.¹¹

III

Authority for Local Charters to Provide for Recall of Constitutional Officers such as School Board Members

A

The strongest legal basis to permit a local government, such as a charter county, to provide in their charter for the recall of School Board Members is the concept of home rule.

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Home rule was granted to municipalities and to counties to deal with the explosion of local bills being submitted each session of the

Legislature. For example, the year before the new Florida Constitution was adopted, 1967 Laws of Florida reveal that there were 1428 local laws adopted and 1068 general laws and laws of local application adopted. Something needed to be done to stop the explosion in local bills and to permit local governments to deal efficiently with local issues.

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There is no express preemption of the subject of recall to the state, either by general act or the Florida Constitution.¹³ In fact, the Florida Division of Elections in DE 94-14 (Aug. 1, 1994) answered the following question from the Brevard County Charter Commission: May a county charter lawfully provide a method for the recall of county officers?

The Division stated:

Your . . . question is answered in the affirmative. A county charter may provide a method for the recall of county officers. However, the provisions of Section 100.361, Florida Statutes, are applicable to all chartered counties and will prevail over any conflicting provisions in such charters to the extent of the conflict.

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Thus, charter county home rule should be found to grant Brevard County the legal ability to allow the people of Brevard County to amend their Charter to permit the recall of Brevard County School Board Members, especially given that the delegation of home rule to Brevard County is extremely broad. (emphasis supplied by proponent).

B
Powers in the Brevard County Charter Must Be
Construed to Be Very Wide and Liberal

Not only is the power of home rule for a charter county broad, but the Brevard County Charter reinforces the concept in Section 1.3. This section, entitled “Construction”, provides that “[t]he powers granted by this Home Rule Charter shall be construed liberally in favor of charter government.” This section 1.3 dictates that the proposals of the CRC to amend the Charter are to be construed liberally in favor of charter government, which would mean the enhancement of the powers of charter government. **This would include recall election of school board members.** (emphasis supplied by proponent)

C

School Board Members Are County Officers

A county charter has control over so-called constitutional or county officers. For example, in Article VIII, Section 1(d) of the Florida Constitution, there are specific provisions relating to the election of the constitutional or county officers, including in each county a [sheriff](#), a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court. No provision of the Constitution or state statute prohibits providing for the recall of the constitutional or county officers.

It should also be noted that school board members are county or constitutional officers. The Florida Supreme Court in In re Advisory Opinion to the Governor, 626 So. 2d 684 (Fla. 1993), answered a request from the Governor for an advisory opinion stating that a school board member is a county officer for purposes of the Governor's suspension authority under article IV, section 7(a) Florida Constitution. The Court reached this opinion even though the Constitution does not say that a school board member is a county officer.

The Court made it clear that the term "county officer" in the Constitution applies to not only the [sheriff](#), a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court but also to county commissioners and school board members. The Court, at 689, stated:

While an argument can be made that the suspension provision in article IV, section 7, should be construed narrowly and that school board members should be characterized as "district" rather than "county" officers, we find that a broader construction is appropriate. We reach this conclusion because it is apparent that the public looks at both school board members and county commissioners as "county" officials, who have equivalent power and authority, albeit in different local governmental spheres. We recognize that article VIII, section 1(d), defines certain "county officers." We note, however, that the county officers defined in section 1(d) could not have been intended to be the only "county" officers subject to the suspension provisions of article IV, section 7, because that provision does not include county commissioners within the definition of a

county official. The duties and governing authority of county commissioners are set forth in article VIII, section 1(e). School board members' duties and authority are found in article IX, sections 4(a) and 4(b), which provides that "each county shall constitute a school district" and that school board members shall "operate, control, and supervise" the schools within the county (emphasis added). . . .

D

At Least One County has Adopted Provisions for Recall of School Board Members

A review of the 19 charter county charters indicates that least one other county, Duval, has adopted provisions for the recall of school board members.¹⁶

SERVICE OF PROPOSAL

This proposal was sent by e-mail on May 20, 2022, to: the members of the Brevard County Charter Review Commission; to Commission attorney Paul R. Gougelman; to Brevard County employees Jim Liesenfelt, Melissa Brandt.

5/20/2022 1:03:25 PM

Compare Results

Old File:

Proposal to correct scrivners error in section 5.2 recall.pdf

1 page (108 KB)
4/29/2022 11:33:05 AM

versus

New File:

amended proposal to correct scrivners error in section 5.2 recall.pdf

5 pages (138 KB)
5/20/2022 1:01:46 PM

Total Changes

21

Content

6 Replacements
14 Insertions
0 Deletions

Styling and Annotations

1 Styling
0 Annotations

[Go to First Change \(page 1\)](#)

AMENDED PROPOSAL 19

Blaise Trettis (proponent), member of the 2021-22 Brevard County Charter Review Commission, proposes the following amendment to correct the scrivener's error in section 5.2 Recall and to add school board members to the list of county officers subject to recall as provided by general law. Additional numbers and words are underlined; deleted numbers and words are stricken-through.

Section 5.2. Recall

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REASON FOR PROPOSAL

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As an aside, proponent's research reveals that the following eight charter counties provide for the recall of county constitutional officers: 1) Brevard, § 5.2; 2) City of Jacksonville (i.e. Duval County), which expressly includes recall of school board members in addition to any officer elected in any consolidated government, § 15.01; 3) Orange, § 604; 4) Hillsborough, § 9.08; 5) Clay, § 3.2; 6) Miami-Dade, § 8.02; 7) Columbia, § 6.2; 8) Sarasota, § 6.3.

The amended proposal adds school board members to all of the other county constitutional officers subject to recall election in the manner provided by general law for removal of a county commissioner; i.e., sheriff, tax collector, supervisor of elections, property appraiser, clerk of the circuit court.

Proponent emphasizes that Amended Proposal 19 (i.e. this proposal) is completely different from school board recall proposal 2 by proponent which was withdrawn from the Commission's consideration by 6-5 vote at the May 12, 2022 meeting of the Charter Review Commission. The defeated proposal 2 was six typed single-spaced pages in length and most importantly included only malfeasance as the statutory ground available for recall listed in § 100.361(2)(d) Fla. Stat. and included up to three votes on motions of school board members as grounds for recall. Contrarily, this Amended Proposal 19 merely consists of adding these three words to the 5.2 Recall section of the Brevard County Charter: "school board members".

Proponent submits that the best argument in support of Amended Proposal 19 is the following excerpts from Commission attorney Paul Gougelman's May 12, 2022 letter to the

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ISSUE: May the Brevard County Charter be amended to add a provision permitting a recall of Brevard County School Board Members? Would such a provision be violative of Article VIII, Section 1(g) of the Florida Constitution which provides that, “[c]ounties 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”?

■ ■ ■ ■ ■

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The process was intended to be difficult. Most importantly, recall is only permitted in one of seven circumstances: Malfeasance;⁸ Misfeasance;⁹ Neglect of duty; Drunkenness; Incompetence; Permanent inability to perform official duties; and Conviction of a felony involving moral turpitude.¹⁰ §100.361(2)(d), Fla.Stat.¹¹

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There is no express preemption of the subject of recall to the state, either by general act or the Florida Constitution.¹³ In fact, the Florida Division of Elections in DE 94-14 (Aug. 1, 1994) answered the following question from the Brevard County Charter Commission: May a county charter lawfully provide a method for the recall of county officers?

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Not only is the power of home rule for a charter county broad, but the Brevard County Charter reinforces the concept in Section 1.3. This section, entitled “Construction”, provides that “[t]he powers granted by this Home Rule Charter shall be construed liberally in favor of charter government.” This section 1.3 dictates that the proposals of the CRC to amend the Charter are to be construed liberally in favor of charter government, which would mean the enhancement of the powers of charter government. **This would include recall election of school board members.** (emphasis supplied by proponent)

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School Board Members Are County Officers

A county charter has control over so-called constitutional or county officers. For example, in Article VIII, Section 1(d) of the Florida Constitution, there are specific provisions relating to the election of the constitutional or county officers, including in each county a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court. No provision of the Constitution or state statute prohibits providing for the recall of the constitutional or county officers.

It should also be noted that school board members are county or constitutional officers. The Florida Supreme Court in In re Advisory Opinion to the Governor, 626 So. 2d 684 (Fla. 1993), answered a request from the Governor for an advisory opinion stating that a school board member is a county officer for purposes of the Governor's suspension authority under article IV, section 7(a) Florida Constitution. The Court reached this opinion even though the Constitution does not say that a school board member is a county officer.

The Court made it clear that the term "county officer" in the Constitution applies to not only the sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court but also to county commissioners and school board members. The Court, at 689, stated:

While an argument can be made that the suspension provision in article IV, section 7, should be construed narrowly and that school board members should be characterized as "district" rather than "county" officers, we find that a broader construction is appropriate. We reach this conclusion because it is apparent that the public looks at both school board members and county commissioners as "county" officials, who have equivalent power and authority, albeit in different local governmental spheres. We recognize that article VIII, section 1(d), defines certain "county officers." We note, however, that the county officers defined in section 1(d) could not have been intended to be the only "county" officers subject to the suspension provisions of article IV, section 7, because that provision does not include county commissioners within the definition of a

county official. The duties and governing authority of county commissioners are set forth in article VIII, section 1(e). School board members' duties and authority are found in article IX, sections 4(a) and 4(b), which provides that "each county shall constitute a school district" and that school board members shall "operate, control, and supervise" the schools within the county (emphasis added). . . .

D

At Least One County has Adopted Provisions for Recall of School Board Members

A review of the 19 charter county charters indicates that least one other county, Duval, has adopted provisions for the recall of school board members.¹⁶

SERVICE OF PROPOSAL

This proposal was sent by e-mail on May 20, 2022, to: the members of the Brevard County Charter Review Commission; to Commission attorney Paul R. Gougelman; to Brevard County employees Jim Liesenfelt, Melissa Brandt.

BREVARD COUNTY

HOME RULE CHARTER

Adopted by Voters November 8, 1994

Effective Date January 1, 1995

Amended March 12, 1996

Amended November 3, 1998

Amended November 7, 2000

Amended November 5, 2002

Amended November 7, 2004

Amended November 4, 2008

Amended November 2, 2010



shall have the right to initiate County law legislation that is not in conflict with the Charter, and to amend or repeal amendments or repeal are not in conflict with law, upon petition signed by a number of electors qualified to vote in the last election that the number shall contain at least one elector in each of at least three

ive shall, prior to obtaining any signatures, proposed ordinance or Charter amendment to the Board of Supervisors, with the proposed ballot summary and signatures will be affixed and obtain a dated available period for obtaining signatures on the petition not later than nine (9) months after the initiation by the Supervisor of Elections. The sponsor shall submit signed and dated forms to the Supervisor of Elections and upon submission shall pay all fees. The Supervisor of Elections shall within ten days verify the signatures thereon, or specify a reason for rejection of signature if the petition is rejected for insufficient number of valid signatures. If the petition is rejected, the sponsor shall, within thirty (30) days within which to submit the petition for verification. The Supervisor of Elections shall verify the additional signatures. In the event the signatures are still not acquired, the petition initiative shall be void and none of the signatures may be used in any subsequent identical or similar petition.

of County Commissioners.

After the requisite number of names has been obtained, the Supervisor of Elections and reported to the Board of the Board of County Commissioners shall

give notice and hold a public hearing on the proposed ordinance according to law and vote on it. If the Board fails to enact the proposed ordinance, it shall by resolution, call a referendum on the question of the adoption of the proposed ordinance to be held at the next general election occurring at least forty-five (45) days after the adoption of such resolution. If the question of the adoption of the proposed ordinance is approved by a majority of those registered voters voting on the question, the proposed ordinance shall be declared by resolution of the Board of County Commissioners to be enacted and shall become effective on the date specified in the ordinance, or if not so specified, on January 1 of the succeeding year. The Board of County Commissioners shall not amend or repeal an ordinance adopted by initiative, without the approval of a majority of the electors voting at a referendum called for that purpose.

5.1.3. Limitation on ordinances by initiative.

The power to enact, amend or repeal an ordinance or amend this Charter by initiative shall not include ordinances or provisions relating to the existing County budget, existing debt obligations, existing capital improvement programs, salaries of non-elected County officers and employees, the collection of taxes, or the rezoning of less than five percent (5%) of the total land area of the County.

SECTION 5.2. RECALL

The County Commissioners shall be subject to recall as provided by general law. Any elected County officer named in Section 4.2 of this Charter may be recalled in the manner provided by general law for removal of a County Commissioner of a charter county. A successor to the unexpired term of any recalled commissioner or elected County officer shall be elected in the manner provided by general law for filling of vacancies in office after recall in charter counties.

SECTION 5.3. LIMITATION ON DEBT OR ITS EQUIVALENT

PART A
CHARTER LAWS
CHARTER OF THE CITY OF JACKSONVILLE, FLORIDA

The Charter of the City of Jacksonville is set out herein as readopted by Chapter 92-341, Laws of Florida. Formerly, the Charter of the City of Jacksonville was derived from Chapter 67-1320, Laws of Florida, adopted by the Legislature of the State of Florida at its regular session in 1967, as amended. The first legal step to consolidated city-county government for Jacksonville occurred in 1934 when the Florida Constitution was amended to permit merger of Duval County and all of its cities. That government matured only after a legislative-directed study commission drafted a Charter with widespread public approval which was adopted as the Charter in 1967. The government was not the metropolitan form of Miami-Dade County, which had retained the county government, nor was it the chartered-county form later permitted by the Florida Constitution when it was revised in 1968. It essentially eliminated two governments (city and county) and replaced it with one.

Smaller communities in Duval County-the three beaches cities and the town of Baldwin-were reconstituted as urban services districts: they were permitted elements of local control but they henceforth would look to the new City of Jacksonville for the former functions of county government, and could draw on essential urban services such as police and fire from the central government. Through judicial and legislative action, these communities were restored to their municipal status: today the City of Jacksonville stands in the relationship of a county government to them, and they continue to function as municipal governments.

To conform to the traditional organization of Florida state government, Jacksonville retained the offices of Sheriff, Property Appraiser, Tax Collector, Supervisor of Elections and Clerk of the Circuit Court. But these officers are now considered not only as county officers but as officers of the Consolidated Government, and as such play an important role in its operation. Certain special functions were allotted to independent agencies appointed by the Mayor or Governor, while a measure of centralized control was held by the City through approval of their budgets and by requiring their use of the central services of the City. Consistent with the Charter's home rule objectives, the Council was permitted to modify this requirement for use of central services.

Through the years, legislation by both the Legislature and the Council have added to and subtracted from the Charter, in an attempt to achieve both aims of the Consolidated Government: government by the broadest representation of its citizens (exercising their home rule powers under the Florida Constitution) and the efficient response to urban problems.

History notes following a particular section indicate the complete history of amendatory legislation enacted subsequent to Chapter 67-1320, Laws of Florida. The indexes appearing at the beginning of each article, notes appearing at the end of various sections or at the beginning of an article or chapter and section and subsection headings enclosed in brackets are added editorially.

- (2) Within that part of the general services district not included within the second, third, fourth, and fifth urban services districts, at such millage rate as is authorized by the Constitution and general law for municipalities to levy.

(b) The second, third, fourth, and fifth urban services districts are each authorized to levy taxes upon all of the real and personal property within their respective districts assessed for taxes, annually, for the payment of debt service requirements of ad valorem bonds as authorized and required by law, and for all other purposes of the governments of each of said urban services districts, at such millage rate as is authorized by the Constitution and general law for municipalities to levy.

(Laws of Fla., Ch. 78-536, § 14; Ord. 84-1307-754, § 21; Laws of Fla., Ch. 92-341, § 1)

Section 14.08. Increases and decreases in millage limitations.

No increase shall be allowed in any of the millage limitations provided in section 14.07 unless first approved by a majority vote of those qualified electors voting in a special referendum in the district to be affected by any such proposed increase in such millage limitations. No such increase shall be effective for a period longer than 2 years. On the written petition or petitions of qualified electors representing not less than 20 percent in number of such electors voting in the last such special referendum in the general services district or 20 percent of such electors voting in the last such special referendum in an urban services district, a special referendum shall be held to consider a reduction in any millage limitation which has been previously increased under the provisions of this section. Not more than one such special referendum shall be held in any calendar year.

(Laws of Fla., Ch. 71-695; Ord. 84-1307-754, § 21; Laws of Fla., Ch. 92-341, § 1)

Section 14.09. Limitation on ad valorem taxes.

The Council shall not adopt any millage rate which would result in more than a three (3) percent increase in total ad valorem taxes levied on the preliminary taxable value (adjusted to exclude ad valorem taxes generated from new construction added in the current year) over the previous year's ad valorem tax levy. The Council shall not fail to reduce the millage rate should such action be necessary to ensure that this limitation on the ad valorem tax levy takes affect.

(Ord. 92-1073-753, § 1 (Referendum of November 3, 1992))

ARTICLE 15. REMOVAL OF OFFICERS

Sec. 15.01. Recall by voters.

Sec. 15.02. General and special elections.

Section 15.01. Recall by voters.

Any officer elected in any consolidated government or school board election may be removed from office in the following manner:

- (a) A petition demanding an election of a successor of the elected official sought to be removed shall be filled with the supervisor of elections.
- (b) In the petition for recall of a person elected in the city at large, there shall be included the signatures of qualified voters equal to 10 percent of the number of voters registered in that district at the time of the election of the person sought to be removed.

- (c) In the petition for recall of a person elected in a district election, there shall be included the signatures of voters qualified to vote in that district equal to 10 percent of the number of voters registered in that district at the time of the election of the person sought to be removed.

The petition shall contain a general statement of the grounds for which the removal is sought. Copies of petitions may be executed, but one of the signers of each copy shall affirm under oath before an officer competent to administer oaths that he believes that each signature to the copy is the genuine signature of the person whose name it purports to be. Within 15 normal working days from the date of filing such petition, the supervisor of elections shall examine the petition and ascertain whether the petition is signed by the required number of persons and whether such persons are qualified voters as shown by the registration books. He shall attach to the petition his certificate showing the result of such examination. If the supervisor of elections determines that the petition is insufficient, it may be amended within 15 days from the date of said certificate. The supervisor of elections shall, within 15 days after such amendment, make like examination of the amended petition. If he again determines that the petition is insufficient, it shall be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect. If the supervisor of elections shall determine that any petition is duly executed and in proper form, he shall at once order and fix a date for holding a recall election not less than 30 days or more than 60 days from the date on which he determines the petition to be sufficient. The supervisor of elections shall make or cause to be made publication of notice of such recall election. A majority of the votes cast in such election shall be required to remove the officer. Upon such removal, a vacancy shall exist in the office.

(Laws of Fla., Ch. 69-1173; Laws of Fla., Ch. 72-572; Ord. 84-1307-754, § 13; Laws of Fla., Ch. 92-341, § 1)

Section 15.02. General and special elections.

(a) The city shall conduct elections for the offices of Council Member, Mayor, Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections and Civil Service Board Member pursuant to the procedures set forth herein. Elections shall be by majority vote.

(b) The names of all persons who qualify as candidates for election to an office referred to in subsection (a) shall be placed on the general election ballot. If one candidate in such election receives a majority of the votes for an office, that candidate shall be elected. If no candidate in such election receives a majority of the votes for an office, the names of the two (2) candidates receiving the highest number of votes for such office shall be placed on a run off election ballot. The Council by ordinance shall provide for procedures in the event of a tie. The party affiliation, if any, of each candidate shall be noted on the election ballot for each election. Special elections shall follow the procedures set forth in this section.

(Ord. 91-178-146, § 1 (Referendum of November 3, 1992))

ARTICLE 16. RETIREMENT AND PENSION BENEFITS

Sec. 16.01. Retirement and pension system authorized.

Sec. 16.02. Existing plans continued.

Sec. 16.03. Amendment of prior plans in certain respects.

Sec. 16.04. Election of membership by certain employees and membership of handicapped employees.

Sec. 16.05. Police and correctional officers; special provisions relative to disability.

Sec. 16.06. Funding and enhanced pension benefits for correctional officers.

Section 16.01. Retirement and pension system authorized.

verified by the supervisor of elections and reported to the board, the board shall, by resolution, call a referendum on the question of the adoption of the proposed petition to be held at the next primary, general or special election occurring at least forty-five (45) days after the adoption of such resolution. If the question of the adoption of the proposed petition is approved by a majority of those registered electors voting on the question, the proposed petition shall be enacted and shall become effective on the date specified in the petition, or, if not so specified, on January 1 of the succeeding year.

- B. *Ordinance.* Within thirty (30) days after the requisite number of names have been verified by the supervisor of elections and reported to the board, the board shall notice and hold a public hearing on the proposed petition according to law and vote on it. If the board fails to adopt the proposed petition, it shall, by resolution, call a referendum on the question of the adoption of the proposed petition to be held at the next primary, general or special election occurring at least forty-five (45) days after the adoption of such resolution. If the question of the adoption of the proposed petition is approved by a majority of those registered electors voting on the question, the proposed petition shall be declared by resolution of the board to be enacted and shall become effective on the date specified in the petition, or, if not so specified, on January 1, of the succeeding year. The board shall not amend or repeal an ordinance adopted by initiative for a period of one (1) year after the effective date of such ordinance.

- C. The initiative power shall not be restricted, except as provided by general law and this Charter.

(Adopted November 1988)

Sec. 603. Limitation.

The power to enact, amend or repeal an ordinance by initiative shall not include ordinances relating to administrative or judicial functions of

county government, including but not limited to, county budget, debt obligations, capital improvement programs, salaries of county officers and employees and the levy and collection of taxes. (Renumbered pursuant to amendments adopted November 1988)

Sec. 604. Power of recall.

The electors of the county shall have the power to recall any elected Charter officer in accordance with the laws of the State of Florida. (Renumbered pursuant to amendments adopted November 1988)

State law reference—Recall, F.S. § 100.361.

Sec. 605. Nonpartisan elections.

Elections for all Charter offices shall be nonpartisan. No candidate shall be required to pay any party assessment or be required to state the party of which the candidate is a member. All candidates' names shall be placed on the ballot without reference to political party affiliation.

In the event that more than two (2) candidates have qualified for any single office under the chartered government, an election shall be held at the time of the first primary election and, providing no candidate receives a majority of the votes cast, the two (2) candidates receiving the most votes shall be placed on the ballot for the general election.

(Created November 1992)

ARTICLE VII. GENERAL PROVISIONS

Sec. 701. Charter amendment by board.

The board, by a majority vote of all members, shall have the authority to propose amendments to this Charter subject to referendum of the general electorate, at any primary, general or special election.

(Amended November 1988)

Sec. 702. Charter review commission.

A. A Charter review commission shall be appointed by the board. The Charter review commission shall consist of not less than eleven (11) members and not more than fifteen (15) members.

It is the intent of the electorate in adopting this Charter that if any section, subsection, sentence, clause, term or word of this Charter is held invalid, the remainder of the Charter shall not be affected.

Section 9.06. Vacancies.

Vacancies in commission districts shall be deemed to exist and be filled in accordance with the Constitution and Laws of Florida.

Section 9.07. Public Meetings.

Meetings of the board of county commissioners and other boards shall be held and conducted as provided by general law and rules of the board not inconsistent therewith.

Section 9.08. Recall.

The people shall have the power to recall elected officials by recall election initiated, called, held and conducted as provided by general law for chartered counties.

Section 9.09. Planning.

There shall be for Hillsborough County and its municipalities a single local planning agency created by such special law or laws which need not be approved by a referendum. It shall have responsibility for comprehensive planning and related activities as are committed to it by general law or applicable special laws.

Section 9.10. Environmental Protection.

There shall be for Hillsborough County and its municipalities a single local environmental protection commission created by such special law or laws which need not be approved by referendum.

Section 9.11 Discrimination Prohibited.

To be consistent with federal and state constitutions, laws, rules, and regulations, the county government shall not deprive any person of any right because of race, sex, age, national origin, religion, physical handicap, or political affiliation. The administrative code shall provide adequate means for protecting these rights, including equal opportunity assurances.

Section 9.12. Lowering of Salaries.

The salaries of commissioners and the county administrator may be lowered to the extent allowed by general law.

X. Transition And Schedule**Section 10.01. Offices and Officers of Former Government.**

Unless otherwise provided by this Charter, all offices, officials, boards, commissions, and agencies of the former government shall continue to perform their respective duties and functions until such minimum time allowed for the adoption of an administrative code pursuant to Section 7.02. At said time, said duties and functions shall be performed in accordance with the administrative code.

Section 10.02. Interim County-Wide Districts.

CLAY COUNTY HOME RULE CHARTER

2009 Interim Edition



- (b) Shall have free and unrestricted access to all of the employees, officials, records, and reports of the components and programs of County government directly under the Board of County Commissioners, and, where appropriate, may require all branches, departments, and officials of the components and programs of County government directly under the Board of County Commissioners to provide oral and written reports and to produce documents, files and other records.

(4) Assistant Commission Auditors shall be appointed by and be responsible to the Commission Auditor. The appointment of any Assistant Commission Auditor shall be subject to the appropriation of funds therefor by the Board of County Commissioners. The Commission Auditor shall have the sole authority to suspend or terminate any Assistant Commission Auditor with or without cause.

History.—Paragraph B(1) amended effective January 1, 1995, on proposal by 1993-94 Ch.Rev.Comm.; subparagraph A(1)(f) added effective October 1, 1999, on proposal by 1997-98 Ch.Rev.Comm.; subsection D added effective October 1, 1999, on proposal by 1997-98 Ch.Rev.Comm.

⁶ **Note.**—Effective October 1, 1999.

⁷ **Note.**—See Historical Notes for version in effect through December 31, 1994.

⁸ **Note.**—Effective October 1, 1999.

ARTICLE III

ELECTED COUNTY CONSTITUTIONAL OFFICES

Section 3.1: Elected County Constitutional Offices.

⁹ The offices of Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court and Supervisor of Elections shall remain as elected constitutional offices and the powers, duties and functions shall not be altered by this Home Rule Charter, except that the powers, duties and functions of the Clerk of the Circuit Court shall be limited to those of clerk of the circuit court and recorder as described in Article VIII, §1(d), Constitution of the State of Florida. The Constitutional officers shall perform their executive and administrative functions as specified by law, except that the Clerk of the Circuit Court shall perform only the executive and administrative functions as specified by law with respect to those powers, duties and functions of the Clerk of the Circuit Court described in Article VIII, §1(d), Constitution of the State of Florida, as clerk of the circuit court and recorder.

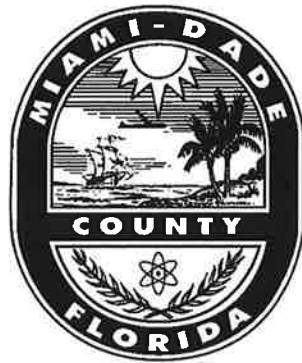
History.—Amended effective October 1, 1999, on proposal by 1997-98 Ch.Rev.Comm.

⁹ **Note.**—See Historical Notes for version in effect through September 30, 1999.

Section 3.2: Recall.

Each of the constitutional offices described in Section 3.1 of this Article shall be subject to recall in the same manner, under the same procedures, and for the same grounds as are provided by general law for the members of the Board of County Commissioners.

History.—Added effective January 1, 1999, on proposal by 1997-98 Ch.Rev.Comm.



THE
HOME RULE
AMENDMENT
AND
CHARTER

(AS AMENDED THROUGH
NOVEMBER 4, 2008)

MIAMI-DADE COUNTY, FLORIDA

4. The Board may within 30 days after the date a sufficient petition is presented adopt the ordinance as submitted in an initiatory petition or repeal the ordinance referred to by a referendary petition. If the Board does not adopt or repeal the ordinance as provided above, then the proposal shall be placed on the ballot without further action of the Board.
5. If the proposal is submitted to the electors, the election shall be held either:
 - (a) In the next scheduled county-wide election, or
 - (b) If the petition contains the valid signatures in the county in numbers at least equal to eight percent of the registered voters in the county, the election shall take place on the first Tuesday after 120 days from certification of the petition. The result shall be determined by a majority vote of the electors voting on the proposal.
6. An ordinance proposed by initiatory petition or the repeal of an ordinance by referendary petition shall be effective on the day after the election, except that:
 - (a) Any reduction or elimination of existing revenue or any increase in expenditures not provided for by the current budget or by existing bond issues shall not take effect until the beginning of the next succeeding fiscal year; and
 - (b) Rights accumulated under an ordinance between the time a certified referendary petition against the ordinance is presented to the Board and the repeal of the ordinance by the voters, shall not be enforced against the county; and
 - (c) Should two or more ordinances adopted at the same election have conflicting provisions, the one receiving the highest number of votes shall prevail as to those provisions.
7. An ordinance adopted by the electorate through initiatory proceedings shall not be amended or repealed by the Board for a period of one year after the election at which it was adopted, but thereafter it may be amended or repealed like any other ordinance.

SECTION 8.02. RECALL.

Any member of the Board of County Commissioners, the Mayor, the Property Appraiser, the Sheriff or Constable may be removed from office by the electors of the county, district,

or municipality by which he was chosen. The procedure on a recall petition shall be identical with that for an initiatory or referendary petition, except that:

1. The Clerk of the Circuit Court shall approve the form of the petition.
2. The person or persons circulating the petition must obtain signatures of electors of the county, district, or municipality concerned in numbers at least equal to four percent of the registered voters in the county district or municipality on the day on which the petition is approved, according to the official records of the County Supervisor of Elections.
3. The signed petition shall be filed with and canvassed and certified by the Clerk of the Circuit Court.
4. The Board of County Commissioners must provide for a recall election not less than 45 nor more than 90 days after the certification of the petition.
5. The question of recall shall be placed on the ballot in a manner that will give the elector a clear choice for or against the recall. The result shall be determined by a majority vote of the electors voting on the question.
6. If the majority is against recall the officer shall continue in office under the terms of his previous election. If the majority is for recall he shall, regardless of any defect in the recall petition, be deemed removed from office immediately.
7. No recall petition against such an officer shall be certified within one year after he takes office nor within one year after a recall petition against him is defeated.

ARTICLE - 9

GENERAL PROVISIONS

SECTION 9.01. ABOLITION OF CERTAIN OFFICES AND TRANSFER OF FUNCTIONS.

A. On May 1, 1958, the following offices are hereby abolished and the powers and functions of such offices are hereby transferred to the Mayor, who shall assume all the duties and functions of these offices required under the Constitution and general laws of this state: County Tax Collector, County Surveyor, County Purchasing Agent, and County Supervisor of Registration. The Mayor may delegate to a suitable person or persons the powers and functions of such offices.

HOME RULE CHARTER FOR COLUMBIA COUNTY, FLORIDA

PREAMBLE

THE PEOPLE OF COLUMBIA COUNTY, FLORIDA, by the grace of God free and independent, in order to attain greater self-determination, to exercise more control over our own destiny, to create a more responsible and effective government, and to guarantee constitutional rights to all equally, do hereby ordain and establish this Home Rule Charter as our form of government for Columbia County.

ARTICLE 1

CREATION, POWERS AND ORDINANCES OF HOME RULE CHARTER GOVERNMENT

1.1 Creation and general powers of home rule charter government

Columbia County shall be a home rule charter county, and, except as may be limited by this Home Rule Charter, shall have all powers of self-government granted now or hereafter by the Constitution and laws of the State of Florida.

1.2 Body corporate, name and boundaries

Columbia County shall be a body corporate and politic. The corporate name shall be Columbia County. The county seat and boundaries shall be those designated by law on the effective date of this Charter.

1.3 Construction

The powers granted by this Home Rule Charter shall be construed broadly in favor of the charter government. The specified powers in this Charter shall not be construed as limiting, in any way, the general or specific power of the government, as stated in this article. It is the intent of this article to grant to the charter government full power and authority to exercise all governmental powers necessary for the effective operation and conduct of the affairs of the charter government.

1.4 Special powers and duties of county

1.4.1 County purposes. The county, operating under this Charter, shall have all special powers and duties which are not inconsistent with this Charter, heretofore granted by law to the Board of County Commissioners, and shall have such additional county and municipal powers as may be required to fulfill the intent of this Charter.

1.4.2 Municipal purposes. The county shall have all necessary powers to accomplish municipal purposes within special districts. Property situated within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents not within municipal boundaries, nor shall property situated in the county be subject to taxation for services provided by the county exclusively for the benefit of the property or residents within municipal boundaries. To this

be completed not later than six months after initial receipt of the petition by the Supervisor of Elections. The sponsor shall comply with all requirements of general law for political committees, and shall file quarterly reports with the Supervisor of Elections stating, to the best of the sponsor's information and belief, the number of signatures procured. The time and form of such reports may be prescribed by ordinance. When a sufficient number of signatures is obtained, the sponsor shall thereupon submit signed and dated forms to the Supervisor of Elections and upon submission shall pay all fees required by general law. The Supervisor of Elections shall, within sixty (60) days after submission, verify the signatures thereon, or specify a reason for the invalidity of each rejected signature if the petition is rejected for insufficiency of the number of valid signatures. If the petition is rejected for insufficiency of the number of signatures, the sponsor shall have an additional thirty (30) days within which to submit additional signatures for verification. The Supervisor of Elections shall, within thirty (30) days verify the additional signatures. In the event sufficient signatures are still not acquired, the petition initiative shall be rendered null and void and none of the signatures may be carried over onto another identical or similar petition.

6.1.2 Consideration by Board of County Commissioners. *Within sixty (60) days after the requisite number of names has been verified by the Supervisor of Elections and reported to the Board of County Commissioners, the Board of County Commissioners shall give notice and hold a public hearing on the proposed ordinance according to law and vote on it. If the board fails to enact the proposed ordinance, it shall, by resolution, call a referendum on the question of the adoption of the proposed ordinance to be held at the next general election occurring at least forty-five (45) days after the adoption of such resolution. If the question of the adoption of the proposed ordinance is approved by a majority of those registered electors voting on the question, the proposed ordinance shall be declared by resolution of the Board of County Commissioners to be enacted and shall become effective on the date specified in the ordinance, or if not so specified, on January 1 of the succeeding year. The Board of County Commissioners shall not amend or repeal an ordinance adopted by initiative prior to the next succeeding general election, without the approval of a majority of the electors voting at a referendum called for that purpose.*

6.1.3 Limitation on ordinances by initiative *The power to enact, amend or repeal an ordinance or amend this Charter by initiative shall not include ordinances or provisions relating to administrative or judicial functions; the county budget; debt obligations, capital improvement programs, salaries of county officers and employees, the assessment or collection of taxes; or matters inconsistent with the Charter, the general laws of Florida, or the Florida Constitution.*

6.2 Recall

The County Commissioners shall be subject to recall as provided by general law. Any elected constitutional county officer may be recalled in the manner provided by general law for recall of a county commissioner of a charter county. A successor to the unexpired term of office of any recalled commissioner or elected constitutional county officer shall be selected in the manner provided by the Constitution or general laws of Florida for filling of vacancies in office after recall in charter counties.



SARASOTA COUNTY CHARTER

CERTIFIED AS TRUE AND ACCURATE BY
KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT AND COUNTY COMPTROLLER
SARASOTA, FLORIDA

JUNE 2008

precincts and of all Absentee, Provisional, and Military and Overseas (UOCAVA) ballots. Such comprehensive manual audit shall be completed within five days after the election, with the exception of comprehensive audits of Military and Overseas ballots, which shall be completed within five days after a primary election, and within 10 days after a general election. Audits shall be completed by a reputable independent and nonpartisan auditing firm as in (2) above. A copy of these audits shall be retained for public view and copying at the Supervisor of Elections Office in addition to being given to the County Commissioners. These audits shall be considered Florida public records pursuant to Florida Statute 119.

(Added 11/7/2006.)

Section 6.3 Recall. The procedures for the recall of a County Commissioner shall be as set forth in general law. The procedures for the recall of other elected County officers, including, but not limited to, the Sheriff, Supervisor of Elections, Tax Collector, Property Appraiser, and Clerk of the Circuit Court shall be the same as those for the recall of a County Commissioner. *(Amended 3/14/2000 and 11/7/2000.)*

Section 6.4 Method. Ordinances shall prescribe the method of calling special elections and referenda.

Section 6.5 Elections for County Office. As identified herein, County office for which compensation is paid shall be defined to include membership on the Board of County Commissioners, Clerk of the Circuit Court, Property Appraiser, Tax Collector, Supervisor of Elections, and Sheriff. County office for which compensation is not paid is membership on the Charter Review Board. *(Added 11/6/1990; Amended 11/5/1996 and 11/7/2000.)*

6.5A No candidate for any County office for which compensation is paid shall accept any contribution from any contributor, including a political committee, as defined by state law, in cash or in kind, in an amount in excess of \$200. *(Amended 11/7/2000.)*

Section 6.6 Enforcement. Within sixty (60) days of the adoption of this Article, the Board of County Commissioners shall adopt by ordinance provisions for the enforcement of this Article, including reasonable penalties for any willful violation. *(Amended and Renumbered 3/14/2000.)*

Section 6.7 Qualification. Anyone who wishes to qualify for an elected position in Sarasota County that requires residency within a specific district must have resided within that district for six (6) months immediately prior to qualification. Anyone who wishes to qualify for a



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER:

SUBJECT:

PETITIONER CONTACT:

REQUESTED ACTION:

SUMMARY EXPLANATION & BACKGROUND:

Staff Contact:

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2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

SUMMARY EXPLANATION & BACKGROUND CONTINUED:

County Charter Provision Comparisons

Updated December 2020

LEGISLATIVE BODY										
County	Size	How Elected	Partisan Election -- Y/N	Length of Term	Term Limitation	Adjustments to Salary	Separates Legislative & Executive Functions	Specifies Non-Interference Clause	Administrative Code Required	Recall
Alachua	5	District (§2.2)	Silent	4	N	Statute	Y (§2.1)	N	Y (§2.2)	Y (§2.2)
Brevard	5	District (§2.1;2.3)	Silent	4 (§2.4)	2 (§2.4)	Ordinance (even-numbered years)(§2.6)	Y (§1.5)	Y (§3.4)	Y (§2.10.2)	Y (§5.2)
Broward	9	District (§2.01(A)1)	Y (§2.01(B))	4	3 (§2.02)	Statute (§2.01(D))	Y (§1.02(c))	Y (§2.07)	Y (§2.13)	Y (§1.04(M))
Charlotte	5	District/At Large (§2.2)	Silent	4	Silent	Statute	Y	Y	Y	Y
Clay	5	District	Silent	4	2	Charter (majority vote in general election)	Y	Y	Y	Y
Columbia	5	District (§2.1)	N (§2.3;5.3)	4	N	Statute (§2.5)	Y (§1.6)	Y (§3.4)	Y (§2.8(6))	Y
Duval	19	14 District/5 At Large (§5.02)	Silent	4 (§5.03)	2 (§5.041)	Charter (§5.04, 9.12)	Y (§4.01)	N	Y	Y (§15.01)
Hillsborough	7	4 District/3 At Large (§4.03)	Y	4		Ordinance (§4.07)	Y (§3.01)	N	Y (§7.01)	Y (§9.08)
Lee	5	District/At Large (§2.2(A))	Y (§2.2A)	4	3	Statute (§2.2(C))	Y (§2.1)	Y (§2.2(I))	Y (§2.2(E))	Y (§2.2(G))
Leon	7	5 District/2 At Large (§2.2(1))	N	4	Silent	Ordinance (§2.2(3))	Y (§§1.8, 2.1)	Y	Y (§2.2(6))	Y (§4.2)
Miami-Dade	13	13 District (§1.04)	N (§3.3)	4 (§3.01)	2 (§3.01(E))	Charter (§1.06)	Y (§1.01, §2.02)	Y (§4.04)	Y (§1.02(H))	Y (§8.02)
Orange	7	6 District/Mayor-At Large (§201)	N (§605)	4 (§204(A))	2 §(204(B))	Ordinance (§2.05)	Y (§108)	Y (§212)	Y (§211)	Y (§604)

County Charter Provision Comparisons

Updated December 2020

LEGISLATIVE BODY										
County	Size	How Elected	Partisan Election -- Y/N	Length of Term	Term Limitation	Adjustments to Salary	Separates Legislative & Executive Functions	Specifies Non-Interference Clause	Administrative Code Required	Recall
Osceola	5	District/At Large (§2.2(A))	Silent	4	Silent	Statute (§2.2(C))	Y (§2.1)	Silent	Y (§2.2)(E))	Y (§2.2(G))
Palm Beach	7	District (§2.2)	Y-except non-partisan for property app, sheriff, sup. of elections (§4.1.a)	4	2	Statute	Y (§2.1)	Y (§2.5)	Y (§2.4)	Y (§5.2)
Pinellas	7	4 District/3 At Large (§3.01)	Silent	4	Silent	Statute (§3.01)	Y (§3.01, §4.01 (c))	N	Silent	Silent
Polk	5	District/At Large (§2.1)	Y (§5.2.1)	4 (§2.4)	12 (§2.3)	Charter (§2.5)	Y (§1.6)	Y (§3.4)	Y (§2.10)	Y (§6.2)
Sarasota	5	District/At Large (§2.1A)	Silent	4 (§2.1A)	2 (§2.1A)	Charter (§2.1B)	Silent	Y	Y	Y
Seminole	5	District/At Large (§2.2A)	Silent	4 (§2.2A)	Silent	Ordinance	Y (§2.1)	Y (§2.2(I))	Y (§2.2E)	Y (§2.2G)
Volusia	7	5 District/1 At Large/1 Chair At Large (elected) (§301)	N (§904)	4 (§303.1)	2 (§303.5)	Charter (§304)	Y (§203)	Y (§404)	Y (§308.1)	Silent
Wakulla	5	District/At Large (§2.1)	Silent	4 (§2.4)	N	Statute (§2.5)	Y (§1.6)	Y (§3.4)	Y (§§2.8, 2.9)	Y (§6.2)

EXECUTIVE BRANCH									
				County Executive					
County	Selection of County Executive	Method of Appointment	Method of Termination	With or Without Cause	Terms/ Conditions of Employment	Powers and Duties	Appointment of Dept. Heads	Termination of Department Heads	With or Without Cause
Alachua	Appointed	Majority (§2.3(A)(2))	Majority vote, after hearing if requested by CM (§2.3(A)(2))	Silent	Ordinance	Charter/ Ordinance	Cty Mgr/BoCC majority vote confirmation (§2.3(B)(1))	Cty Manager (§2.3(B)(2))	Either
Brevard	Appointed	Silent	Silent	Silent	Contract	Charter (§3.3)	Mgr/BoCC Approval (§4.5.1)	Manager (§4.5.1)	Either (§4.5.1)
Broward	Appointed	6/9	Majority	Silent	Silent	Charter	Adm/BoCC Majority Approval	Administrator	Silent
Charlotte	Appointed (§2.3(A)(1))	4/5 (§2.3(A)(2))	4 outright or 3 out of 5 @ at 2 meetings 2 weeks apart (§2.3(A)(4))	Either (§2.3(A)(4))	Ordinance (§2.3(A)(2))	Charter (§2.3(A)(1))	Adm/BoCC Advice & Consent (§2.3(B)(1))	Administrator (§2.3(B)(2))	Either (§2.3(B)(2))
Clay	Appointed (§2.3(A)(1))	Majority (§2.3(A)(1))	Majority (§2.3(A)(1))	Either (§2.3(A)(1))	Silent	Charter (§2.3(A)(1))	Administrator (§2.3(B)(1))	Manager/ BCC appeal (§2.3(B)(2))	Either (§2.3(B)(2))

EXECUTIVE BRANCH									
				County Executive					
County	Selection of County Executive	Method of Appointment	Method of Termination	With or Without Cause	Terms/ Conditions of Employment	Powers and Duties	Appointment of Dept. Heads	Termination of Department Heads	With or Without Cause
Columbia	Appointed	Majority (§2.8(1))	Majority/at 2 meetings or super-majority at one meeting (§2.8(1))	Either	Contract (§3.2) subject to annual review by BoCC	Charter (§3.3)	Manager (§3.3(10))	Manager (§3.3(10);§4.2)	Either/BoCC approval; Dept Head can appeal to BoCC (§4.2)
Duval	Mayor Elected (§6.01)	4 years	Silent	Silent	Silent	Silent	Mayor/Council Confirmation	Silent	Silent
Hillsborough	Appointed (§5.01)	5/7 (§5.03(1))	5 or 4 @ 2 meetings (§5.03(1))	Either (§5.03(1))	Ordinance (§5.03(2))	Silent	Adm w/BoCC Consent (§5.01)	Administrator (§5.01)	Either (§5.01)
Lee	Appointed (§2.3(A)(1))		Majority (§2.3(A)(1))	Either (§2.3(A)(1))	Contract	Charter (§2.3(A)(1))	Manager (§2.3(B))	Manager (§2.3(B))	Either (§2.3(B))

EXECUTIVE BRANCH									
				County Executive					
County	Selection of County Executive	Method of Appointment	Method of Termination	With or Without Cause	Terms/ Conditions of Employment	Powers and Duties	Appointment of Dept. Heads	Termination of Department Heads	With or Without Cause
Leon	Appointed (§2.3(1))	Majority + 1	Majority +1	Silent	Contract	Charter (§2.3(1)(A))	Administrator does not include county attorney and TDC staff (§2.3(2))	Administrator (§2.3(2))	Either (§2.3(2))
Miami-Dade	Mayor Elected (§2.02)	Elected-2 time term limit				Charter	Mayor	Mayor	
Orange	Mayor Elected (§3.02)	Elected				Charter	Mayor	Mayor	
Osceola	Appointed (§2.3(A)(1))	Majority	Silent	Silent	Silent	Charter (§2.2(A)(1))	Adm w/BoCC Advice & Consent	Administrator (§2.2(B)(2))	Either (§2.2(B)(2))
Palm Beach	Appointed (§2.4)	Majority (§2.4)	Silent	Silent	Silent	Charter	Adm/w BoCC Advice & Consent (§4.2)	Silent	Silent

EXECUTIVE BRANCH									
				County Executive					
County	Selection of County Executive	Method of Appointment	Method of Termination	With or Without Cause	Terms/ Conditions of Employment	Powers and Duties	Appointment of Dept. Heads	Termination of Department Heads	With or Without Cause
Pinellas	Appointed	5/7 (§4.01(a))	4/5 at 2 meetings (§4.01(a))	Silent	Silent	Charter (§4.01(C))	Adm/BoCC Approval for unclassified positions (§4.01(C)(2))	Adm/BoCC Approval for unclassified positions (§4.01(C)(3))	With
Polk	Appointed	Majority of entire commission (§2.8(1))	Majority at 2 meetings (§2.8(1))	Silent	Contract (§3.2)	Charter	Adm/BoCC Approval (§4.2)	Administrator (§4.2)	Either (§4.2)
Sarasota	Appointed (§2.6A)	4/5 (§2.6B)	4 or 3/5 @ 2 meetings 3 weeks apart (§2.6B)	Silent	Silent	BCC and Charter (§2.6F)	Adm/BoCC Confirmation (§2.6F)	Adm/BoCC Confirmation (§2.6F)	Either (§2.6F)
Seminole	Appointed (§2.3(A)(1))	Majority	Majority	Either (§2.3(A)(1))	Silent	Charter (§2.3(A))	Adm/BoCC Confirmation (§2.3(B))	Administrator	Either
Volusia	Appointed (§401)	Silent	Silent	Silent	Silent	Charter (§403)	Adm/Council Approval (§602)	Silent	Silent

EXECUTIVE BRANCH									
				County Executive					
County	Selection of County Executive	Method of Appointment	Method of Termination	With or Without Cause	Terms/ Conditions of Employment	Powers and Duties	Appointment of Dept. Heads	Termination of Department Heads	With or Without Cause
Wakulla	Appointed (§3.1)	Silent	Silent	Silent	Contract (§3.2)	Charter (§3.3)	Silent	Silent	Silent

COUNTY ATTORNEY					
County	Method of Appointment	Method of Termination	With or Without Cause	Appointment of Assistant County Attorneys	Termination of Assistant County Attorneys
Alachua	BoCC (§2.3(C))	Silent	Either (§2.3(C))	Silent	Silent
Brevard	BoCC	Silent	Silent	Silent	Silent
Broward	BoCC (§2.10)	Silent (§2.10)	Silent (§2.10)	County Atty (§2.10(C))	Silent
Charlotte	BoCC (§2.3(D))	Silent	Silent	Silent	Silent
Clay	Majority (§2.3(C)(1))	Majority (§2.3(C)(1))	Either (§2.3(C)(1))	County Attorney (§2.3(C)(2))	County Attorney (§2.3(C)(2))
Columbia	Elected Non-Partisan	Not Applicable	Not Applicable	County Attorney	County Attorney
Duval	Mayor/Council Confirm (§7.03)	Mayor or Council (§7.06)	With/Council Confirm (§7.206)	General Counsel (§7.207)	Silent
Hillsborough	5 (§6.03(1))	5 or 4 @ 2 meetings (§6.03(1))	Either (§6.03(1))	County Attorney (§6.01)	County Attorney (§6.01)
Lee	Majority (§2.3(C)(1))	Majority (§2.3(C)(1))	Either (§2.(C)(1))	County Attorney (§2.(C)(5))	County Attorney (§2.3(C)(5))
Leon	BoCC (§2.4)	Silent (§2.3)	Either (§2.4.1)	Silent	Silent
Miami-Dade	BoCC subject to Mayor veto/override (§5.06)	Silent	Silent	County Attorney (§5.06)	Silent
Orange	Silent	Silent	Silent	Silent	Silent

COUNTY ATTORNEY					
County	Method of Appointment	Method of Termination	With or Without Cause	Appointment of Assistant County Attorneys	Termination of Assistant County Attorneys
Osceola	Majority (§2.3(C))	Silent	Silent	Co Atty subject to budget approval (§2.3(C))	Silent
Palm Beach	BoCC (§4.3)	Silent	Silent	County Attorney subject to budget approval (§4.3)	Silent
Pinellas	County Attorney Oversight Committee (§4.2(a))	Silent	Silent	Co Atty/BoCC App (§4.02(6))	Silent
Polk	BoCC (§4.3)	Majority (§4.3)	Silent	Silent	Silent
Sarasota	BoCC (§2.7)	Silent	Silent	Silent	Silent
Seminole	Majority (§2.4)	Majority (§2.4)	Either (§2.4)	County Attorney (§2.4)	County Attorney (§2.4)
Volusia	Council (§III.A.1)	Silent	Silent	Silent	Silent
Wakulla	BoCC (§4.1)	Silent	Silent	Silent	Silent

ELECTED CONSTITUTIONAL OFFICERS				
County	Affects Status of Elected Constitutional Officers	Describe Change	Does Charter Provide for Recall of Elected Officials	School Board
Alachua	N (§3.1)		Silent	
Brevard	Y (§4.1;4.2)	Makes them county officers (§7.23)	Y (§4.1.2; §5.2)	Elections procedures (§8.1)
Broward	Y (§3.06)	Abolished Tax Coll/Clerk Audit Functions Now Dept. of Financial Svcs & Adm	Silent	
Charlotte	N (§3.1)		Silent - residency requirements (§3.1)	
Clay	Y (§3.1)	Manager is Board Clerk and performs Clerk finance functions (§2.3 (4)(1)f); creates a Commission Auditor; constituional officers term limits (§2.3 (D))	Y (§3.2)	
Columbia	N (§5.1)		Silent	
Duval	Y	Mayor Elected; Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections - elected charter offices (2 term limits)	Y (§15.01)	Y (Article 13)
Hillsborough	N (§1.02)		Silent	
Lee	Y (§3.1)	SOE: Non-Partisan §§3.1;3.2 (A)	Silent	
Leon	Y (§3.1)	SOE: Non-Partisan §3.2 (A)	Silent	
Miami-Dade	Y (§9.01)	Sheriff abolished; Tax Collector and Clerk finance functions now Dept. of Financial Admininstration; transferred functions to Mayor; elected Property Appraiser	Y (§8.02)	

ELECTED CONSTITUTIONAL OFFICERS				
County	Affects Status of Elected Constitutional Officers	Describe Change	Does Charter Provide for Recall of Elected Officials	School Board
Orange	Y (§703)	Clerk of Court/Comptroller; removes charter status of Property App; Tax Collector; SOE; Sheriff and reinstates constitutional status (§703); Sheriff, Property Appraiser, SOE and Clerk of Court into nonpartisan, elected charter officers subject to term limits of 4 consecutive year terms, abolishing status as constitutional officers	Silent	
Osceola	Y (§3.1)	Clerk functions transferred to Manager	Silent	
Palm Beach	Y (§4.1.a)	Property Appraiser; Sheriff; Supervisor of Elections - nonpartisan	Silent	
Pinellas	N (§4.03)		Silent	
Polk	Y (§5.1; 5.2)	Non-partisan for Clerk, Property Appraiser, Supervisor or Elections, Sheriff, Tax Collector	Silent	
Sarasota	Y (§2.4)	4 Yr Term Limits for Constitutional Officers	Y	
Seminole	N (§3.1)		Silent	
Volusia	Y (§601.1)	Tax Coll/Clerk now Dept. of Finance & Adm; Sheriff, SOE, Property Appraiser Appointed as Department Directors	Silent	
Wakulla	N (§5.1)		Silent	

INITIATIVE TO ENACT, AMEND OR REPEAL COUNTY ORDINANCES						
County	% of Registered Electors Required on Petition	Time Limitation to Gather Signatures	Time Limit for County Commission to Take Action	If Referendum is Required it will be scheduled at:	Limitation on Subject Matter for Initiative Petitions	Approval as to Form
Alachua	7% (§2.2(H))	180 days (§2.2(H)(2))	60 days (§2.2(H)(3))	General Election (§2.2(H)(3))	Specified in charter (§2.2(H)(4))	Y (§2.2(H)(2))
Brevard	5% (§5.1)	9 mos. (§5.1.1)	60 days (§5.1.2)	General Election (§5.1.2)	Specified in charter (§5.1.3)	Silent
Broward	7%	180 days (§7.01)	90 days	General/Special election	Specified in charter (§7.01)	Y
Charlotte	10% (§2.2(G)(1))	6 mos (§2.2(G)(2))	60 days (§2.2(G)(3))	General Election (§2.2(G)(3))	Specified in charter (§2.2(g)(4))	Y (§2.2(G)(2))
Clay	10% (§2.2(I)(1))	180 days (§2.2(I)(2))	45 days (§2.2(I)(3))	General Election (§2.2(I)(3))	Specified in charter (§2.2(I)(5))	Y (§2.2(I)(2))
Columbia	7% (§6.1)	6 mos (§6.1.1)	60 days (§6.1.2)	General Election (§6.1.2)	Specified in charter (§6.1.3)	Silent
Duval	Silent	Silent	Silent	Silent	Silent	Silent
Hillsborough	Silent	Silent	Silent	Silent	Silent	Silent

INITIATIVE TO ENACT, AMEND OR REPEAL COUNTY ORDINANCES						
County	% of Registered Electors Required on Petition	Time Limitation to Gather Signatures	Time Limit for County Commission to Take Action	If Referendum is Required it will be scheduled at:	Limitation on Subject Matter for Initiative Petitions	Approval as to Form
Lee	5% (§2.2(H)(1))	180 days (§2.2(H)(2))	45 days (§2.2(H)(3))	General Election (§2.2(H)(3))	Specified in charter (§2.2(H)(4))	Y (§2.2(H)(2))
Leon	10% (§4.1(1))	1 year (§4.2(2))	60 days (§4.2(3))	General Election (§4.2(3))	Specified in charter (§4.2(4))	Y
Miami-Dade	4% (§8.01)	120 days	60 days after legal review report	Next Countywide Election or if 8% signatures, special election	Specified in charter	Y
Orange	7% (§601(B))		30 days (§602(B))	Next election, 45 days after Res by BoCC (§602(B))	Specified in charter (§603)	Y (§602)
Osceola	7% (§2.2(H)(1))	180 days (§2.2(H)(2))	60 days (§2.2(H)(3))	General Election (§2.2(H)(3))	Specified in charter (§2.2(H)(4))	Y (§2.2(H)(2))
Palm Beach	7% (§5.1)	Silent	45 days subject to verification by SOE (§5.1)	General Election (§5.1)	Specified in charter (§5.1)	Silent
Pinellas	Silent	Silent	Silent			

INITIATIVE TO ENACT, AMEND OR REPEAL COUNTY ORDINANCES						
County	% of Registered Electors Required on Petition	Time Limitation to Gather Signatures	Time Limit for County Commission to Take Action	If Referendum is Required it will be scheduled at:	Limitation on Subject Matter for Initiative Petitions	Approval as to Form
Polk	6% (§6.1)	1 year (§6.1.1)	60 days (§6.1.2)	General Election (§6.1.2)	Specified in charter (§6.1.3)	Silent
Sarasota	Silent					Silent
Seminole	5% (§2.2(H)(1))	6 mos (§2.2(H)(2))	60 (§2.2(H)(3))	General Election (§2.2(H)(3))	Specified in charter (§2.2(H)(4))	Y (§2.2(H)(2))
Volusia	Silent				Silent	Silent
Wakulla	30% (§6.1)	6 mos (§6.1.1)	60 days (§6.1.2)	General Election (§6.1.2)	Specified in charter (§6.1.3)	Silent

METHODS TO AMEND CHARTER AMENDMENT BY PETITION						
County	Subject Matter Exclusions	% of Registered Electors Required on Petition	Time Limit to Gather Signatures	Referendum Will Be Scheduled	Voting Requirements	Other
Alachua		10% (§4.2(A)(1))	180 days (§4.2(A)(2))	General Election (§4.2(A)(1))	Majority (§4.2(A)(3))	
Brevard	Y (§7.3.2.1)	4% (§7.3.2)	9 mos (§7.3.2.4;§5.1.1)	Special Election (§7.3.3)	Majority (§7.3.3)	
Broward		7%	180 days	See charter (§7.01(G)(1)&(2))	Majority (§7.01(I))	
Charlotte		10% (4.2(B)(1))	90 days (4.2(B)(1))	General Election (§4.2(B)(1))	Majority (§4.2(B)(3))	
Clay		10%(§4.2(A)(1))	180 days (§4.2(A)(3))	General Election (§4.2(A)(2))	Majority (§4.2(A)(4))	
Columbia		10% (§8.3.2(2))	6 mos (§8.3.2)	General Election (§8.3.3)	Majority (§8.3.3)	
Duval		5% (§18.05(a))	180 days	Next Countywide General Election (§18.05(h))	Majority (§18.05)	
Hillsborough		8% (§8.03(1))	6 mos (§8.03(1))	General Election (§8.04)	Majority (§8.04)	
Lee		7% (§4.1(A)(1))	90 days (§4.1(A)(2))	General Election (§4.1(A)(4))	Majority (§4.1(A)(4))	
Leon		10% (§5.2(1)(A))	1 year (§5.2(1)(A))	General Election (§5.2(1)(B))	Majority (§5.2(1)(B))	
Miami-Dade	N	10% (§9.07(A))	Silent	General Election	Majority (§9.07(D))	
Orange	N	10% (§601(A))	180 days (§601(A))	Next General Election (§602(A))	Majority (§602(A))	Providing for single subject, legal review, comptroller prepared financial impact statement and public hearing requirements; ensuring equal percentage of signatures from all commission districts
Osceola	N	10% (§4.2(A)(1))	180 days (§4.2(A)(2))	Special Election (§4.2(A)(1))	Majority (§4.2(A)(3))	
Palm Beach	N	7% (§6.3)	Silent	General Election or presidential primary (§6.3)	Majority (§6.3)	
Pinellas	N	8%(§6.02(1))	240 days (§6.02(2))	General Election or special call referendum (§6.02(1))	Majority (§6.02(1))	Brief financial impact statement prepared by county auditor placed on ballot with proposed charter amendment
Polk	Y (§8.3.2))	7% (§8.3.2)	1 year (§8.3.2, §6.1.1)	General Election - cannot be held sooner than 60 days after amendment proposed or validated (§8.3.3)	60% (§8.3.3)	60% (§8.3.3)
Sarasota	N	10% (§7.1)	Silent	General Election (§7.1)	Majority (§7.1)	Majority (§7.1)

METHODS TO AMEND CHARTER AMENDMENT BY PETITION						
County	Subject Matter Exclusions	% of Registered Electors Required on Petition	Time Limit to Gather Signatures	Referendum Will Be Scheduled	Voting Requirements	Other
Seminole	N	7.5% residing in 3/5 (§4.2(A)(1))	6 mos (§4.2(A)(2))	General Election (§4.2(A)(1))	Majority (§4.2(A)(3))	Majority (§4.2(A)(3))
Volusia		5% (§1302.2)	Silent	General Election (§1302.3)	Majority (§1302.3)	Majority (§1302.3)
Wakulla	Y (§7.3.2)	30% (§7.3.2)	6 mos (§7.3.2, §6.1.1)	General Election (§7.3.3)	Majority (§7.3.3)	Majority (§7.3.3)

AMENDMENT BY CHARTER REVIEW COMMISSION						
County	Appointment of Charter Review Commission Specified in Charter?	When Appointed	Size of Commission	Election Scheduled	Voting Requirements of Commission	Financial Impact Statements
Alachua	Y (§4.2(B))	Every 10 years (§4.2(B)(1))	11-15 (§4.2(B)(1))	General Election (§4.2(B))	Majority (§4.2(B)(5))	Silent
Brevard	Y (§7.4)	Every 6 years (§7.4)	15 (§7.4)	Special Election (§7.4.1)	Majority (§7.4.1)	Silent
Broward	Y	Every 12 years	19	General Election	2/3 vote (§6.02)	Y (§11.07)
Charlotte	Y (§4.(C)(1))	Every 6 years (§4.2(C)(1))	15/ 3 alternate (§4.2(C)(1))	General Election (§4.2(C)(1))	Majority (§4.2(C)(5))	Silent
Clay	Y (§4.2(B)(1))	Every 4 years (§4.2(B)(1))	15/5 alternates (§4.2(B)(1))	General Election (§4.2(B)(5))	Majority (§4.2(B)(5))	
Columbia	Y (§8.4)	Every 8 years (§8.4)	Silent	General Election (§8.4(3))	Silent	Silent
Duval	N					
Hillsborough	Y	Every 5 years (§8.02)	14 (§8.02)	General Election (§8.04)	2/3 vote (§8.04)	Y

AMENDMENT BY CHARTER REVIEW COMMISSION						
County	Appointment of Charter Review Commission Specified in Charter?	When Appointed	Size of Commission	Election Scheduled	Voting Requirements of Commission	Financial Impact Statements
Lee	Y	Every 8 years (§4.1(B)(1))	15 (§4.1(B)(1))	General Election (§4.1(B)(4))	Majority (§4.1(B)(4))	N
Leon	Y	Every 8 years (§5.2(2)(A))	BoCC decides	General Election (§5.2(2)(A))	Silent	Silent
Miami-Dade	N					
Orange	Y (§7.02)	Every 4 years (§7.02(B))	11-15 (§7.02(A))	General Election (§7.02(B))	Silent	
Osceola	Y (§4.2(C)(1))	Every 4 years (§4.2(C)(1))	11 (§4.2(C)(2))	Silent	2/3 vote (§4.2(C)(8))	Silent
Palm Beach	N					
Pinellas	Y	Every 8 years (§6.03(a))	13 (§6.03(a))	General Election (§6.03(c))	Silent	Y (§6.06)

AMENDMENT BY CHARTER REVIEW COMMISSION						
County	Appointment of Charter Review Commission Specified in Charter?	When Appointed	Size of Commission	Election Scheduled	Voting Requirements of Commission	Financial Impact Statements
Polk	Y	Every 8 years (§8.04)	13 (§8.4)	General Election (§8.4)	Silent	Silent
Sarasota	Elected (§2.8A)	4 year terms (§2.8A)	10 (§2.8A)	Next Countywide Election (§7.1)	2/3 (§2.8B)	Silent
Seminole	Y (§4.2(B))	Every 6 years (§4.2(B)(1))	15 (§4.2(B)(1))	General Election (§4.2(B)(1))	Majority (§4.2(B)(4))	Silent
Volusia	Y (§1303)	Every 10 years (§1303)	According to general law (§1303)	General Election (§1303)	Silent	Silent
Wakulla	Y (§7.4)	Every 8 years (§7.4)	15 (§7.4)	General Election (§7.4)	Not less than 10 members (§7.4)	Silent

CHARTER AMENDMENT BY COUNTY COMMISSION			
County	Amendment Proposed by Ordinance Approved by	Referendum Will Be Scheduled	Voting Requirements
Alachua	Majority + 1 (§4.2(C)(1))	General Election (§4.2(C)(2))	Majority (§4.2(C)(2))
Brevard	Not less than 4 (§7.3.1)	Special/concurrent with countywide	Majority
Broward	Majority + 1 (§2.06)	General Election	Majority
Charlotte	Majority (§4.2(A))	General Election (§4.2(A))	Majority (§4.2(A))
Clay	Majority (§4.2(C)(1))	Next General or Special Election (§4.2(C)(1))	Majority (§4.2(C)(1))
Columbia	Majority + 1 (§8.3.1)	General Election (§8.3.3)	Majority (§8.3.3)
Duval	Silent	Silent	Silent
Hillsborough	5 (§8.01)	Special Election or Regular Election as directed by BoCC (§8.04)	Majority (§8.04)
Lee	Majority (§4.1(C)(1))	General Election (§4.1(C)(2))	Majority (§4.1(C)(2))
Leon	Majority + 1 (§5.2(3)(A))	General Election (§5.2(3)(A))	Majority (§5.2(3)(B))
Miami-Dade	Resolution of BoCC (§9.07(A))	General Election	Majority
Orange	Majority (§7.01)	Primary, General or Special Election (§7.01)	Silent

CHARTER AMENDMENT BY COUNTY COMMISSION			
County	Amendment Proposed by Ordinance Approved by	Referendum Will Be Scheduled	Voting Requirements
Osceola	Majority + 1 (§4.2(B)(1))	Special Election (§4.2(B)(1))	Majority (§4.2(B)(1))
Palm Beach	4 (§6.3)	Presidential Election Ballot (§6.3)	Majority (§6.3)
Pinellas	Majority + 1 (§6.01)	Next Countywide or Special Election (§6.01)	Majority (§6.01)
Polk	Majority + 1 (§8.3.1)	General Election (§8.3.3)	60% (§8.3.3)
Sarasota	Silent	Special Election (§7.1)	Majority (§7.1)
Seminole	Majority (§4.2(C)(1))	General Election (§4.2(C)(1))	Majority (§4.2(C)(1))
Volusia	2/3 vote of Council (§1302.1)	General Election (§1302.3)	Majority (§1302.3)
Wakulla	Majority + 1 (§7.3.1)	General Election (§7.3.3)	Majority (§7.3.3)

INTERGOVERNMENTAL RELATIONS	
County	"
Alachua	Municipal ordinances prevail in event of conflict. Environmental - Ordinances that establish different standards for the purpose of protecting the environment by prohibiting or regulating air or water pollution, the more stringent will apply inside a municipality. The less stringent standards still apply as well. (§1.4) Land use planning - Each municipality responsible for planning inside municipal boundaries; county for unincorporated area. County and a city may, by interlocal, agree to provide for joint planning under certain circumstances. (§1.5) County Growth Management Area - charter amended to establish a countywide "County Growth Management Area" and county's comp plan and land development regulations will govern land
Brevard	Municipal ordinances prevail except as otherwise provided by state or federal law. (§1.7)
Broward	Municipal ordinances prevail except when the county ordinance relates to (1) setting minimum standards protecting the environment through the prohibition or regulation of air/water pollution, or the destruction of resources in the county belonging to the general public; (2) land use planning ; (3) regulates the conduct of elected officials, appointed officials, and public employees through an enacted Code of Ethics ; (4) handgun management (§2.12)
Charlotte	Municipal ordinances prevail except for countywide ordinances relating to (1) impact fees to pay the cost of county facilities or (2) countywide comp plan or countywide comp plan elements and countywide LDRs as defined by Ch. 163 , Part II, Fla. Stat., as amended by the Legislature.
Clay	Municipal ordinances prevail.
Columbia	Municipal ordinances prevail except the county may, by ordinance, adopt minimum countywide standards for (1) regulating adult entertainment ; (2) protecting the environment by regulating air or water pollution; (3) outdoor burning ; (4) hours of sales of alcoholic beverages ; (5) animal control ; (6) firearms and weapons and; (7) protection of level of service standards for county maintained roads . Municipal ordinances in these areas can be stricter than the county minimum and apply. (§1.8)
Duval	Consolidated government.
Hillsborough	Municipal ordinances prevail. (§4.09) Planning - Charter establishes a single planning agency for cities and county to be created by special act without a referendum; responsible for comp planning and related activities as are committed to it by general or special law. (§9.09) Environmental protection - Charter establishes a single local environmental protection commission to be created by special act without a referendum.(§9.10)
Lee	Municipal ordinances prevail (§1.4); minimum environmental regulations (§1.6)
Leon	Municipal ordinances prevail. (§1.6)
Miami-Dade	Charter has power to preempt all municipal powers. (§§6.01, 6.02)

INTERGOVERNMENTAL RELATIONS	
County	"
Orange	Municipal ordinances generally prevail. Exceptions: County ordinances prevail when the county sets minimum standards for (1) regulating adult entertainment ; (2) protecting the environment by prohibiting or regulating air/water pollution, and only to extent that minimum standards are stricter than municipal ones; and (3) prohibiting or regulating simulated gambling or gambling. (§704) Voluntary annexation -Charter preempts ability to annex certain "preservation districts" to the county. (§505)
Osceola	Municipal ordinances prevail to extent of conflict. In the absence of conflict, county ordinances shall be effective inside municipalities when such intent is expressed by county ordinance. (§1.4) Casino gambling reserved to the people. (§1.5)
Palm Beach	<ul style="list-style-type: none"> •Municipal ordinances prevail to extent of conflict, except that county ordinances shall prevail over (1) matters relating to protection of wells and well fields; (2) matters relating to schools, county-owned beaches, district parks and regional parks, solid waste disposal, county law enforcement, and impact fees for county roads and public buildings; in matters related to county fire-rescue impact fees and county library impact fees in those municipalities whose properties are taxed by the county for library and/or fire-rescue services, respectively; (3) for adoption and amendment of countywide land use element; (4) matters related to establishment of levels of service for collector and arterial roads which are not the responsibility of any municipality; (5) voluntary annexation and (6) ethics regulation.
	<p>the restriction of the issuance of development orders which would add traffic to such roads which have traffic exceeding the adopted level of service, provided that such ordinance is adopted and amended by a majority of the county commission; and (5) voluntary annexation. (§1.3) Protection of Health, Safety and Welfare of all residents of county. County may adopt appropriate ordinances to accomplish these purposes. (§3.3)</p> <ul style="list-style-type: none"> •Both county and municipal approval of charter amendments when they affect municipal power or function.(§6.3)
Pinellas	The county has all special and necessary power to furnish within the various municipalities the services and regulatory authority listed here: (1) development and operation of 911 emergency communication system; (2) development and operation of solid waste disposal facilities, exclusive of municipal collection systems; (3) development and operation of regional sewer treatment facilities in accordance with federal law, state law, and existing or future interlocal agreements, exclusive of municipal systems; (4) acquisition, development and control of county-owned parks, buildings, and other county owned parks; (5) public health or welfare services or facilities; (6) operation, development and control of St. Pete-Clearwater airport;(7) design, construction and maintenance of major drainage systems in both the incorporated and unincorporated area; (8) design, construction and maintenance of county roads; (9) implementation of consumer protection regulations and protections; (10) animal control; (11) civil preparedness; (12) fire protection for unincorporated areas; (13) motor vehicle inspections;

INTERGOVERNMENTAL RELATIONS	
County	"
	<p>(14) water distribution, exclusive of municipal systems and in accordance with interlocals; (15) charitable solicitations regulations; (16) provide municipal services in unincorporated areas; (17) all powers necessary to transfer functions and powers of other governmental agencies; (18) special one-rule tax to acquire beachfront and other property for recreational use; (19) countywide planning, as provided by special law; (20) voluntary annexation procedures, including lands available for annexation, to the extent provided by general law. (§2.04)</p> <p>Annexation - Nothing in the charter prevents a municipality from annexing an unincorporated area, except that all annexations shall be in accordance with the exclusive method and criteria for voluntary annexation, including delineation of areas eligible for annexations adopted by ordinance under the authority elsewhere in charter. (§2.07)</p> <p>County can furnish additional services to the municipalities when the municipality requests it and BoCC approves. (§2.05) Certain powers of county limited. (§2.06)</p>
Polk	Municipal ordinances prevail. (§1.8)
Sarasota	Generally, municipal ordinances prevail except with respect to comprehensive planning and future land use designations in areas outside the urban service area which are not designated in a municipality's comp plan. In those areas, absent agreement, county's, rather than city's, future land use map designation ordinances control. (§3.3)
Seminole	Generally, municipal ordinances prevail. (§1.4) Exceptions: Casino gambling reserved to the people (Art. V, §1.1) and county ordinances related to the Rural Boundary prevail over municipal ones in conflict with county ordinances related to it. (Art. V, §1.2)
Volusia	<p>Municipal ordinances prevail, except as otherwise provided by the charter. (§1305) Growth Management Commission - countywide power. (§202.3) Environmental minimum standards, including, but not limited to, tree protection, stormwater management, wastewater management, river and waterway protection, hazardous waste disposal, wetlands protection, beach and dune protection, air pollution. Standards shall apply in all areas of the county; county ordinances prevail in this area, municipalities may adopt stricter standards. (§202.4) Unified Beach Code - County has jurisdiction over coastal beaches and approaches (specifically including municipal areas) and exclusive authority to regulate the beaches and public beach access and use; county ordinance prevails in this area. (§205)</p>
Wakulla	Municipal ordinances prevail; if county ordinance in conflict in municipality ordinance not effective. (§1.8)

ETHICS, ELECTIONS AND OPEN GOVERNMENT					
County	Campaign Finance Regulation	County Ethics Commission	Local Code of Ethics	Local Elections Criteria/Procedures	Redistricting Board
Alachua	Y (§1.6)	N	Silent		
Brevard	N	N	N		
Broward	N	Y (§10.01)	Y		
Charlotte	N	N	N		
Clay	N	N	Y (§2.2(E))		
Columbia	N	N	Y		
Duval	N	Y (§1.202)	Y (§1.202)		
Hillsborough	N	N	Y (§9.03)		
Lee	N	N	N		
Leon	N	N	Y		
Miami-Dade	N	Y-Independent Inspector General	Y		
Orange	N	N	Y (§707)		
Osceola	N	N	N		
Palm Beach		Y	Y (§2-441 through 2-447)		
Pinellas	N	N	N		Y
Polk	N	N	N		
Sarasota	Y (§6.5A)	N	N		
Seminole	N	N	N		
Volusia	N	N	Y (§1201)		
Wakulla	N	N			

RECALL ELECTION HELD	
County	
Alachua	N
Brevard	N
Broward	N
Charlotte	N
Clay	N
Columbia	N
Duval	N
Hillsborough	
Lee	N
Leon	N
Miami-Dade	Y (1970s/ 2006)
Orange	N
Osceola	N
Palm Beach	N
Pinellas	N
Polk	N
Sarasota	N
Seminole	N
Volusia	
Wakulla	N

Sec. 7.4.1. Independent review of proposed charter amendments.

1. For any proposed amendment sponsored by the County Commission or the Charter Review Commission, the County Commission, at the county's expense, shall empanel a panel of three (3) persons to determine whether the proposed amendment and ballot language embraces one subject only and is consistent with the Florida Constitution, general law and this Charter. The person serving on the panel shall have demonstrated experience in Florida local government law and shall either be licensed to practice law in the State of Florida or have retired from a Florida law practice or the Florida judiciary within the past five years.
2. If at least two (2) members of the panel find that the proposed amendment embraces only one (1) subject and is consistent with the Florida Constitution, general law and this Charter, the County Commission shall place the proposed charter amendment on the ballot for the consideration at a referendum at a special election held concurrently with the next countywide election or at an earlier special election called for that purpose. Notice of the election shall conform to the requirements set forth in the last paragraph of section 7. 3. 3. in this Charter. Passage of a proposed charter amendment shall require approval by a majority of the registered electors voting in the special election.
3. The three (3) person panel shall submit its findings for each proposed amendment to the Charter Review Commission within ten (10) calendar days of receipt and shall include a comprehensive written report regarding the conclusion(s) made. If the three (3) person panel rejects the proposed amendment or ballot language, it shall be sent back to the Charter Review Commission, during regular session, for a reasonable opportunity to cure any defect. The panels written report shall include, with specificity, the rationale for rejecting the proposed language and a suggested manner in which the defect(s) should be resolved. If all three (3) members of the panel conclude that the proposed language is incurable, the Charter Review Commission shall hold a vote on whether to abandon the proposal altogether or attempt to remedy.

*First Draft- submitted 4/29/22:

Sec. 7.4.1. Independent review of proposed charter amendments.

1. For any proposed amendment sponsored by the County Commission or the Charter Review Commission, the County Commission, at the county's expense, shall empanel a panel of three (3) persons to determine whether the proposed amendment and ballot language embraces one subject only and is consistent with the Florida Constitution, general law and this Charter. The person serving on the panel shall have demonstrated experience in Florida local government law and shall either be licensed to practice law in the State of Florida or have retired from a Florida law practice or the Florida judiciary within the past five years.
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*Revised/Final Draft- submitted 5/2/22:

Sec. 7.4.1. Independent review of proposed charter amendments.

1. For any proposed amendment sponsored by the County Commission or the Charter Review Commission, the County Commission, at the county's expense, shall empanel a panel of three persons to determine whether the proposed amendment and ballot language embraces one subject only and is consistent with the Florida Constitution, general law and this Charter. All members of the ~~The person serving on the~~ panel shall have demonstrated experience in Florida local government law and shall either be licensed to practice law in the State of Florida or have retired from a Florida law practice or the Florida judiciary within the past five years.
2. If at least two (2) members of the panel find that the proposed amendment embraces only one (1) subject and is consistent with the Florida Constitution, general law and this Charter, the County Commission shall place the proposed charter amendment on the ballot for the consideration at a referendum at a general election or special election held concurrently with the next countywide election or at an earlier special election called for that purpose. Notice of the election shall conform to the requirements set forth in the last paragraph of section 7. 3. 3. In this Charter. Passage of a proposed charter amendment shall require approval by a majority of the registered electors voting in the ~~special~~ election.
3. The three (3) person panel shall submit its findings for each proposed amendment to the Board of County Commissioners and the Charter Review Commission within thirty (30) days of receipt by the review panel of the proposal and shall include a comprehensive written report containing the panels conclusion(s). If two (2) members of the three (3) person panel reject the proposed amendment or ballot language, the proposal shall be promptly returned to the Charter Review Commission for a reasonable opportunity to cure any defect. The panel's written report must include, with specificity, the rationale for rejecting the proposed language and a suggested manner in which the defect(s) may be resolved. If all three (3) members of the panel conclude that the proposed language is incurable, this opinion should be indicated and the Charter Review Commission shall hold a vote on whether to abandon the proposal altogether or attempt to cure it, allowing for one (1) opportunity to do so. Notwithstanding section 7.4 of this Charter, the term of the Charter Review Commission shall be extended for the sole purpose of further considering the charter amendment proposal rejected by the three (3) person review panel.

*Copy Showing Highlighted Revisions:

Sec. 7.4.1. Independent review of proposed charter amendments.

1. For any proposed amendment sponsored by the County Commission or the Charter Review Commission, the County Commission, at the county's expense, shall empanel a panel of three persons to determine whether the proposed amendment and ballot language embraces one subject only and is consistent with the Florida Constitution, general law and this Charter. All members of the ~~The person serving on the~~ panel shall have demonstrated experience in Florida local government law and shall either be licensed to practice law in the State of Florida or have retired from a Florida law practice or the Florida judiciary within the past five years.
2. If at least two (2) members of the panel find that the proposed amendment embraces only one (1) subject and is consistent with the Florida Constitution, general law and this Charter, the County Commission shall place the proposed charter amendment on the ballot for the consideration at a referendum at a general election or special election held concurrently with the next countywide election or at an earlier special election called for that purpose. Notice of the election shall conform to the requirements set forth in the last paragraph of section 7. 3. 3. In this Charter. Passage of a proposed charter amendment shall require approval by a majority of the registered electors voting in the special election.
3. The three (3) person panel shall submit its findings for each proposed amendment to the Board of County Commissioners and the Charter Review Commission within thirty (30) days ~~ten (10 days)~~ of receipt by the review panel of the proposal and shall include a comprehensive written report containing the panels conclusion(s). If two (2) members of the three (3) person panel ~~reject rejects~~ rejects ~~the proposed amendment or ballot language, the proposal shall be promptly returned sent back to the Charter Review Commission, during regular session, for a reasonable opportunity to cure any defect. The panel's panels~~ written report must shall ~~include, with specificity, the rationale for rejecting the proposed language and a suggested manner in which the defect(s) may be resolved. If all three (3) members of the panel conclude that the proposed language is incurable, this opinion should be indicated and the Charter Review Commission shall hold a vote on whether to abandon the proposal altogether or attempt to cure it, allowing for one (1) opportunity to do so. Notwithstanding section 7.4 of this Charter, the term of the Charter Review Commission shall be extended for the sole purpose of further considering the charter amendment proposal rejected by the three (3) person review panel.~~



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER:

SUBJECT:

PETITIONER CONTACT:

REQUESTED ACTION:

SUMMARY EXPLANATION & BACKGROUND:

Staff Contact: Melissa Brandt
Telephone Number: (321) 301-4438
Email Address: Melissa.Brandt@brevardfl.gov



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER:

SUBJECT:

PETITIONER CONTACT:

REQUESTED ACTION:

SUMMARY EXPLANATION & BACKGROUND:

Staff Contact:

Melissa Brandt

Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov

Amend Section 2.9.10 Citizens process for advising the County Commission to read:

The Board of County Commissioners shall develop procedures that will provide a mechanism for an individual, or an organized group of individuals to submit a formal written recommendation for the enhancement of the effectiveness and efficiency of County government to the County Commission on ~~an annual~~ a semiannual basis. The County Commission's procedures shall include the following provisions:

- a. ~~An annual~~ Two semiannual filing dates;
- b. The written recommendations shall be reviewed by the County Commission, and following the review, the County Commission shall vote to either accept the recommendation, accept the recommendation with revisions, or reject the recommendation; and,
- c. The County Commission's final vote and consideration of the recommendation shall occur no later than 120 days after receipt of the written recommendation. (Newly adopted 11-2-10)



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER:

SUBJECT:

PETITIONER CONTACT:

REQUESTED ACTION:

SUMMARY EXPLANATION & BACKGROUND:

Staff Contact:

Melissa Brandt

Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE: June 23 2022

AGENDA ITEM NUMBER: Proposal 24 Public Hearing 2

SUBJECT:

ESTABLISHMENT OF A BREVARD COUNTY WORKFORCE HOUSING AND
SUPPORTIVE HOUSING FOR VULNERABLE FAMILIES TRUST FUND

PETITIONER CONTACT:

Jordin Chandler
chandlerjordin@yahoo.com

REQUESTED ACTION:

Jordin Chandler, a member of the 2021-2022 Charter Review Commission, proposes that a new section (Section 1.9), be added to Article 1: "Creation, Powers, and Ordinances of Home Rule Charter Government," of the Brevard County Charter.

SUMMARY EXPLANATION & BACKGROUND:

According to Florida Realtors' year-end report, at the end of 2021, the statewide median sales price for single-family existing homes was \$348,000. That's 20% more than the previous year. At the same time, rent has increased more than 20% since last year. While the cost of living has increased and will continue to increase, wages remain stagnant. This alarming inflationary trend has only proven that we can no longer turn a blind eye to one of our nation's most critical needs — affordable housing.

Affordable housing is sometimes referred to as "workforce housing." This is because affordable housing serves the needs of people employed in the jobs we rely upon to make every community viable. They are people such as teachers, teacher's aides, nursing assistants, medical technologists, retail workers, government employees, emergency services providers, and law enforcement. These are some of the low- and very low-income members of our community who play an essential role in our county's safety and security, development, and financial wellness.

Staff Contact:	Melissa Brandt
Telephone Number:	(321) 301-4438
Email Address:	Melissa.Brandt@brevardfl.gov



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

SUMMARY EXPLANATION & BACKGROUND CONTINUED:

In addition, after decades of implementation and research, supportive housing has expanded to serve other populations sometimes identified outside of the homelessness system. In recent years supportive housing has been designed to serve high-need families with children. Specifically, families face multiple, complex challenges, including homelessness, child welfare involvement, domestic violence, substance use, mental health issues, and histories of complex trauma. In order to serve families with children effectively, the housing and services should be designed to reflect the needs of at least two generations in need of support.

Supply and Demand for Affordable Housing:

Rental market studies by the Shimberg Center for Housing Studies at the University of Florida include data that shows supply versus demand for affordable housing by County. This data shows the gap between the number of rental households and the number of available, affordable rental units.

Shimberg's 2016 study showed that the gap between supply and demand for renters earning <\$40% AMI was 4,261 units, but in their 2019 study, that gap had risen to 11,380 units!

Housing Vouchers:

In Brevard, housing vouchers have traditionally been the principal way of subsidizing rental units so that the landlord receives the Fair Market Rent while the tenant pays a maximum of 30% of their income. However, the last few years of rising house prices and rental rates have led to a significant devaluation of the housing voucher. Regular 2022 studies of Brevard rental rates by the Brevard Homeless Coalition (BHC) have shown that the average gap between the Fair Market Rent and the rent actually being asked by the landlord is 30%. Reality says that even the most community-minded landlords will be reluctant to take a 30% drop in income to offer housing to a low-income applicant.

This proposal would establish a Workforce Housing and Housing for Vulnerable Families Trust Fund, which will be used to create and sustain affordable housing in Brevard County.

PROPOSAL TO AMEND THE BREVARD COUNTY CHARTER TO ESTABLISH A TRUST FUND THAT WILL CREATE AND SUSTAIN WORKFORCE HOUSING AND SUPPORTIVE HOUSING FOR VULNERABLE FAMILIES.

Jordin Chandler, a member of the 2021-2022 Brevard County Charter Review Commission, proposes that the following underlined words be added to a new section (section 1.9) under **Article 1** of the Brevard County Charter:

Sec. 1.9. – Brevard County Workforce Housing and Supportive Housing for Vulnerable Families Trust Fund.

- (A) *Brevard County Workforce Housing and Supportive Housing for Vulnerable Families Trust Fund established.* The Brevard County Workforce Housing and Supportive Housing for Vulnerable Families Trust Fund ("Trust Fund") is hereby established.
- (1) See Sec. 62-6301. - **Definitions.** Of the Brevard County Code of Ordinances pertaining to the definitions for Workforce and Affordable Housing.
- (2) *Supportive housing is a combination of affordable housing and supportive services designed to help stabilize people who face complex challenges. Supportive housing has historically been offered to chronically homeless individuals through the homeless system and is recognized as a cost-effective and empirically based solution for long-term homelessness. Supportive housing models can look as different as the communities in which they are located. However, all supportive housing includes affordable housing, individualized, tenant-centered services, and property and housing management.*
- (B) *Purposes of Trust Fund.* The purpose of the Trust Fund is to provide a continuing, non-lapsing fund for the Brevard County Commission to use to address the need for affordable housing within Brevard County. The Trust Fund will be used to create and sustain affordable housing throughout Brevard County for renters and homeowners, and to increase workforce housing opportunities. The section is intended to comply with F.S. ch. 163 generally and specifically F.S. § 163.3177(6)(f), F.S. ch. 420 generally and specifically F.S. § 420.907, and F.S. ch. 125 and specifically F.S. § 125.379.
- (C) *Revenue sources.* The Trust Fund established under this section shall be funded as directed by the County Commission, and may be comprised of the following sources:
- (1) Brevard County General Revenue appropriated to the Trust Fund by the County Commission as part of the annual budget;

- (2) Funds voluntarily contributed by municipalities that may elect to participate in the Trust Fund and programs funded by the Trust Fund;
- (3) Grants or donations of money, property, or any other thing of value made to the Trust Fund;
- (4) Mandatory or voluntary payments, including but not limited to fees from new commercial and residential development, made pursuant to the development policies established by ordinance; and,
- (5) Other sources as established by ordinance.

(D) *Continuing Nature of Trust Fund.* Unless otherwise provided by ordinance or required by applicable law, unspent portions of the Trust Fund established under this Section, repayments of principal and interest on loans provided from the Trust Fund, and interest earned from the deposit or investment of monies from the Trust Fund:

- (1) Shall remain in the Trust Fund, to be used exclusively for the purposes of the Trust Fund;
- (2) Do not revert to the general revenues of the County, and
- (3) Any appropriations do not lapse.

(E) *Administration and Oversight of Trust Fund.* The Trust Fund shall be administered, appropriated, and expended by the County Commission in a manner consistent with the purposes of the Trust Fund as set forth in this section. The Trust Fund shall be administered in a manner that allows the Trust Fund to leverage other sources of public funds and private investment. The Trust Fund shall be included in the annual audit.

- (1) *Dispersion of funds.* The board of county commissioners shall establish and adopt written policies and procedures within the housing and human services department for the dispersion of such trust funds and residential density equivalent units. The criteria shall include a priority-based ranking system, similar to the state housing finance corporation format, to determine priority for the awarding of funds or density equivalent units to applicants.

Example: Proposals having more than the minimum percentage of units serving lower-income residents shall receive a higher priority ranking.

- (2) *Application.* Any applicant seeking to secure such funds or residential density equivalent units shall submit an application to the housing and human services department.
- (3) *Trust fund and unit dispersion.* Dispersion of funds and, or, density equivalent units shall be limited by fund availability and shall be in accordance with the written policies and procedures established by the

board of county commissioners for the use of such funds. Dispersion of residential unit density, by the transfer of development rights, shall be consistent with the transfer of development rights for affordable units section of the code and the county comprehensive plan.

Developments seeking the use of housing trust funds or density equivalent units should be located in areas serviced by existing transportation and utilities infrastructure and located near other public facilities, services, employment centers, shopping, active mass transit corridors, daycare centers, schools, and health services. A location evaluation matrix and needs analysis form, authorized by the BOCC as a part of these regulations, shall be completed and submitted to determine consistency with the location criteria. Developments scoring at or above the minimum 66th percentile will be eligible to receive housing trust funds and density equivalents. A complete application will include a completed location evaluation matrix and needs analysis form that meets the minimum scoring requirement at or above the 66th percentile. A higher-ranking score may be used to determine the awarding of additional funds when available.

(4) *Trust fund affordability agreement.* The applicant shall enter into a land use and deed restriction affordability agreement with the county. The agreement shall provide the number and designation level of affordable units, and period of time as affordable, and any other requirements in order to receive housing trust fund monies or units consistent with the written policies and procedures established by the board of county commissioners. A land trust may be used as a mechanism to retain units as affordable and/or special needs units.

(5) *Trust fund discretionary allocation.* Allocation of these funds and units are discretionary and must compete with all other developments and are based on fund and unit availability. Priority shall be given to developments designed to facilitate pedestrian access to transit and neighborhood commercial nodes that score above the 66th percentile on the completed location evaluation matrix and needs analysis forms.

(F) *Implementation by Ordinance.* No later than July 1, 2023, the County Commission shall adopt one or more ordinances implementing the provisions of this section, and/or strictly enforce existing ordinances (such as those located at Chapter 62, Article XVII), which ordinances may be amended from time to time by the County Commission consistent with the provisions of this section.

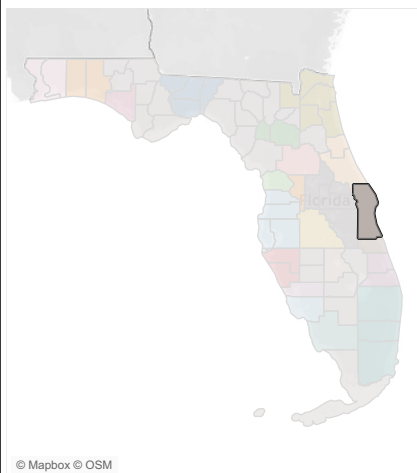
Wages and Housing Costs by MSA

The following dashboard shows the median hourly wage necessary to afford housing in Florida overall as well as in each metropolitan statistical area (MSA).

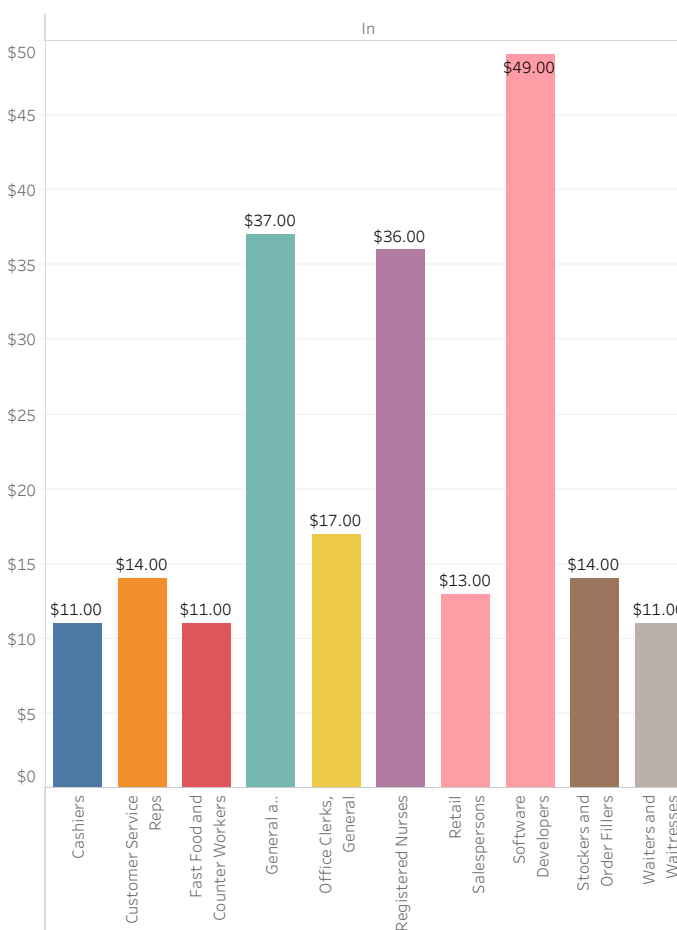
Click an MSA on the map below to see how the 10 most common jobs in the area stack up compared to the median rent (from the 2020 5-Year ACS) or median mortgage (Home Values from the Florida Realtors 2021 Year-End Report, assuming a 4.83% interest rate and 10% down).

Palm Bay-Melbourne-Titusville, FL

MSAs in Florida with BLS Data



Median Income of Top 10 Most Common Occupations in Florida



Wage Needed to Afford Median Home

