

# **BREVARD COUNTY CHARTER REVIEW COMMISSION**

## **AGENDA**

February 17, 2022

2725 Judge Fran Jamieson Way, 1st Floor, Building C Viera, FL 32940

Commission Room, 3:00 P.M.

- A. Call to Order
- B. Roll Call
- C. Approval of Minutes
- D. Fiscal Analysis Direction
- E. Proposals
  - 1. Charter Cap
  - 2. Recall School Board Member
- F. Attorney Memo-Term Limits
- G. Public Comment
- H. Adjournment

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations or an interpreter to participate in the proceedings, please notify Melissa Brandt no later than 48 hours prior to the meeting at (321) 301-4438.

Assisted listening system receivers are available for the hearing impaired and can be obtained from SCGTV staff at the meeting. We respectfully request that ALL ELECTRONIC DEVICES and CELL PHONES REMAIN OFF while the meeting is in session.

Pursuant to 286.0105, Florida Statutes, the County hereby advises the public that if a person decides to appeal any decision made by the Charter Review Commission with respect to any matter considered at its meeting or hearing, he or she will need a record of the proceedings, and that for such purpose, affected persons may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the County for the introduction or admission into evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

# CHARTER REVIEW COMMISSION MEETING

Thursday, January 06, 2022

5:00 p.m.

Brevard County Government Center

2725 Judge Fran Jamieson Way, 3<sup>RD</sup> Floor  
Viera, Florida 32940

## A. Call to Order

Mike Haridopolos:

Why don't we start with the roll call if we could?

## B. Roll Call

Melissa Brandt:

Robin Fisher (District I) - Present

Kendall Moore (District I)- Present

Marcia Newell (District I)- Absent

Mike Haridopolos (District II)- Present

Marie Rogerson (District II)- Present

Blaise Trettis (District II)- Present

Bob White (District III)-Absent

Tom Jenkins (District IV)- Absent

Cole Oliver (District IV)- Present

Sue Schmitt (District IV)- Present

Jordin Chandler (District V)- Present

Vic Luebker (District V)- Present

Dave Neuman (District IV)- Absent

Matt Nye (District III)- Present

Staff Members Present- Jim Liesenfelt, Melissa Brandt, Summer Wylie, Attorney Paul Gougelman

Melissa Brandt:-We do have a quorum.

Mike Haridopolos: All right, fantastic. Before we get started if everyone could turn off their devices, we are going to do our best to get out of here in a timely manner. We have a pretty straight forward agenda today. What I would like to do first is the approval of minutes.

## C. Approval of Minutes from September 23, 2021

Mike Haridopolos: Is there any objections to the approval of minutes. All right without objection show those adopted.

#### **D. Fiscal Analysis Direction**

Mike Haridopolos: We also have today, we mentioned the last time about the necessary for a fiscal analysis for anything that is being put forth, and so we have Summer Wiley here who will kind of walk us through that process. Summer, welcome to the Commission.

Summer Wiley: Thank you, good evening everyone. For the Fiscal Analysis (inaudible) 7.4.2 recommends or requires that the CRC shall obtain an analysis of the fiscal impact of the proposed charter amendment prior to the transmittal of the proposed charter amendment to the County Commission. This section was adopted and added to the charter in 2010. As the CRC did not approve any charter amendments in 2016, this provision has never been implemented. Staff has the following options to implement the fiscal impact section for the CRC to consider today: The County currently has three contracts that maybe considered to obtain the financial analysis of any proposed charter amendments. We have an internal auditing contract with RSM. We have an external auditing contract with Terry Beckert and we have a financial advisory contract with PFM financial advisors. We have an hourly rate scheduled for both RSM and PFM financial advisors. However, for Terry Beckert our pricing is based on a lump sum analysis. RSM's rate schedule varies from \$ 200.00 per hour to \$ 270.00 per hour depending on the position assigned to the task. PFM's hourly rate schedule varies from \$ 175.00 per hour to \$200.00 per hour depending on the position assigned to the task. Today staff is seeking direction from the CRC on whether you would prefer that Purchasing Services develop competitive solicitation and advertise for the services, or if the CRC prefers that the staff reach out to one of these three firms and negotiate a stand- alone task under the current terms and conditions of the existing contracts with the County?

Mike Haridopolos: Thank you, Paul do you have a question?

Paul Gougelman: I do Mr. Chairman. Maybe you can brief us. The Charter is silent on what the fiscal analysis should contain. Maybe you could brief the board on what the fiscal analysis involves so they are aware.

Mike Haridopolos: Summer, thanks

Summer Wiley: Let me see if I have that in front of me here. (inaudible)

Jim Liesenfelt: Same thing, it is kind of silent on it. What we have when we do board agendas is we do fiscal impact on the budget agenda, so the standard assumption is that you would develop some impact, you know this amendment would cost the County \$50,000 a year. Municipalities anticipate a cost of \$ 25,000 a year. As I recall, in the Charter it just says you do a fiscal impact. And then whatever you guys want to do with it would be your decision. You just have to develop a fiscal impact to go along with any Charter amendment and that would be presented to the Board.

Summer Wiley: Long term effects range, that sort of thing.

Mike Haridopolos: With that, does anyone on the commission have any other questions for Summer or strong opinions as far as the selection process for someone who might do the analysis for us? Sue?

Sue Schmitt: I think it would be nice to see that in writing.

Mike Haridopolos: That can be done.

Jim Liesenfelt: We can submit, we can give that to everybody. And your next meeting is the 20<sup>th</sup>.

Mike Haridopolos: As of right now.

Jim Liesenfelt: Yeah, sure correct (laughter)

Mike Haridopolos: Depending on our work load. Any other questions for Summer on that? All right, thank you so much.

#### **E. Amended Rules of Procedure:**

Mike Haridopolos: Last time we went into the amended rules of procedure. I know Blaise, you put forth those procedure items. Does everyone have a copy of those new rules in front of you? Okay. And as Melissa was kind enough to send all of this out to us I believe on page four, rule sixteen is what we looked at specifically. And Blaise, I will turn it over to you. Why don't you kind of walk us through your thought process again just so everyone is reminded, it has been a little while since we took this up, and we can take one final look at it.

Blaise Trettis: The changes I believe the changes to the best of my recollection were moved, seconded and voted on and got a majority vote last meeting. Rule sixteen which changed the number of affirmative votes required – to change the policies from ten to eight.

Mike Haridopolos: Correct.

Blaise Trettis: And then on rule seventeen, there has been quite a bit of deleting of the previous language, which had to do with one member from each district having to be present for a vote on an approval or disapproval of a proposal. So that was deleted, and only the first sentence of that prior rule was left. And it was left at ten members must approve a proposal. And I think the easiest way to see it was by the email that was sent out which has the strikethrough and the addition in sixteen from ten to eight. That is the easiest way to see it I believe. My thought was that it has already been voted on

Mike Haridopolos: It has. We have not been here in a while, and I just think that by bringing it up, is everyone comfortable and understanding that change to the rules? I just want to make sure everyone's is going to...Paul do you have a question or comment?

Paul Gougelman: Yes, I have two comments. (inaudible) One is regarding the ten- vote requirement on rule seventeen which basically is historic, previous Charter Review Commissions as well as the original Charter Commission adhered to that same rule. The question came up in the procedures several times and that is if we are considering a

proposed charter amendment, and it is not ready for final approval, and nine members vote to go forward with it, is it killed? And I will tell you the past the way that they have looked at this is that it is only the final vote to transmit to the County Commission that would require ten votes. So, I don't know if that is in step with what this board intends? The other comment that I was going to make to you is that on rule eight, proxy voting. The last sentence, only those members physically present should be entitled to vote, I don't know if that was intentional to put that in or not, it certainly is legally okay for you to do that. However, that is not really what the law is right now according to rulings of the Attorney General. There are, in fact when I say the Attorney General, I mean a number of them that have served as Attorney General over the years that, they have, The Attorney General has ruled that in cases where there are an individual member has a significant circumstance that is the term that is used, about being able to attend, or being unable to attend, that if there is a significant circumstance the members of the board, in this case the physically present members of this board can vote to admit that person to attend by telephone. And the question is, what is a significant circumstance? The latest ruling is of the Attorney General's Office is that they leave that decision to those that are physically present. In past cases, they have ruled that being in the hospital, having a sickness, um something of that sort. Something that is more than just, well I didn't feel like driving out to Viera today. That could be a significant circumstance. According to the Attorney General, that would be up to you all. So, I don't know if you want to leave that in there. We have had a circumstance with Covid on the increase again. Some people become somewhat nervous about attending meetings like this, and anyway, I will leave those two points in your hands.

Mike Haridopolos: Thank you. I think that, if I could just start the conversation right now, unless we are, I think we even had this discussion about this last meeting. I felt we were all pretty comfortable where we are at. And if the circumstance calls for it as we move forward, we do have the ability with the new rule we put in that with only eight votes we can change the procedures anyway. So, if we see this Covid situation continue on as we move forward, obviously I think we should address that. But at this point unless Melissa tells us otherwise, and we are at quorum, I am sure we will be fine. And as we know, every major proposal is going to have at least three public meetings, so we are not going to be making any major votes until down the line. So, if it is okay with everyone else, I will just keep it as is, and if we see a circumstance where we might need to have some folks join in by Zoom or Teams or what have you, we can do that unless someone objects. Is that okay with everyone? Okay, thanks for that information Paul. Great work.

**F. Press Release/Letter to Public:**

Mike Haridopolos: All right, so the Press Release to the Public. Has everyone seen that with the Red top on it? I think there has already been some news stories coming out, as we are inviting folks to come and testify before the commission. I believe a couple of folks, at least one person signed up to testify today or make their comments known. As we know this is a once in a every six- year process. We want to make sure that everyone is aware that they have the opportunity to have their voice heard, and that all of the

meetings are going to be well noted so that people can make the accommodations to be here. So, unless there is any objection to this draft, why don't we go ahead and move forward and put that in the public prevue so they can get more involved in the meetings. Is that okay with everyone? Okay so without objection, please show that adopted.

**G. Proposed Meeting Schedule:**

Mike Haridopolos: As you all can see, also in your paperwork, our next proposed meeting is on the 20<sup>th</sup> of January. We do not have anything before us accept for the one item that came to our attention in the last few days that one of our commission members had put forth, and I know you have a copy of that. We can do whatever the committee deems necessary. We can meet on the 20<sup>th</sup> and start discussing this proposal in full. I am going to give Blaise the opportunity to kind of introduce it in full so people are more familiar with it once they read over it in full while we are gone, or we can cancel that meeting and move it to the 3<sup>rd</sup> of February, if you don't think that is a pressing issue. We have a multitude of meetings scheduled. It would be great if we had more of a workload, but at this point we do not, but I will take direction from the commission members if they would like to have another meeting in a couple of weeks or we push to February 3<sup>rd</sup>. It is up to you all.

Blaise Trettis: I am fine with February 3<sup>rd</sup>.

Vic Luebker: I think it is the right thing to do so it is publicly out there.

Mike Haridopolos: Yes, so everyone is okay with cancelling the January 20<sup>th</sup> meeting then? Everyone? Okay so let's cancel that meeting for the 20<sup>th</sup> of January that Thursday at 3:00 pm., and our next scheduled meeting will be the 3<sup>rd</sup> of February at 3:00 pm right here. Without objection, show that adopted.

All right, before we go to public comment, Blaise you want to, you were kind enough to kind of put forth an idea, so if you wouldn't mind kind of explaining that through,( and I will get these next-reference public comment cards) just so we have, I don't want to get into debate about it, if you have clarification questions. Just so we understand it. I just thought since you put this good work in, we at least will have a better feel for it when we take it up on the 3<sup>rd</sup> of February, so it's your floor.

Blaise Trettis: Thank you. The written comments that were submitted really are detailed and I hope they would be so that anyone who wants to study it or learn it, would be able to read it, and read the comments and study it and have all of their questions answered about what the intent is. But I will briefly describe it. It is a proposal to change two sections of the Brevard County Charter to make it I submit make it even more clear that excess taxation imposed by a super majority vote of the Board of County Commissioners lasts for only one year. It is my position that is what the voters intended to do when they voted in 2008, I think the language in the Charter makes that abundantly clear. However, the Board of County Commissioners has taken a different position and since 2019-2020 fiscal year when a law enforcement multiple service unit taxation district exceeded the Charter cap, in that one year the following fiscal year, and then the following fiscal year,

which is this fiscal year. So, this is two fiscal years after that. That excess taxation above and in excess of the Charter cap amount became the baseline amount taxation for the coming years. Which made it in perpetuity. And I submit that that is in violation of what the voters intended in 2008, but that is the position the County has taken. I think somewhat fortunately for me at least in trying to write this language, there was a lawsuit by former Clerk of Court, Scott Ellis challenging the Board's decision to make this excess taxation permanent year after year. That lawsuit was dismissed on procedural grounds. The Circuit Court in Brevard County ruled that Scott Ellis did not have legal standing to sue, so the merits were not reached or decided. But the Board of County Commissioners represented by the County Attorney did address the merits of the lawsuit in their pleadings and my language to change the Charter is directly from the County Attorney's pleadings in that lawsuit. Where the County Attorney suggested that Mr. Ellis would prevail if the County Charter were changed in two respects, and that is exactly what this proposal is, as it mirrors what the County Attorney argued what would make it perfectly clear that the excess taxation because of special need or critical need or emergency is one year and one year only.

So, it is my position that it is unfortunate that this even has to be made, because I think it was clear in 2008 what the voters intended. But, unfortunately that is where it is at and there is no question that this change, if approved will make the excess taxation if approved, only one year. Thank you.

Mike Haridopolos: Sue.

Sue Schmitt: May we discuss as to why we may be opposed to it?

Mike Haridopolos: I thought what we would do...

Sue Schmitt: Just for informational purposes for the next meeting.

Mike Haridopolos: Yeah, we got time, yeah sure go ahead, let's do that.

Sue Schmitt: It certainly has nothing to do with Blaise because I have a lot of respect for him. But the wording in here and what has been used is the increase of law enforcement MST. So that you are aware and a little history, the law enforcement MST's were created a number of years ago because of litigation. At the time, the funds were taken out of general fund, and which cities also contribute to, and at that time the cities filed litigation against the County and MST's were created because the MST uses are strictly for road patrol. And that is all they are used for in the unincorporated area. And that is why they were created. And so, when the Board of County Commissioners, which I wasn't on, but I was on when that happened. When the Board of County Commissioners increase because of the MST for law enforcement recently the- If you take that literally at what Blaise is suggesting in here, then the following year it would revert back. Now the Sheriff, and when he asked the Board for increase, they couldn't take it from the general fund because that also includes city money. And that has already been decided, legally. So, they would have no choice but to increase the MSTU because it is strictly for road patrol. He wanted to hire more deputies and also increase salaries and buy equipment for road patrol for unincorporated area. If you took this literally, and did this, at that point the

following year if the Sheriff goes out and hires those deputies or increases salaries, he is going to have to lay those deputies off in the unincorporated area or cut their salaries. And I have a real issue with that, and I would guess the Sheriff might too. The other MSTU's that you have are part of the budget when they approve it for your parks and recreation. And just looking strictly at public safety, and to me that really is what being a Commissioner is about. It is public safety for the Sheriff in the unincorporated area, for your fire, your emergency services, and then you have your parks and rec and your roads. And the County Commission is elected by the people in their districts, and that is why they vote the way they do, hopefully. I wouldn't swear to that, but hopefully they do. And to me, then to tell them the next year, well I am sorry Sheriff but now you have to cut everybody's salary or lay off deputies in the unincorporated area, I think the people in this County would go nuts. In all honesty.

Mike Haridopolos: I think that is why we will have the discussion.

Sue Schmitt: I just wanted to have that laid out on the record.

Mike Haridopolos: I got good news for you, we will have many opportunities. Mr. Nye?

Matt Nye: I just had one point of clarification. It is just now about law enforcement, it is the way this is being interpreted across the board was my understanding. That, I mean I know that was the one specific issue that brought this to a head, but just the entire concept of when, how is that calculated. So that is my concern. I understand the argument Ms. Schmitt just made, but I think these clarifications are necessary, and I think it will save us a lot of money in litigation going forward.

Mike Haridopolos: Okay, any other comments on that? Okay one more, and then let's, we got plenty of time. Of course, Blaise, go ahead.

Blaise Trettis: Just briefly you know, in 2021 the Florida legislator passed state law which prohibits a law enforcement budget from being reduced. I will throw that out there.

Mike Haridopolos: Other questions or comments? All right so one of the things, I got here earlier and talked with the staff a little bit is we already had Summer give a presentation, but I think what will be really important is this we have plenty of time to get into the issue in every one of these issues. We will have at least three public hearings, is that we vote with as much information as possible. So, one of the things that I would request is, we did this when we handled property taxes about a decade ago (indiscernible). I think whatever side you are on, you have an understanding of how it would have impacted, not going forward, no one can put it in the future, but you can look at the past. So, what I would like the County to do, as much as they can, hopefully we won't need outside groups to do this. But would be the idea that we said if this started in 2005, or 10 or 15, whatever it might be. Where would our number be now for those different departments? It is always helpful to get a perspective on that just so we understand what we are impacting. So, I would like that to be done. If that is okay with everyone. I think that would be important so that we understand good or bad, where that might go. So at least we can make use of the folks who handle financial issues like that.



And I wouldn't be surprised, given the emotions on both sides and how much of an interesting debate it was last time, when it was almost in the courts, I am sure we will have a lot of folks coming to say their peace on. And of course, if we pass it or not, or if we do pass it, it goes to the County Commissioners, and later voters. So, but I think it is always beneficial if we have as much information as possible so if you do have some folks who really want to come and testify, I think that would be helpful, obviously, I wouldn't be surprised if we have some of our Constitutional Officers come to let their peace be known as well, but this is an important issue and I am glad you brought it up early because this will give us plenty of time to discuss it on February 03. Yes, Mr. Fisher, go ahead.

Robin Fisher: Is it possible to have, I don't know if it is the County Attorney's Office, or Charter Review Attorney, but to figure out what other counties has the same provision, because I, if I remember correctly we are one of the few counties that have this Charter cap. And so, I would at least get an understanding to who else has that, and does it still make sense to have the Charter cap?

Mike Haridopolos: That is an excellent suggestion. Let's try to find out which other counties in Florida have that in place, and we can look at how that has impacted their budgets and how they handled this conundrum. Any other comments or questions?

#### **H. Public Comment:**

Mike Haridopolos: All right we have two folks that have come in to speak. Carol, you are up first. I have a unique last name so I won't pronounce yours if you don't mind (laughter). We are not going to put you on the clock, but if you could just be respectful of the time, and if we questions we will give them to you.

Carol Vyhonsky: Thank you. My name is Carol Vyhonsky. I live in Melbourne. I have been a Brevard County resident for 21 years. I am here tonight to speak on Article 5 Section 5.2 of the County Charter which deals with recalls. I am here to request that school board members be added to the language of elected county officers subject to recall under this section. Some people say that school board members cannot be recalled in Brevard County because the Charter does not allow for it. I am not an attorney so I don't know if that is accurate or not, but one could certainly argue that school board members are elected County Officers. Even though they receive their paychecks from the State, it is the voters of Brevard County who elect them to office. The same as we elect the County Commissioners, the Sheriff, the Property Appraiser, the Tax Collector and so on. The decisions made by the School Board certainly affect all of Brevard County. For example, the half cent sales tax that we all pay to the schools. Why should they have blanket immunity from recall? The same voters of Brevard County who elect the School Board Members should also be able to recall them according to the Charter just as the Charter allows for a recall of the other County elected Officers. Therefore, I am asking that you consider adding School Board Members to the language of section

5.2 as elected County Officers who may be recalled in the manner provided by general law. Thank you.

Mike Haridopolos: Thank you so much. Any questions for Carol? All right we also have Kathryn Delany is here as well. Welcome.

Kathryn Delany: Sorry, I am a little nervous (laughter). Good evening committee members, my name is Kathryn Delany. Thank you all for taking the time out of your busy schedule to serve our community. I am a Brevard resident, I grew up here, graduated from Rockledge High. I am here to request that section 5.2 of the Charter gets revised to include School Board Members. As elected officials, School Board Members should be included in the list of Constitutional Officers that are subject to recall. Thank you so much for your consideration and your time.

Mike Haridopolos: Thank you. Jim, let me ask a question of the staff. If someone does have an interest in this as a public citizen, do they literally give that information to the County staff and then they write it up for them? Or do they have to get an outside group to write up a legal document?

Jim Liesendfelt: I was thinking the same thing Mr. Chair. I will double check 2010, I believe and in 2016 they came up with their own proposals and I made a note on our form to add to the website. Just as Mr. Trettis has the agenda item. That they public can fill out an agenda item. We will give a contact. They give it to staff. So that way you can have it in your package, if you guys want. We will just add a subject in their proposals, and then you can take a look at any proposals that they public would submit. I mean that is a suggestion if you would like.

Matt Nye: I would support something like that and be willing to put that forward, but that was going to be one of my questions. Was that obviously this is going to be subject to review by council I am sure as far as that like, yea.

Paul Gougelman: If you ask for it, we will review it.

Matt Nye: I guess I need to put in the proposal first then and then we will...

Cole Oliver: Mr. Chair should we consider having at least one board member sponsor the item to be heard by the whole board, rather than everything that comes in being heard? If it doesn't have any support (conversation inaudible)

Matt Nye: I will volunteer for this one.

Mike Haridopolos. (laughter) and again I think this is one that has been very much in the public eye and so I think it is always a great idea if one of the Commissioners likes the proposal, if they can kind of take that initiative and work with our legal staff to make sure it meets all of the qualifications, so we don't get into that squabble after the fact, if we choose to support it. It is a great suggestion. Blaise?

Blaise Trettis: Mr. Chair, I would like my proposal to be published on the County's web site on the page that is dedicated to the County Charter Review Commission, so that the

public will be able to read it. I don't think it is there now, but I think it should be there, so it is available to anyone who wants to look at it.

Mike Haridopolos: I think all proposals should be on there shortly correct? Yeah

Jim Liesenfelt: In 2016 the proposals were put on the website on the same page that has all of your contact information, so that we will get on there.

Mike Haridopolos: Absolutely that is a great suggestion. All right, any other comments? Mr. Fisher?

Robin Fisher: I don't understand, and I don't know if we should ask them or one of them to research it for us but I would like to have a better understanding of how term limits came into play. And if there was a proposal to eliminate term limits or make them a longer period of time. Is that proper to ask our attorney or staff to look at that?

Mike Haridopolos: I think it would be more than accurate. In the legislature we would always have a full proposal for how something became a law. So, I am sure it wouldn't be difficult for us to find out how that proposal started and so forth, and we will get that for you. I think if we could send that information out to the commission members before our next meeting I think it would be very helpful. And if there is any other issues, you want the staff to research, I think that is why they are here. They want to make sure they are supporting us and can have constructive meetings. And I think the other one we kind of got into, I know Paul brought it up to me before the meeting. We need to be very, very sensitive to this Sunshine Law and so what I have done is that I have received a few different emails from folks. I immediately send it over to Melissa so it can be shared with the entire commission. So, there is not side conversations going on and everyone is well aware of it. Just use an abundance of caution. Clearly, we are going to have every proposal to go through so many times, and here that is a great thing. But let's not leave any wiggle room on things if we can, um do the things correctly. So, if you do receive an email, send it over to Melissa. She will pop it out to everyone so that everyone is well aware the issues that might be discussed in the meeting, which will just make it that much more productive. Great proposal, thanks Robin.

I. Adjournment:

Mike Haridopolos: All right without any further questions, thank you. End of meeting.

5:35 pm.



BOARD OF COUNTY COMMISSIONERS


**County Manager's Office**

2725 Judge Fran Jamieson Way

Building C, Room 301, MS# 88

Viera, Florida 32940

**Inter-Office Memo**

TO: Charter Review Commission  
FROM: James Liesenfelt, Assistant County Manager   
DATE: February 8, 2022  
SUBJECT: Financial Analysis of Proposed Charter Amendments

At the January 6, 2022 meeting, the Charter Review Commission received a briefing from Summer Wylie, Brevard County Procurement Supervisor, regarding the procurement of a firm to perform Fiscal Analysis of proposed charter amendments as require by the Charter, Article 7.4.2.

The Charter Review Commission took no action at the meeting and asked that information be summited in writing. Attached is that information.

Staff is seeking direction from the Charter Review Commission on whether to issue a competitive solicitation from a firm or use an existing auditing firm on a task order basis.

Staff will be available at the meeting to answer any questions.

Thank you.



Central Services Department  
2725 Judge Fran Jamieson Way  
Building X, Room XXX  
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

## Inter-Office Memo

**TO:** Charter Review Commission

**THROUGH:** Jim Liesenfelt, Assistant County Manager *RL*

**THROUGH:** Steven A. Darling, Jr., Central Services Director *SD*

**FROM:** Summer Wyllie, Procurement Supervisor *SW*

**DATE:** January 18, 2022

**SUBJECT:** **Financial Analysis of Proposed Charter Amendments**

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Per Brevard County Charter 7.4.2. "Analysis of fiscal impact of proposed charter amendment, the CRC 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."

This section was adopted and added to the Charter in 2010. As the CRC did approve any Charter amendments in 2016, this provision in the Charter has never been implemented. Staff has the follow options to implement the fiscal impact section for the CRC to consider.

The County currently has 3 contracts that may be considered for to obtain the financial analysis of any proposed charter amendments:

- Internal Auditing Contract with RSM, LLP
- External Auditing Contract with Cherry Bekaert
- Financial Advisor Contract with PFM Financial Advisors

We have an hourly rate schedule for both RSM and PFM Financial Advisors, however, no current hourly rate schedule exists for Cherry Bekaert as it is project specific. RSM's Hourly rate schedule varies from \$200 per hour to \$270 per hour, depending on the position assigned to the task. PFM's Hourly rate schedule varies from \$175 per hour to \$200 per hour, again, depending on the position assigned to the task.

Staff is seeking direction from the CRC on whether the CRC would prefer that Purchasing Services develop a competitive solicitation and advertise for these services, or if the CRC prefer that staff reach out to either RSM, Cherry Bekaert, or PFM and negotiate a standalone task under the current terms and conditions of their existing respective contracts with the County.

If you have any questions or require further details on this, please do not hesitate to contact me at 321-617-7390, 59331. Thank you.

Meeting Date
02/03/2022



AGENDA	
Section	
Item No.	<b>Proposal #1</b>

2021-2022

*Charter Review Commission Agenda Report*

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**

**Staff Contact: Melissa Brandt**  
**Phone Number : 321-301-4438**

**Email:**  
**melissa.brandt@brevardfl.gov**

**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](mailto:Melissa.Brandt@brevardfl.gov); Jim Liesenfelt at [jim.liesenfelt@brevardfl.gov](mailto:jim.liesenfelt@brevardfl.gov); and to Paul R. Gougelman, attorney for the Brevard County Charter Review Commission.




BOARD OF COUNTY COMMISSIONERS

County Manager's Office  
2725 Judge Fran Jamieson Way  
Building C, Room 301, MS# 88  
Viera, Florida 32940

## Inter-Office Memo

TO: Charter Review Commission

FROM: James Liesenfelt, Assistant County Manager 

DATE: February 8, 2022

SUBJECT: Finding of Critical Needs Summary

At the January 6, 2022 meeting, the Charter Review Commission discussed Member Blaise Trettis' proposal (Proposal #1) regarding Article 2.9.3.1, Limitations on growth in ad valorem tax revenues, also known as the Charter Cap. It was requested that staff provide information on the fiscal impact information had the Proposal #1 been in place historically.

Attached is the summary of the impact from the two Findings of Critical Needs in Fiscal Year 2016-2017 and Fiscal Year 2019-2020.

If further information is requested by the Charter Review Commission, staff will be happy to respond.

Thank you.

## Brevard County Charter Cap – Finding of Critical Needs Summary

The Brevard County Charter Review Commission, on January 6, 2022, discussed Proposal #1, and requested that staff provide the financial impact had this provision been in place historically.

### Fiscal Year 2016-2017

On September 13, 2016, the Board of County Commissioners adopted resolutions for the finding of critical needs for the following three taxing districts. The charter cap millage rate was exceeded for these districts.

**Note: If critical need revenues were rolled-back, recurring expenses would need to be funded through other budget reductions.**

- **General Fund – Increase over Charter Cap of \$2,459,651**  
Findings of Critical Need include Sheriff's Office for personnel and capital equipment needs, \$959K (recurring); Supervisor of Elections for election needs, \$1.2M (recurring); 1.5% Cost of Living Adjustments, \$506K (recurring); Road & Bridge Maintenance, \$1.26M (recurring); Transit Services, \$156K (recurring); Veteran's Services, \$40K (recurring); **Cumulative Impact FY18 thru FY22 if Critical Need Revenue Rolled-Back, \$13.59M**
- **Road & Bridge District 1 MSTU – Increase over Charter Cap of \$495,836**  
Finding of Critical Needs to address unfunded road resurfacing and reconstruction needs identified within the district (recurring); **Cumulative Impact FY18 thru FY22 if Critical Need Revenue Rolled-Back, \$2.69M**
- **Road & Bridge District 5 MSTU – Increase over Charter Cap of \$18,918**  
Finding of Critical Needs to address unfunded road resurfacing and reconstruction needs identified within the district (recurring); **Cumulative Impact FY18 thru FY22 if Critical Need Revenue Rolled-Back, \$100.4K**

**Cumulative 5-Year Impact if FY2016-2017 Critical Need Revenue Rolled-Back, \$16,383,442**

### Fiscal Year 2019-2020

On July 23, 2019, the Board of County Commissioners adopted a resolution for the finding of critical needs to support an increase in the Law Enforcement MSTU. The charter cap millage rate was exceeded for this taxing district. **Note: If critical need revenues were rolled-back, recurring expenses would need to be funded through other budget reductions.**

- **Law Enforcement MSTU – Increase over Charter Cap of \$942,309**  
Finding of Critical Needs including the Marjory Stoneman Douglas High School Public Safety Act, requiring changes in school security and an increase in school resource deputies from 10 to 37, resulting in a fiscal impact to BCSO of \$1,002,511, which doesn't include \$650K in equipment and vehicle costs; additional critical needs include challenges in recruitment and retention due to non-competitive starting pay (recurring).

**Cumulative Impact FY21 thru FY22 if Critical Need Impact Rolled-Back, \$1.87M**



**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](mailto:Melissa.Brandt@brevardfl.gov)



**2021-2022**

**CHARTER REVIEW COMMISSION AGENDA REPORT**

**SUMMARY EXPLANATION & BACKGROUND CONTINUED:**

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

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

**SECTION 8.2 RECALL ELECTION OF SCHOOL BOARD MEMBERS**

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

**(2) RECALL PETITION.—**

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

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

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

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

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

1. Malfeasance;

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

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

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

(g) *Verification of signatures.*—

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



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

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

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

**(3) RECALL PETITION AND DEFENSE.—**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 1. REASON FOR PROPOSAL

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

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

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

#### SERVICE OF PROPOSAL

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

By Senator Gruters

23-00343A-22

2022244\_\_

Senate Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article IX and the creation of a new section in Article XII of the State Constitution to require members of a district school board to be elected in a partisan election.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 4 of Article IX and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE IX

EDUCATION

SECTION 4. School districts; school boards.—

(a) Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors in a partisan ~~nonpartisan~~ election for appropriately staggered terms of four years, as provided by law.

(b) The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance

23-00343A-22

2022244\_\_

30 joint educational programs.

31 ARTICLE XII

32 SCHEDULE

33 Partisan election of members of district school boards.-

34 This section and the amendment to Section 4 of Article IX  
 35 requiring members of a district school board to be elected in a  
 36 partisan election rather than a nonpartisan election shall take  
 37 effect upon approval by the electors, except that members of  
 38 district school boards may not be elected on a partisan basis  
 39 until the general election held in November 2024; however,  
 40 partisan primary elections may occur before the 2024 general  
 41 election for purposes of nominating political party candidates  
 42 to that office for placement on the 2024 general election  
 43 ballot.

44 BE IT FURTHER RESOLVED that the following statement be  
 45 placed on the ballot:

46 CONSTITUTIONAL AMENDMENT

47 ARTICLE IX, SECTION 4

48 ARTICLE XII

49 PARTISAN ELECTION OF MEMBERS OF DISTRICT SCHOOL BOARDS.-

50 Proposing amendments to the State Constitution to require  
 51 members of a district school board to be elected in a partisan  
 52 election rather than a nonpartisan election and to specify that  
 53 the amendment only applies to elections held on or after the  
 54 general election held in November 2024; however, partisan  
 55 primary elections may occur before the 2024 general election for  
 56 purposes of nominating political party candidates to that office  
 57 for placement on the 2024 general election ballot.

House Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article IX and the creation of a new section in Article XII of the State Constitution to require members of a district school board to be elected in a partisan election.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 4 of Article IX and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE IX

EDUCATION

SECTION 4. School districts; school boards.—

(a) Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors in a partisan ~~nonpartisan~~ election for appropriately staggered terms of four years, as provided by law.

26 (b) The school board shall operate, control and supervise  
 27 all free public schools within the school district and determine  
 28 the rate of school district taxes within the limits prescribed  
 29 herein. Two or more school districts may operate and finance  
 30 joint educational programs.

31 ARTICLE XII

32 SCHEDULE

33 Partisan election of members of district school boards.-

34 This section and the amendment to Section 4 of Article IX  
 35 requiring members of a district school board to be elected in a  
 36 partisan election rather than a nonpartisan election shall take  
 37 effect upon approval by the electors, but no district school  
 38 board election shall be a partisan election before November 5,  
 39 2024.

40 BE IT FURTHER RESOLVED that the following statement be  
 41 placed on the ballot:

42 CONSTITUTIONAL AMENDMENT

43 ARTICLE IX, SECTION 4

44 ARTICLE XII

45 PARTISAN ELECTION OF MEMBERS OF DISTRICT SCHOOL BOARDS.-

46 Proposing amendments to the State Constitution to require  
 47 members of a district school board to be elected in a partisan  
 48 election rather than a nonpartisan election and to specify that  
 49 the amendment only applies to elections held on or after  
 50 November 5, 2024.



## The 2021 Florida Statutes

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[Title IX](#)  
ELECTORS AND  
ELECTIONS

[Chapter 100](#)  
GENERAL, PRIMARY, SPECIAL, BOND, AND REFERENDUM  
ELECTIONS

[View Entire  
Chapter](#)

### 100.361 Municipal recall.—

(1) APPLICATION; DEFINITION.—Any member of the governing body of a municipality or charter county, hereinafter referred to in this section as “municipality,” may be removed from office by the electors of the municipality. When the official represents a district and is elected only by electors residing in that district, only electors from that district are eligible to sign the petition to recall that official and are entitled to vote in the recall election. When the official represents a district and is elected at-large by the electors of the municipality, all electors of the municipality are eligible to sign the petition to recall that official and are entitled to vote in the recall election. Where used in this section, the term “district” shall be construed to mean the area or region of a municipality from which a member of the governing body is elected by the electors from such area or region. Members may be removed from office pursuant to the procedures provided in this section. This method of removing members of the governing body of a municipality is in addition to any other method provided by state law.

#### (2) RECALL PETITION.—

(a) *Petition content.*—A petition shall contain the name of the person sought to be recalled and a statement of grounds for recall. The statement of grounds may not exceed 200 words, and the stated grounds are limited solely to those specified in paragraph (d). If more than one member of the governing body is sought to be recalled, whether such member is elected by the electors of a district or by the electors of the municipality at-large, a separate recall petition shall be prepared for each member sought to be recalled. Upon request, the content of a petition should be, but is not required to be, provided by the proponent in alternative formats.

#### (b) *Requisite signatures.*—

1. In a municipality or district of fewer than 500 electors, the petition shall be signed by at least 50 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

2. In a municipality or district of 500 or more but fewer than 2,000 registered electors, the petition shall be signed by at least 100 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

3. In a municipality or district of 2,000 or more but fewer than 5,000 registered electors, the petition shall be signed by at least 250 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

4. In a municipality or district of 5,000 or more but fewer than 10,000 registered electors, the petition shall be signed by at least 500 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

5. In a municipality or district of 10,000 or more but fewer than 25,000 registered electors, the petition shall be signed by at least 1,000 electors or by 10 percent of the total number of registered electors of the municipality or district as of the preceding municipal election, whichever is greater.

6. In a municipality or district of 25,000 or more registered electors, the petition shall be signed by at least 1,000 electors or by 5 percent of the total number of registered electors of the municipality or district as of the

preceding municipal election, whichever is greater.

All signatures shall be obtained, as provided in paragraph (e), within a period of 30 days, and all signed and dated petition forms shall be filed at the same time, no later than 30 days after the date on which the first signature is obtained on the petition.

(c) *Recall committee.*—Electors of the municipality or district making charges contained in the statement of grounds for recall, as well as those signing the recall petition, shall be designated as the recall committee. A specific person shall be designated in the petition as chair of the committee, and this person shall act for the committee. The recall committee and the officer being recalled are subject to the provisions of chapter 106.

(d) *Grounds for recall.*—The grounds for removal of elected municipal officials shall, for the purposes of this act, be limited to the following and must be contained in the petition:

1. Malfeasance;
2. Misfeasance;
3. Neglect of duty;
4. Drunkenness;
5. Incompetence;
6. Permanent inability to perform official duties; and
7. Conviction of a felony involving moral turpitude.

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

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

(g) *Verification of signatures.*—

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

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

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

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

(3) **RECALL PETITION AND DEFENSE.**—

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

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

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

(d) *Signed petitions; request for striking name.*—The clerk shall assemble all signed petitions, check to see that each petition is properly verified by the oath of a witness, and submit such petitions to the county supervisor of elections. Any elector who signs a recall petition has the right to demand in writing that his or her name be stricken from the petition. A written demand signed by the elector shall be filed with the clerk, and, upon receipt of the demand, the clerk shall strike the name of the elector from the petition and place his or her initials to the side of the signature stricken. However, a signature may not be stricken after the clerk has delivered the “Recall Petition and Defense” to the supervisor for verification of the signatures.

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

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

(4) **RECALL ELECTION.**—If the person designated in the petition files with the clerk, within 5 days after the last-mentioned notice, his or her written resignation, the clerk shall at once notify the governing body of that fact, and the resignation shall be irrevocable. The governing body shall then proceed to fill the vacancy according to the provisions of the appropriate law. In the absence of a resignation, the chief judge of the judicial circuit in which the municipality is located shall fix a day for holding a recall election for the removal of those not resigning. Any such election shall be held not less than 30 days or more than 60 days after the expiration of the 5-day period last-mentioned and at the same time as any other general or special election held within the period; but if no such election is to be held within that period, the judge shall call a special recall election to be held within the period aforesaid.

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

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

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

(6) FILLING OF VACANCIES; SPECIAL ELECTIONS.—

(a) If an election is held for the recall of members elected only at-large, candidates to succeed them for the unexpired terms shall be voted upon at the same election and shall be elected in the same manner as provided by the appropriate law for the election of candidates at general elections. Candidates shall not be elected to succeed any particular member. If only one member is removed, the candidate receiving the highest number of votes shall be declared elected to fill the vacancy. If more than one member is removed, candidates equal in number to the number of members removed shall be declared elected to fill the vacancies; and, among the successful candidates, those receiving the greatest number of votes shall be declared elected for the longest terms. Cases of ties, and all other matters not herein specially provided for, shall be determined by the rules governing elections generally.

(b) If an election is held for the recall of members elected only from districts, candidates to succeed them for the unexpired terms shall be voted upon at a special election called by the chief judge of the judicial circuit in which the districts are located not less than 30 days or more than 60 days after the expiration of the recall election. The qualifying period, for purposes of this section, shall be established by the chief judge of the judicial circuit after consultation with the clerk. Any candidate seeking election to fill the unexpired term of a recalled district municipal official shall reside in the district represented by the recalled official and qualify for office in the manner required by law. Each candidate receiving the highest number of votes for each office in the special district recall election shall be declared elected to fill the unexpired term of the recalled official. Candidates seeking election to fill a vacancy created by the removal of a municipal official shall be subject to the provisions of chapter 106.

(c) When an election is held for the recall of members of the governing body composed of both members elected at-large and from districts, candidates to succeed them for the unexpired terms shall be voted upon at a special election as provided in paragraph (b).

(d) However, in any recall election held pursuant to paragraph (b) or paragraph (c), if only one member is voted to be removed from office, the vacancy created by the recall shall be filled by the governing body according to the provisions of the appropriate law for filling vacancies.

(7) EFFECT OF RESIGNATIONS.—If the member of the governing body being recalled resigns from office prior to the recall election, the remaining members shall fill the vacancy created according to the appropriate law for filling vacancies. If all of the members of the governing body are sought to be recalled and all of the members resign prior to the recall election, the recall election shall be canceled, and a special election shall be called to fill the unexpired terms of the resigning members. If all of the members of the governing body are sought to be recalled and any of the members resign prior to the recall election, the proceedings for the recall of members not resigning and the election of successors to fill the unexpired terms shall continue and have the same effect as though there had been no resignation.

(8) WHEN PETITION MAY BE FILED.—No petition to recall any member of the governing body of a municipality shall be filed until the member has served one-fourth of his or her term of office. No person removed by a recall, or resigning after a petition has been filed against him or her, shall be eligible to be appointed to the governing body within a period of 2 years after the date of such recall or resignation.

(9) RETENTION OF PETITION.—The clerk shall preserve in his or her office all papers comprising or connected with a petition for recall for a period of 2 years after they were filed.

(10) OFFENSES RELATING TO PETITIONS.—No person shall impersonate another, purposely write his or her name or residence falsely in the signing of any petition for recall or forge any name thereto, or sign any paper with knowledge that he or she is not a qualified elector of the municipality. No person shall employ or pay another to accept employment or payment for circulating or witnessing a recall petition. Any person violating any of the provisions of this section commits a misdemeanor of the second degree and shall, upon conviction, be punished as provided by law.

(11) INTENT.—It is the intent of the Legislature that the recall procedures provided in this act shall be uniform statewide. Therefore, all municipal charter and special law provisions which are contrary to the provisions of this act are hereby repealed to the extent of this conflict.

(12) PROVISIONS APPLICABLE.—The provisions of this act shall apply to cities and charter counties whether or not they have adopted recall provisions.

History.—ss. 1, 2, ch. 74-130; s. 1, ch. 77-174; s. 12, ch. 77-175; s. 1, ch. 77-279; s. 1, ch. 81-312; s. 20, ch. 83-217; s. 17, ch. 89-338; s. 15, ch. 90-315; s. 549, ch. 95-147; s. 14, ch. 95-280; s. 1, ch. 2000-249; s. 5, ch. 2001-40; s. 8, ch. 2002-281; s. 13, ch. 2008-95.



## MEMORANDUM

TO: Chairman and Members of the Charter Review Commission

FROM: Paul Gougelman, General Counsel

SUBJECT: County Commissioner Term Limits

DATE: January 22, 2022

**BACKGROUND:** At the last Charter Review Commission (“CRC”) meeting at the request of Member Robin Fisher, the CRC asked for information regarding development of county commissioner term limits and the legality of altering the term limits for Brevard County Commissioners.

**SHORT ANSWER:** Currently, Section 2.04 of the Charter limits County Commissioners to no more than two consecutive terms. The Florida Supreme Court has determined that a county charter may contain term limits. The CRC may propose revision of the terms in the Charter.

**ANALYSIS:** In government, there are waves of public interest in various topics. These waves of interest suddenly appear and occupy public interest for varying amounts of time and then subside. For example, one of the issues *du jour* in the early 2000s was a drive to regulate rave clubs.<sup>1</sup> In the 1980s in Florida, growth management suddenly became a big issue. Public polling indicates that all of these issues have subsided as issues of concern.

### *The National Perspective*

During the 1990s, term limits became the issue *du jour* in Florida<sup>2</sup> and elsewhere in the U.S. What seems to have caused this is that,

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<sup>1</sup> A rave club was a club open until early morning (5 AM) that didn’t serve alcohol after 2 AM but allowed younger people to dance to loud music and use drugs.

<sup>2</sup> The concept of term limits actually started with ancient Greeks and Romans. They believed that a change of leadership periodically was good for government. Bell, *History of County Term Limits*, National Association of Counties at 3 (Feb. 2011).

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[c]itizens across the country began to wonder about elected officials who seemed to spend their careers in their elected offices. They began to wonder if they were getting the best representation and leadership for their communities from these state and local officials who ran and were reelected over and over again. As this discontent spread, many began to feel that new ideas and fresh leadership on a periodic basis was a desirable aim. As they contemplated how to achieve these changes, the concept of term limits emerged . . .<sup>3</sup>

However by 2000, the interest in term limits seem to be waning nationally. For example, no states added term limits during the period 2006 to 2011, and “nationally, only a handful of counties have taken any action. Of those counties [nationally] that have addressed term limits in recent years, 10 have rescinded their earlier legislation, 2 have voted to continue the current limits and only 4 have voted to impose new term limits.”<sup>4</sup>

#### *Term Limits in Florida*

In 1992 an initiative petition placed an amendment on the ballot adopting Article VI, Section 4(c) to the Florida Constitution which limited the term of office to no more than eight years for state representatives, state senators, the lieutenant governor, and any member of the Florida Cabinet.<sup>5</sup> The amendment passed with a vote of 76.8%, which appears to be roughly the percentage of the vote by which many term limits are adopted.<sup>6</sup>

The move to adopt terms has also surfaced in several Florida counties. The following charter counties have adopted term limits:<sup>7</sup>

Brevard County – 2 consecutive terms<sup>8</sup>

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<sup>3</sup> Bell, Channen, *History of County Terms*, at p.3 (National Association of Counties Feb., 2011).

<sup>4</sup> *Id.*

<sup>5</sup> The amendment didn't actually bar someone from serving more than eight years. It simply precludes an individual's name from appearing on the ballot.

<sup>6</sup> The vote was 3,625,517 yes (76.8%) and 1,097,133 no (23.2%), according to the Florida Secretary of State. The vote in Brevard County was 141,319 yes (81.5%) and 31,868 no (18.5%).

<sup>7</sup> 19 of the 67 counties have adopted charters. Charter counties without term limits include Alachua, Columbia, Charlotte, Leon, Osceola, Pinellas, Seminole, and Wakulla. Pinellas County's Charter Revision Commission examined the issue of term limits in 2016, but term limits were not enacted. See Badmin, T., *Terms Limits on Agenda for Pinellas Charter Review Group*, Tampa Bay Reporter (Jan. 17, 2016).

<sup>8</sup> §2.04, Brevard County Charter.

Broward County – 3 consecutive terms<sup>9</sup>  
Clay County – 2 consecutive terms<sup>10</sup>  
Duval County – 2 consecutive terms<sup>11</sup>  
Hillsborough County – 2 consecutive terms<sup>12</sup>  
Lee County – 3 consecutive terms<sup>13</sup>  
Miami-Dade County – 2 consecutive terms<sup>14</sup>  
Orange County – 2 consecutive terms<sup>15</sup>  
Palm Beach County – 8 years<sup>16</sup>  
Polk County – 12 years<sup>17</sup>  
Sarasota County – 2 consecutive terms<sup>18</sup>  
Volusia County – 8 consecutive years<sup>19</sup>

### *Term Limits in Brevard County*

The term limits issue surfaced in Brevard County in the late 90s. The Charter Review Commission considered the issue. Member Albert Notary was one of the strong proponents. The CRC recommended term limits to the Brevard County Commission in August, 1999. The language recommended was an amendment to Section 2.04 of the Charter as follows: “No county commissioner shall serve more than two (2) consecutive terms.”

In September, 1999, the County Commission asked County Attorney Scott Knox whether the proposed term limit amendment for county commissioners was legal. County Attorney

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<sup>9</sup> §2.02, Broward County Charter.

<sup>10</sup> §2.2 A., Clay County Charter.

<sup>11</sup> §5.041, Duval County/City of Jacksonville Charter.

<sup>12</sup> §4.04, Hillsborough County Charter. Hillsborough County Commissioners have asked their legal staff to look at changing the term limits. Bowen, C.T., *Hillsborough Commissioners’ Question on Term Limits: What about us?*, Tampa Bay Times (Jan. 14, 2022).

<sup>13</sup> §2.2 A.2., Lee County Charter.

<sup>14</sup> §3.01, Miami-Dade County Charter. The issue was placed on the 2012 election ballot and was adopted 556,391 yes (77.45%) to 161,954 no (22.55%).

<sup>15</sup> §204 B., Orange County Charter.

<sup>16</sup> §2.2, Palm Beach County Charter.

<sup>17</sup> §2.3, Polk County Charter.

<sup>18</sup> §2.1 A., Sarasota County Charter.

<sup>19</sup> §303.5, Volusia County Charter.



Knox responded that “[a]lthough there is a legal argument to the contrary, the amendment would likely be held to be consistent with general law and therefore constitutional.”<sup>20</sup> Given that several of the incumbent commissioners would be up for re-election during the next cycle and had already served two terms, County Attorney Knox was asked whether term limits, if adopted, would be effective retroactively. He stated that “it is doubtful that the proposed amendment, as worded, can be applied retroactively.”<sup>21</sup> However, he explained that the proposed amendment didn’t make it clear whether the term limit prohibition was retroactive or not.<sup>22</sup>

During the Fall of 1999, fearing that the County Commission was going to reject the proposed term limits amendment and keep it off the ballot, a citizen’s committee named the Home Rule Charter Committee was formed with Al Notary, James A Strickland, and General Gene Sterling,<sup>23</sup> as leaders. The Committee gathered 16,000 signatures on a petition to put the issue on the ballot. The Supervisor of Elections ruled that sufficient legal signatures had been obtained.

At this point, the County Commission decided to seek an opinion from the circuit court as to the propriety of the term limit proposal. In Brevard County v. Home Rule Charter Committee, Case No. 99-39945-CA-H (18<sup>th</sup> Cir.Ct. *opinion filed* Feb. 15, 2000),<sup>24</sup> Judge Charles Holcomb ruled that there was no controversy presented, and that the court did not have jurisdiction to issue a ruling.

In January, 2000, the County Commission voted 4-1 to reject the amendment.<sup>25</sup> Commissioner Sue Carlson posited that maybe what should be done was to put a clean version of the term limits proposal on the ballot in an effort to resolve the retroactivity issue.<sup>26</sup>

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<sup>20</sup> Memorandum from Scott Knox, County Attorney to Brevard County Board of County Commissioners (Sept. 17, 1999).

<sup>21</sup> *Id.*

<sup>22</sup> Schweers, Jeff, *Commission Downs Term-Limit Amendment*, Florida Today at p. 2A (Jan. 12, 2000).

<sup>23</sup> Charles Moehle was also involved with this group but not as one of the leaders. Some of these individuals were loosely affiliated with then County Property Appraiser Jim Ford.

<sup>24</sup> The opinion was recorded on February 17, 2000, in Official Records Book 4154, Page 3387, Public Records of Brevard County, Florida.

<sup>25</sup> *Id.* Commissioners Carlson, Scarborough, O’Brien, and Higgs voted to reject the amendment. Commissioner Voltz dissented, stating that although she wasn’t in favor of term limits, she felt the proposal should be placed on the ballot.

<sup>26</sup> Schweers, Jeff, *Commission Downs Term-Limit Amendment*, Florida Today at p. 2A (Jan. 12, 2000).

Some of the Home Rule Charter Committee members were unhappy that the amendment was not going to be on the ballot and applied retroactively.<sup>27</sup> The Home Rule Charter Committee then filed suit against Brevard County to have the terms limits amendment as proposed by the Home Rule Charter Committee placed on the ballot in Home Rule Charter Committee v. Brevard County, et al., Case No. 05-2000-CA-12365-XXXX-XX (Fla. 18<sup>th</sup> Cir.Ct. *opinion filed* Oct. 6, 2000).<sup>28</sup>

Circuit Court Judge Lisa Davidson Kahn noted in her 13-page opinion that the County Commission had taken the position that the proposed amendment had to be placed on the ballot, unless the County Commission concluded that the proposal was inconsistent with the Florida Constitution or general law. The County Commission concluded in its lawsuit that the proposal was inconsistent with general law.<sup>29</sup>

Judge Davidson found that the County had misconstrued Judge Holcomb's earlier decision. Judge Holcomb found that the County Commission could determine whether to place an amendment on the ballot, and that if they decided not to do so, any aggrieved party could file an action against the County to have the County's decision reviewed by the court.<sup>30</sup> Judge Davidson agreed that it would be "absurd" to ask the County to place an amendment on the ballot, that it, in good faith, has determined to be inconsistent with Florida law, since it is the County that would later be called upon to defend the action.<sup>31</sup>

Ultimately, the court determined that the proposed amendment was not inconsistent with Florida law or the state Constitution.<sup>32</sup> Consequently, the County made a flawed determination not to place the proposed amendment on the ballot. The court stated that "[i]t is not the function of the County to rewrite amendments based upon this conjecture as to potential court rulings, in so doing the County has exceeded the parameters of its authority."<sup>33</sup>

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<sup>27</sup> Schweers, Jeff, *Term Limits, Tax District to Appear on the November Ballot*, Florida Today at p. B1 (March 15, 2000).

<sup>28</sup> The opinion was recorded on November 9, 2000, in Official Records Book 4247, Page 1596, Public Records of Brevard County, Florida.

<sup>29</sup> Home Rule Charter Committee v. Brevard County, et al., Case No. 05-2000-CA-12365-XXXX-XX slip op. at ¶¶C. 8. and 9. (Fla. 18<sup>th</sup> Cir.Ct. *opinion filed* Oct. 6, 2000).

<sup>30</sup> *Id.*, at ¶F.

<sup>31</sup> *Id.*, at ¶G.

<sup>32</sup> *Id.*, slip op. at p. 11.

<sup>33</sup> *Id.*, slip op. at p. 12.

The court ordered the County to place the proposal, as submitted by the petition signature gatherers, on the November, 2000, ballot.<sup>34</sup> The County subsequently sought a rehearing of the case, which was denied.<sup>35</sup> Thereafter, both parties filed appeals with the Fifth District Court of Appeal,<sup>36</sup> but those appeals were subsequently voluntarily dismissed after the November, 2000 election.<sup>37</sup>

The election was held in November 2, 2000, and the term limits amendment was adopted by the voters by a vote of 158,926 yes (77.39%) to 46,422 no (22.61%).

The amended language with the term limits amendment as adopted is worded as follows with the amendatory language being underlined:

**Sec. 2.4. - Terms of office.**

Each Commissioner shall be elected and serve for four (4) years, beginning on the second Tuesday after election, and continuing after such term until a successor is elected and qualified. The terms shall be staggered as presently provided by general law. No county commissioner shall serve more than two (2) consecutive terms.

*Legal Analysis of County Term Limits*

There are two types of term limits. The first type is a limit on the number of terms that an individual may hold. The second type is a limit on the number of terms an individual can hold during their lifetime.<sup>38</sup>

To understand the difference, in Brevard County, an example of the first type is imbedded in the Town of Melbourne Beach's Charter and states:

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<sup>34</sup> *Id.*, slip op. at p. 12., ¶A.

<sup>35</sup> Home Rule Charter Committee v. Brevard County, et al., Case No. 05-2000-CA-12365-XXXX-XX slip op. at ¶¶C. 8. and 9. (Fla. 18<sup>th</sup> Cir.Ct. on motion for rehearing filed Oct. 13, 2000).

<sup>36</sup> Higgs and Scarborough v. Home Rule Charter Committee, Case No. 5D-3334 (Fla. 5<sup>th</sup> DCA appeal filed Nov. 9, 2000); Home Rule Charter Committee vs. Brevard County, Case No. 5D-3334 (Fla. 5<sup>th</sup> DCA appeal filed Oct. 10, 2000).

<sup>37</sup> Higgs and Scarborough v. Home Rule Charter Committee, Case No. 5D-3334 (Fla. 5<sup>th</sup> DCA voluntarily dismissed Dec. 21, 2000); Home Rule Charter Committee vs. Brevard County, Case No. 5D-3334 (Fla. 5<sup>th</sup> DCA voluntarily dismissed Dec. 14, 2000).

<sup>38</sup> Bell, *History of County Term Limits*, National Association of Counties at 3 (Feb. 2011).

(b) Neither a commission member or the mayor may qualify for or serve more than two (2) complete consecutive terms and the portion of an unexpired term occurring by reason of a vacancy. Notwithstanding the foregoing, an elected city official, such as a commissioner, who has served the maximum time in office as permitted by this paragraph, may qualify for and be elected to serve in a different city elected office, such as mayor. Further, a commissioner or the mayor who has served the maximum amount of time permitted by this sub-section may again serve on the commission subject to the time and term limitations of this sub-section; provided, that the official has not served on the commission for at least one (1) year (three hundred sixty-five (365) days = one (1) year). Any city elected official who resigns within one (1) year (three hundred sixty-five (365) days = one (1) year) before the end of the second consecutive term of office shall be prohibited from qualifying as a candidate for a commission seat in the next regular city election. This paragraph shall be applicable to any commission member or the mayor who, subsequent to the election held on November 2, 2004, has served for two (2) complete consecutive terms and which terms have been served in full after November 2, 2004.

§2.03(b), Town of Melbourne Beach Charter (emphasis supplied).

Although term limits for county commissioners are not legal in non-charter counties,<sup>39</sup> they are very much legal in Florida's charter counties. However, there is been a rather involved history.

In Cook v. City of Jacksonville, 823 So.2d 86 (Fla. 2002), the Florida Supreme Court found term limits for county commissioners to be unconstitutional. The reasoning in Cook was that a term limit was a "disqualification"<sup>40</sup> from election to office. The Court further found that Article VI, Section 4 of the Florida Constitution, lists those "disqualifications."<sup>41</sup>

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<sup>39</sup> AGO 2019-03 (Response to query by Highlands County Attorney).

<sup>40</sup> For example, "[n]o person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability." And "[n]o person may appear on the ballot for re-election to any of the following offices: (1) Florida representative, (2) Florida senator, (3) Florida Lieutenant governor, [or] (4) any office of the Florida cabinet, . . . if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years." Art. VI, §4, Fla. Const. of 1968.

<sup>41</sup> Cook, at 92–93.

Because terms for county commissioner were not included in the list of “disqualifications,” the Court decided that term limits for county commissioners were not constitutional.

However, several years later in Telli v. Broward County, 94 So.3d 504 (Fla. 2012), the Florida Supreme Court again examined the constitutionality of term limits in a case involving Broward County Commissioners. The Court receded from its earlier ruling in Cook and found county commissioner term limits to be constitutional and consistent with Article VIII, Section 1(g) of the Florida Constitution of 1968 and the broad concepts of extending home rule to voters in charter counties. *Accord* Autunes v. Sarasota County, 94 So.3d 513 (Fla. 2012)(memorandum opinion involving the Sarasota County Charter based on *Telli*).

Thus, term limits provided for in a charter county’s charter are legal. The CRC may evaluate whether to shorten or enlarge the number of permitted terms or take other action. One other consideration is should these term limits be for lifetime, or should an individual who has served for a certain number of terms be permitted to not seek re-election and later run again?

PRG/mb