

BREVARD COUNTY CHARTER REVIEW COMMISSION

AGENDA

March 24, 2022

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

Commission Room, 1:00 P.M.

- A. Call to Order
- B. Pledge of Allegiance
- C. Roll Call
- D. Approval of Minutes
- E. Reports:
 - 1. Chairman
 - 2. CRC Staff Person and CRC Attorney
 - a. Memo- County Commission salaries, budgets, & populations
 - b. Memo-Recall of School Board Member
 - 3. Other Members
- F. Proposals
 - 1. **Charter Cap- Public Hearing #2**
Public Comment
 - 2. **Recall School Board Member -Public Hearing #1**
Public Comment
 - 3. **Full Time Commissioner-Public Hearing #1**
Public Comment
 - 4. **Revise Citizen Process-Public Hearing #1**
Public Comment
 - 5. **Repeal of Three Attorney Panel-Public Hearing # 1**

Public Comment

G. Unfinished Business

1. Revision to the future meeting schedule
2. Discussion on proposal voting methods
3. Fiscal Analysis Direction
4. **Blaise Trettis:**

Motion to change “ten (10)” in Rule 17. Charter Amendments to “eight (8)”.

H. New Business

1. **Blaise Trettis**

Motion to delete from Rule 16 of the Rules of Procedure Brevard County Charter Review Commission the words with the following strike through:

“Rule 16. Rule Amendments: These rules and policies shall be the by-laws of the Commission and may be amended by an affirmative vote of eight (8) of the members of the Commission ~~with at least one member appointed by each Commissioner present.~~”

2. **Blaise Trettis:**

Motion for Commission attorney Paul Gougelman to seek Attorney General Opinion from Florida Attorney General Ashley Moody on whether Proposal to Amend Brevard County Charter to Add Recall of School Board Members is violative of Article VIII, section 1(g) of the Florida Constitution which provides that, “ Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.”

I. Public Comment

J. 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, February 17, 2022

3:00 p.m.

Brevard County Government Center
2725 Judge Fran Jamieson Way, 1st Floor
Commission Room
Viera, Florida 32940

A. Call to Order

Mike Haridopolos: Welcome to the Brevard County Charter Review Commission, if Melissa you could please call the roll that would be great. No rush.

B. Roll Call

Melissa Brandt:

Robin Fisher (District I) - Present
Kendall Moore (District I) - Present
Marcia Newell (District I) - Present
Mike Haridopolos (District II) - Present
Marie Rogerson (District II) - Present
Blaise Trettis (District II) - Present
Bob White (District III) - Present
Tom Jenkins (District IV) - Present
Cole Oliver (District IV) - Present
Sue Schmitt (District IV) - Present
Jordin Chandler (District V) - Present
Vic Luebker (District V) - Present
Dave Neuman (District V) - Present
Matt Nye (District III) - Present
Gabriel Jacobs-Kierstein (District III) - Late but Present

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

C. Approval of Minutes from January 06, 2022

Mike Haridopolos: All right, thank you so much. For the first order of business everyone should have a copy of the last meeting approval of minutes, do I hear a yay on that?

Vic Luebker: So, moved.

Mike Haridopolos: All right, without objections to that show that adopted.

D. Fiscal Analysis Direction

Mike Haridopolos: The fiscal analysis direction should also be in your packets. As you remember from last time we had some questions about that, and there were three different vendors currently with the County that we can call on if we need to in this process. So, I wanted to make sure that everyone had that information. With that, are there any questions with that particular piece on item D on our agenda?

All right, so everyone has that information.

E. Proposals:

Mike Haridopolos: So, what I would like to do today is to get into a couple of the proposals. As you know from our last meeting we did not have a public meeting in my opinion but we simply kind of brought up the issue. This will be the first official public meeting on our two proposals being brought before us. One being our Charter Cap. The second one I will not count as our first meeting today, but there can be some discussion today about the recall for school board members. And the reason for that again is that it is a proposal that we are just getting into today, and I want to make sure that as we talked about in each of our meetings that there is an abundance of caution. Let's make sure there is a lot of transparency so that anything we propose to bring to the County Commissioners is done in a very thorough way so that whether it be today or in the future meetings, more and more folks who will have an interest on either one of these proposals or others that come before us, can have a full vetting of the issue before we make a final vote. So, this will be the first public hearing we are having on the first of the issues which has been brought forth by Blaise Trettis which is of course on the Charter Cap.

E1. (Charter Cap Discussed at Meeting on 01-06-2022) Public Hearing #1 02-17-2022

Mike Haridopolos: Everyone should have before them the information about that Charter Cap. I think the staff did a nice job of getting kind of the history on that, and as Mr. Fisher was kind enough to ask the good question of what would the impact be had this been in place years past, that information is also in your packets so you understand the fiscal impact that would have if the number was reset. So, with that, what I would like to do is a couple of things: We have some folks in the audience. I would imagine...Melissa are these folks all here for the Charter Cap issue or is it for the school board issue as well?

Melissa Brandt: It is a mixture of topics, mostly the School Board issue.

Mike Haridopolos: Okay, great. And as I mentioned the school board issue will be, the first official meeting will be next time for our three count. But the charter cap, this will be the first official public meeting on it. So why don't we handle the charter cap first. So, if you could just raise your hand if you are here for the charter cap. Okay we have one person. Anyone else? Okay so what we will do is we will allocate three minutes on the issue for Mr. Ellis who is here. I think make a brief presentation on his, and then from there, anyone on the board can ask a question of Mr. Ellis, and then once from there we will just have a discussion and then once that is complete we will move forward with the other proposals. So, Mr. Ellis welcome.

Scott Ellis: Welcome. In a way you are to blame for this.(laughter). The original charter cap came through with Senator Haridopolos up in Tallahassee. It was passed. It was approved, and I think it is very clear that the original cap I believe is very clear that when you have some kind of declared crisis that you can enact that tax for a single year. Single year means a single year. If you wish to enact that again, you must vote it again. I know that Mr. Trettis has got it on here again. I understand why because our first one seems to be tied up in court. A brief history on that, when that came up I had asked to go for declaratory judgement with the courts to avoid a lot of legal issues because simply declaratory judgement we prepare our case, you prepare your case and judge makes a decision. Once judge makes a decision, then you have got something to work with. The County refused to go to dec and instead they chose to knock us out on a standing issue. That has now been removed by the 5th DCA and the issue is back now in the courts here in Brevard. Per Mr. Gougelman's memo and the numbers you have seen, that is totally a self-inflicted wound by the County. I have no sympathy for any of those numbers. This could have all been resolved when it first came up without going to court. The other issue is if Mr. Trettis's issue gets on the ballot, and if it passes it is not retroactive. However, our court decision could be retroactive. Which would be unfortunate for the County, again they dug their own hole by not taking the simple solution first. So, as far as cost associated with the new amendment, there are none. It would be moving forward, not moving backward.

Mike Haridopolos: All right great, before we go to the sponsor of it, are there questions for Mr. Ellis?

Vic Luebker: Yes, Mr. Chair

Mike Haridopolos: Go ahead

Vic Luebker: Scott could you explain a little bit more when you say the simple solution, how you define that?

Scott Ellis: Certainly. It is that the Board came through in 2019 and said we have a crisis and we want to bust the cap. And they did, and they got about \$900,000 out of it. We had told the Board that is fine and what you did was legal, you had the Super Majority. When you roll into 2020, if you want to keep that money you have to make that vote and finding again. You can't keep that money as part of your roll back because that money is only for a single year. Therefore, we had to wait and when the preliminary budget was submitted in 2020 which included that money again with no find in critical need, we told the Board what we would do and then we proceeded to head to the courts. The simple thing again, was to go to declaratory judgement because it doesn't cost anything. Your lawyer prepares a brief, our lawyer prepares a brief. They argue in front of the judge, and judge finds one way or the other. Instead the County went into a protracted legal battle over the issue which I thought was fairly amazing since they said they had a slam dunk issue on their side. I don't know why you would not go for the declaratory judgement if you feel you have a slam dunk issue on your side. So that is where we are at now. I truthfully missed the one in 2017, that is my error. In 2016, the Board had done the same thing, that is my fault I missed it. I was tied up with things in 2016, in 2017 I should have done the same thing. But that doesn't mean I was not going to do it in 2020. They were very openly cold about it. The Board's attitude was well they just don't care.

Mike Haridopolos: Additional questions? Thank you very much Mr. Ellis, it is great seeing you.

Scott Ellis: You are welcome.

Mike Haridopolos: At this point, I am going to have, allow Mr. Trettis to kind of again reiterate the issue, and like we might do like in my old days in the legislature, we will let him kind of handle the questions. If we could just get my attention if you want to ask questions, so Blaise go ahead.

Blaise Trettis: Thank you. It was in 2008 that a local law was passed which allowed this charter cap to be placed on the 2008 ballot. It was passed by over 73 percent of the voters in November and became part of the Charter. I think the critical, I agree with what Scott Ellis has said I wanted to point out. I especially agree with the fact that my proposal, if it were adopted and voted by the electorate, it would be prospective. It would not be retroactive. And I think it is a little bit misleading when you look at these numbers that were done by the County because they seem to me that they suggest that eighteen million dollars or sixteen million dollars or whatever the total amount is, would some how be owed back, or that taxpayers would be on the hook for it. That is not true. If this proposal were voted into the Charter in November it would be prospective. So, it would not affect anything but the future. So, the way I see it is this excess taxation that has occurred since 2017 and on, that is locked in and is not going to be affected by the voters approving my proposal. That is important to know. I think the most important thing is just the wording of the Charter itself when you consider whether or not it is supposed to be one year of excess taxation above the Charter Cap. And I will just read a little bit.

That “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),”(that’s the Charter Cap) “if a supermajority of the Board concurs in a finding that such an excess is necessary because of emergency or critical need”. Here is the most important part in my opinion. “The finding shall set forth the ultimate facts upon which it is based, and shall be valid for a single budget year.” End quote. That is the critical language. It is clear that it can only be for one year. Excess taxation. The language is perfectly clear. If anyone on this Commission would disagree with me, I would like for you to explain to me what that language means if that is not what it means. So that is the critical language. I also would like to say that you know, from the comments at the last Commission meeting it seems that some people don’t like this because it reduces taxation and they think that it would affect in a particular case of the Sheriff. I would like to point out that Mr. Fisher was a County Commissioner in starting in what, 2008-2009? Those were the biggest budget reductions probably seen in Brevard County in decades if not ever, because that is when the great recession hit. I have not gone back in the records to look at this, but my recollection is that the County Commission at that time, including Mr. Fisher, realized that public safety is government’s number one priority, and all though the FTE’s the full-time positions of Brevard Government were slashed to 2000 levels, that the Sheriff’s Office was held harmless, if not slightly increased during those worst of years. So, the law enforcement budget can only be reduced if the Board of County Commissioners lets it be reduced. Okay.

It is a very important point to make. Finally, I would just like to point out that I think these numbers are wrong from the County who did this memorandum because they multiplied

these ... First of all it seems that this is a sum number which is owed back, which would not be the case. But also, these numbers were multiplied by five years when I think it should be four years because it says that in September 13 of 2016 the Board of County Commissioners exceeded the Charter Cap. Well if they voted in September 23rd 2016 that means that the Charter Cap was exceeded starting with the year 2017-2018. So, there is no, that excess taxation during that year because of critical need is fine. It was only through four years since then that should have been rolled back. 2018-2019, 2019-2020, 2020-2021, 2021-2022.

So, all of these numbers were multiplied by five when I submit it should have been four. But even using the highest numbers I want to just emphasize what a really small amount of the entire County budget we are talking about. The budget is now \$1,628,207,528. The \$942,309 excess taxation that went to law enforcement MSTU above the Charter Cap, that \$942,000 plus dollars accounts for only 6/100's of the County's budget. For the general fund for the years, using the County's numbers in this chart or the memo, that is \$2,459,651. That amounts to 15/100's of 1 percent of the budget. For road and bridge, \$495,836 that accounts for 3/100's of the budget of the County. You add those up and we are talking about less than 1/4 of 1 percent is the excess taxation. So, for people to say that we can't live with this, we need the tax money, I submit that is wrong. I also, you know we are the only County in Florida that has this Charter Cap. Some people say that is a bad thing. I say that is a very good thing because look at the quality of life we have here in Brevard County with the Charter Cap. We have, I think excellent schools, the roads you know are probably as good as any county with 600,000 people. Law enforcement is, particularly the Sheriff since 2012 the crime rate has been reduced 43.7 percent. So, this was all done with the Charter Cap in place. So, for people to say that we have to have more tax payer money, I say we should be the model for the rest of the State, and other Counties really should be doing what we are doing here in Brevard County. Thank you.

Mike Haridopolos: All right, thank you. Are there questions?

Sue Schmitt: I don't have any questions, I have a statement.

Mike Haridopolos: Okay, sure, but let's stay with questions first for now before we get into the different statements. Are there any questions for the sponsor of the proposal? Okay, we will go into statements then. Ms. Schmitt.

Sue Schmitt: We had great statements last time. I would just like to address having been on the County Commission in my lifetime. At the last meeting I discussed the history of the 2019-2020 increase that they County Commission put on for the MSTU for the Sheriff. And I also discussed the history that the reason that the MSTU exists today and it is for road patrol is because many, many years ago the cities in Brevard County got together and said we all have our own police departments and you, the County are taking money out of the general fund to subsidize or to pay for the Sheriff or the road deputies. And it was going to go to court and there was a resolution to create the MSTU's for the road patrol for the Sheriff's department. And it was very clear at that point that no money, no funds for the road patrol which is for the unincorporated areas in Brevard County could be used from general fund. And only the MSTU from road patrol. So, at that point, when the Sheriff went to the County Commission for the 2019-2020 budget, we all know what was going on with the pandemic and a lot of other things, and the Sheriff had a critical need.

The Commission at that time made the decision to give the Sheriff an increase for those deputies that were on the road patrol for the unincorporated area because there also was a State law that was passed because of the Marjory Stoneman Douglas High School episode that took place, and the Safety Act by the State legislature, and he had to supply more school deputies which are road patrol, and also more equipment and vehicle cost.

If what Blaise is saying would have been in existence the next year in the budget, that increase would have had to come off. It could not be taken out of the general fund. Now could the County Commission gone into another fund at that point or for roads that we all travel on, or for your parks that your kids go to play little league? Sure, they could. You made a statement that we have great schools. The County Commission does not pay for the schools in Brevard County, that is the School Board. They have nothing to do with the School Board and the schools. Blaise was correct that this was adopted by the public in 2008, but in 13 years, the County Commission, and they have not all been the same Commissioners. There have been many different Commissioners. Have only done an act of critical need twice in the whole 13 years. I don't think any County Commissioner past, present or future is going to go gee we have all this opportunity we can go out and tax everybody. I mean, I just don't think it is going to happen, if for no other reason than politically. But let's say that the Commissioners have some sense about them, and they also live in Brevard. They don't want any more taxes either. I believe that what is in the Charter right now today should stay the way it is, and not be changed period.

Mike Haridopolos: Thank you. Others who might have comments on this. Mr. Moore? Oh, Mr. Jenkins?

Tom Jenkins: I think we are discussing a major policy decision which has long term consequences to the County. In order for the County Commission to avoid advertising a tax increase, they have to reduce the millage to the rolled back rate, which in affect takes into consideration all of the re-assessments that occur on all of the individuals existing property. I know that many years when I was serving as County Manager, there were many years when we had no new construction. And while there may be some very significant new construction going on today to generate revenue, long term there is no guarantee that the new construction revenue will continue to be there. I can tell you that for many years it was not there. It was extremely challenging to balance a budget when you did not have sufficient revenue. The last point I will make is that these costs that have been outlined, they all appear to be reoccurring in nature. In fact, in the case of salaries for example for deputy sheriff's, or for adding deputy sheriff's. Those are even compounded. So, you have got the cost from the prior year, plus whatever cost of living adjustments you have to make for the subsequent year. So, I think those are all considerations that need to be taken into account.

Blaise Trettis: Mr. Chair can I speak?

Mike Haridopolos: Everyone is making statements, and then we will get back with you. Mr. Moore? No, anybody else? Mr. Nye.

Matt Nye: Thank you Mr. Chairman. So, yea I am in support of this proposal. What I find so interesting is that we are speaking of this like it is a new thing. It's in the Charter. I am with Mr. Trettis's evaluation of the language, that seems very unambiguous to me, and quite frankly even if we did have to give back the money, which I agree if Mr. Trettis is saying his proposal is going forward. The County was warned that this was, that there is

a legal challenge, as Mr. Ellis explained, did not go through the declaratory judgement process. So, I am real big on accountability, and we see around the world right now, in all of these different positions there seems to be no accountability. The voters voted for this once, it's a shame that we have to like, you know doubly clarify it again now so many years later. But, it is just really fascinating to me how we are treating this like it is a new thing. The voters already approved it. We shouldn't even be here if the County hadn't broken the rules. So, thank you.

Mike Haridopolos: All right, other comments? Before we go back to Mr. Trettis, just to be clear, last time we put this number in, I think you could be right, it could be four years instead of five. We wanted to get a perspective on the impact that it had at that point so we could have at least a number to work by. If people want to look at that more closely, maybe they can work with Melissa to make sure these numbers are accurate, but that was the intention of it. I think we are all in agreement that this would not be retroactive. Does everyone agree that this would be prospective? Just so everyone is clear, not only to our group, but of course folks will have two more opportunities to talk about this in future meetings. So just to be clear, this is not retroactive, its to be prospective, and the numbers we can look at to see if again if those people have concerns about it, we can get that exact number because again that is our goal here to make good decisions based on numbers that everyone thinks is accurate. Any other comments before I go back to the sponsor. Mr. Trettis you are up then.

Blaise Trettis: Thank you. I just wanted to point out that it has been said that it seems that this was all about deputies, or increasing pay of deputies in 2019. If you go to the resolution itself, the resolution for finding of critical needs law enforcement municipal services taxing unit. It is page after page of everything that the Sheriff would like added to his department. Like hundreds of patrol cars worth sixteen million dollars, and tasers worth four hundred thousand something dollars, and repair of buildings that were five hundred thousand dollars. Deputies were mentioned, but there is not even a dollar figure in the resolution about what dollar number is needed for deputies, so I would encourage you to actually read the resolution to see what was asked for. And I think this material stuff is a perfect example, like the cars, the tasers, other material things, that is a really good example of a good use for exceeding the Charter Cap. Because it is not recurring costs, it is one time, and it is paid for by a one- year increase. I think that is what the Sheriff was really asking for, and you won't find any numbers for pay increases for deputies in the resolution so I would encourage you to study that. Thank you.

Mike Haridopolos: Okay, great. So, we have concluded the discussion today on our Charter Cap. This marks our first meeting. There will be two additional meetings. For those people who are watching on TV, or are here in person, you will have two additional opportunities to at least come and make your peace and give your opinion. We will work on the exact numbers if we are looking back to understand the true impact on it. There will be two more meetings before we make a vote on this and send it over to the County Commission. I guess, I don't have an exact answer but as we look at these different proposals, we might want to as a group decide if we want to take, kind of like have a super day of voting, or if we just want to say on the third reading that we want to have a vote on that day. Or do we want to have that all at once at the end of our Charter so to speak, to get this work done. So, that might be something we think about in the next meeting. So, we all kind of have a super vote day as opposed to taking them one at a time because obviously this is the first agenda item we have and I think there will still be

more as we are seeing more and more emails, and more and more interest come about as we move forward. So, mark this down as meeting number one, two more to go, and we will get into a second issue today, which is meeting number zero, and that is on the recall of school board members.

E2. Recall on School Board Members - (02-17-2022 First Discussion) Public Hearing #0 02-17-2022

This was brought to us, I think everyone saw the email coming through where folks had an interest on recalling school board members. There was a brief discussion in our last meeting about the desire to match what is allowed now on other elected officials, and to apply to the school board members. So that is a proposal put forth. Mr. Trettis are you on this one as well?

Blaise Trettis: I am.

Mike Haridopolos: Okay, why don't you give a brief explanation. I know there is some folks who want to come and testify. We will give them a couple of minutes to let their opinion be known, and if we want to discuss it a bit we can. But again, this is number zero because there has not been a public announcement. This would be out there today, but there was some discussion about that. I think that public disclosure is a better thing. So, Mr. Trettis.

Blaise Trettis: Thank you. The title is Proposal to Amend Brevard County Charter to Add Recall Elections of School Board Members. There is currently in Florida no way to recall a school board member. They finish out their term no matter what. No matter how much people disagree with them, or how much they would like them out of office. There is a Florida Statute 100.361 which has been in place for forty- eight years which provides for the recall election of city council, mayors and county commissioners. So, it is very remarkable that the city of Indialantic with three thousand people, can recall their city council, but a school district of over one hundred and twenty thousand people in Brevard County has no way to recall a school board member. So, that was a big part of the reason why I made this proposal, but the specific reason, well first of all let me say that this proposal tracks very closely the wording of section 100.361. The procedure has already been in place for forty-seven years. There is really no reason to deviate from it much at all, and I did not accept really in just one or a couple of places. The first one is the statute gives seven reasons for a recall: malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, and conviction of a felony involving moral turpitude. I have reduced that to two: malfeasance, which I define as doing something not allowed by law, and the second one is not more than three votes by the School Board Member on a motion or motions made at a School Board meeting or meetings, whether the meetings were regular, special, emergency.

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. And so, what this does it really allows a very specific reason for citizens to petition for the removal of school board members, and that is how they vote on policy matters. And you may say that is what elections are for, that is when you vote people out of office. I generally agree with that, but the problem is when we have School Board members making such important decisions about the health and mental well being of our children, four years is too long to wait to make that change. And because of staggered elections, that is how long people

now have to wait across Florida. If this proposal passes, then that would not be the case. Within one hundred sixty, one hundred ninety days under this proposal, the petitions could be gathered, votes held, and a School Board member could be recalled. And of course, like many things in the last few years, everyone's attention has been focused by the pandemic, and that is the basically the genesis of this proposal. More particularly in August, the Brevard County School Board voted to require school children, and everyone in a school to wear a face mask. And that rule, that order was only undone because we have Governor Ron DeSantis as Governor. And he called the session, the legislature into session and passed a law which prohibited school boards from ordering children to wear school masks. It is only then that the mandatory school face mask order from Brevard County Schools was undone. So, you may think that well then that there is no problem, well there is a problem because I am thinking about the future because if Governor DeSantis were not in office, but instead the other candidate on the other side who was running against him, Gillum, Andrew Gillum, if he had won and he were in office, he would have vetoed that bill in November. And right now, if that had happened, then right now in Brevard County they would be facing indefinite forced masking of children in schools.

So, you have to think about, not what is taking place which is a very good status quo, only because of the elected officials at the state level, but what could happen in years ahead. So that is the basis of it. And I think this will not be used very often at all, because I don't think school board members really make very many controversial decisions. I certainly don't think it would be for the regular decisions such as what vendor is going to get the cafeteria contract or do we buy school buses this year or next year? These routine decisions are not going to be the basis for any recall petitions, but what will be are the most important matters that affect children, parents, grandparents, even employers. As we saw with the pandemic, with the quarantines keeping people out of work because of their children. So, I think it will only be an issue for controversial very important cultural issues. Like a policy on say transgender students in schools. I think that is definitely something that could happen in Brevard County because Brevard County Public School System has a transgender written policy which allows children at every age, K-12 to use the shower, locker room, bathroom of what they "identify" with. Meaning boys can go in the girls bathrooms, shower room and locker rooms and vice versa. The policy also requires teachers to use the pronoun of what the eight- year old wants to be used. So, if Johnny wants to be called her, then that is what the policy is. Teachers have to call Johnny her. So, it also goes into other really important matters, then I think that could be the basis for a recall election. I think it is needed. I think it is very much needed. I don't know if this is out of order Mr. Chair, but I want to make a motion regarding my proposal right now.

Mike Haridopolos: I think we should wait until next time because we have not had a public opportunity yet. We are going to have some comments today, but we will have three opportunities after this.

Blaise Trettis: It is only a motion to have our legal counsel review whether it is consistent with the Constitution.

Mike Haridopolos: I think he is going to comment on that a bit today. But that would be fine after we are concluding, if you want to do a motion then we can do that. Mr. Gougelman do you have an opinion? I know you have something on term limits today. You want to add to the question asked by Mr. Trettis?

Paul Gougelman: No sir, Mr. Chairman, however I do have a memo that will probably be issued at the time of the next meeting.

Mike Haridopolos: I will open it up to the Board. Would people like to see a motion on this? If you would say "aye", (various aye's). Okay Mr. Trettis, make that motion please.

Blaise Trettis: Motion for Charter Review Commission attorney Paul Gougelman to write a legal memorandum in which he gives his legal opinion on whether proposal # 2, Recall Election of School Board Members embraces one subject only, and is consistent with the Florida Constitution general law and the Brevard County Home Rule Charter.

Bob White: Second the motion.

Mike Haridopolos: Any objection? All right without any objection show that adopted and we will get that motion in action and Mr. Gougelman will go to work on that. Thank you.

All right we have some public comment on the issue. What I would like to do is I see a lot of folks here. If we could limit your comments to two minutes that would be great. And then at the conclusion of those two minutes anyone on the board has questions for the person coming to testify feel free to do so. So, we are just going to do it in the order we received the cards so Kathryn Delaney if you would please come forward and just state your name before you get started and we will give you two minutes and hopefully there will be some questions. Thank you.

Kathryn Delaney: Thank you. My name is Kathryn Delaney. Good afternoon committee members. Thank you all for taking the time out of your busy schedules to serve our community. Today I am here in regards to the proposed addition of Section 8.2 Recall Election of School Board Members. All elected officials should be subject to recall by their constituency under the letter of the law. This is a very neutral request as all school board members would be held to the same standards regardless of their party affiliation or ideology. Recall laws are very specific. So, you cannot recall someone because you do not like them or their ideals, or their specific cause. I request that this committee moves forward with this proposal when the time comes, and gets we the people the power to hold our elected officials accountable. Simply to be conscious of your time, I agreed to speak for myself and a bunch of these people behind me today, along with hundreds of people who could not make it today to this meeting. Thank you all again for your service.

Mike Haridopolos: Thanks Ms. Delaney. Any questions for Ms. Delaney?

Thanks again for coming in. Nice to see you. All right we have Nick Tom

Dave Neuman: Tomboulides.

Mike Haridopolos: Tomboulides. Okay. That is a great name. All right. Welcome Nick.

Nick Tomboulides: Thank you. I am actually here to speak about the term limits issue not the recall. So, is that okay? Is this the right time for that? Or should I come back for that?

Mike Haridopolos: Why don't you come back at the end of you don't mind. I appreciate that. Thank you, I will put your card aside here. Okay, next we have Cheryl. Thanks for being here. If you could just give your name and we will go from there.

Cheryl Wojciechowski: Say, watch your house key real fast and that is it, Wojciechowski.

Mike Haridopolos: Thank you very much.

Cheryl Wojciechowski: Hi my name is Dr. Cheryl Wojciechowski. I am from Indialantic, that tiny little town that you just spoke about. I will keep it short. We live in a democracy. The hallmark of our democracy is elections. I am sure that everyone in this room has an elected official, present or past that they really didn't like, and they didn't like what they did. And the thing to do in this Country in most places, is gather your resources, talk to your constituents, talk to your community, and then vote and participate in voting. Our school board members really have a thankless task. They work extremely hard. In the past couple of years, their meetings and their offices have just become this hot bed of controversy. Let them do their jobs. One pet issue should not negate the term of someone who is serving their community. I also worry that if this door is opened for school board members, then they are going to spend so much of their time and the communities money on defending their positions instead of doing their jobs. Thank you very much for your service, your time and attention.

Mike Haridopolos: Thank you much. Are there any questions?

Bob White: I got a question.

Mike Haridopolos: Mr. White for a question.

Bob White: Why should a school board member be treated any differently than a county commissioner or city council person or a mayor or any of the other plethora of elected officials that are subject to recall?

Cheryl Wojciechowski: I am not a lawyer, but I think a school board member, they have a very unique roll. It's not the same it hasn't been a law, it hasn't been a problem up until now. I don't know the rationale as to why it is true for those other people, but it hasn't been necessary up until now. I believe that one pet issue shouldn't be enough to change this.

Bob White: So, you think then that a school board member somehow serves in some kind of altruistic function, altruistic position as opposed to a county commissioner given that a school board, schools typically their budget dwarfs the budget of a county, of the county. So, I am just trying to understand how it is that they should be treated uniquely as opposed to any other elected official?

Cheryl Wojciechowski: Well what other, can a Governor be recalled?

Bob White: uh huh.

Cheryl Wojciechowski: Well, who else can?

Bob White: state legislators, county commissioners, city council people

Cheryl Wojciechowski: So, you are saying that school board members are the only elected officials that cannot be recalled?

Bob White: As of right now, statutorily, it has just always been that way. There is legislation right now to provide for, it hasn't passed but there is legislation that would provide for them to be.

Cheryl Wojciechowski: Has it worked well in other communities that have had school board members recalled?

Bob White: I don't think that is, I don't think that's an issue.

Cheryl Wojciechowski: How much of the budget has been spent?

Bob White: I don't think that is an issue either. The issue is that you made the statement that you think school board members are unique. And I just want you to tell me what is it about a school board member that makes them unique as opposed to any other elected official? They are getting paid a salary, just like other elected officials are getting paid, they make political decisions all of the time just like other elected officials make. They have a huge responsibility to the general public.

Cheryl Wojciechowski: I am not sure all of their decisions are political.

Bob White: I did not say all of them, I said they make political decisions.

Cheryl Wojciechowski: Wouldn't that make them different if not all of their decisions are political?

Bob White: Not every decision by the county commission is political.

Cheryl Wojciechowski: They are serving a smaller proportion of the community.

Bob White: You are trying to split hairs here, not every decision of a county commissioner is political.

Cheryl Wojciechowski: I think you are as well.

Mike Haridopolos: Let's go with so that you don't talk over each other.

Cheryl Wojciechowski: I think we are done. Let's just agree to disagree.

Bob White: That is fine with me.

Mike Haridopolos: Thank you very much for your time. All right we have Elizabeth Mikitarian. Thanks for coming in.

Elizabeth Mikitarian: Hi. Good afternoon. Out of respect to me because I have been an educator in Brevard for almost thirty years, now retired, I am not going to stick with your time limit. It wasn't even advertised as such, so, I will read as quickly as I possibly can.

My name is Liz Mikitarian, I am from Titusville. I am an educator and advocate for children and communities. I know several of the members of this body. I worked personally with

some of you when a past school board member pushed a criminally questionable eight million- dollar software deal while closing our children's public schools at the same time. Some of you even helped me support a candidate trying to defeat that same incumbent school board member. So, I am experienced in calling out our school board members. Have done so, and will continue to do so in the future.

You now are serving on this committee with a responsibility to offer your expertise and research findings to the County Commission.

Chair Haridopolos in your minutes of last meeting, I think said "we vote with as much information as possible" So please ask yourselves... Why is this movement being approached now? Why is this on your agenda of items for you to address right now? I want to provide some information. State representative Randall Fine has publicly supported the request that you are presenting today and it may have even been initiated through his actions and his connections to Moms for Liberty and perhaps even through members sitting here this afternoon. Public servants must not be allowed to influence other committees, boards, to facilitate their own personal revenge agenda . Please do not think that this Charter change request is anything more than that at this time. What you are hearing and potentially taking part in is a retaliation against the Brevard Public School District. A group who claimed to be simply a bunch of really involved local really involved local parents...

Mike Haridopolos: Ms. Mikitarian. Real quick, I am going to ask you a question, and let you continue. What we are doing today is a courtesy. It was brought up today and we are going to have three more meetings after this. If you want to share this statement with everyone, you can email it, we can read it as well. That would be great.

Liz Mikitarian: Okay

Mike Haridopolos: And just so you are also clear, the way that we have all operated, and you can watch all the videos from the past is, whoever brought up a proposal, it's the great thing about Florida, you can bring up anything. I know that some folks have the idea that this was contrived or something, but all we are doing up here is, we are all volunteers, and we are up here just, whatever proposal comes in, we are going to address. It is something we are trying to do. So, if you wouldn't mind, maybe wrap up maybe a minute or so. And then if you could share with Melissa, Melissa could share with the board, that would be great. And we will read the statement in full. I want to be really respectful of everyone else as well. So okay?

Liz Mikitarian: Sure, no I respect that, so thank you. Basically, as you will all read in my further statements that I will email out. I am requesting that you make a motion today to table this issue. So that there is no question of impropriety. That there is no question about this being related to retaliation issue that one of your actual sitting members has been behind as well. I am asking you to not get rid of the idea, because especially Mr. White had some really good points, I believe. But I am questioning the timing, and I am questioning this board that is representative of all the people in our County of taking action on this right now. So, it needs further review. I will end by stating that the irony is not lost on me that Mom's for Liberty presented this request to you on January 6th. Please reconsider and review my request. Thank you.

Mike Haridopolos: Thank you so much.

Bob White: Mr. Chairman?

Mike Haridopolos: Wait, wait. Let's just, and again in this dialogue, let's be really respectful on both sides. Make sure the question is asked. I don't want to have to say back and forth. So, let's start with Mr. Nye because his hand was up first. And again, this is the zero meeting. We have three more. To be clear, Ms. Mikitarian, is that whatever proposal comes forward, for or against, we are going to bring it up. That is the cool thing about this group. So, I know you have asked for it to be taken away, but our whole point is to be open as much as possible. So just another venue for elected officials. We don't have the final say. This will go to the County Commissioner to decide whether they want to move forward with it, so

Liz Mikitarian: Well I do address some of the cost involved in that and all of that in my

Mike Haridopolos: Sure, that is very helpful. Mr. Nye for a question.

Matt Nye: So, I just want to set the record straight. At the last meeting or actually prior to the last meeting I was approached at one of our Republican Liberty Caucus meetings by some people that were asking about how they could recall a school board member. And so, at the last Charter Review Commission, I said "hey I will sponsor that". As it happened. Blaise ended up drawing it up, beat me to the punch. But, like I don't know where you are getting this whole Randy Fein thing, but it had nothing to do with Randy Fein, and so I think you are just, it's insulting quite frankly to act like I, again I am the one that brought it up at the last meeting. That I am some sort of puppet for Randy Fein. That doesn't sit well with me. So, I agree with everything Mr. White said earlier. Why are school board officials the only ones that are not subject to recall? I quite frankly think it was an oversight. It needs to be corrected, and if the people in this room really genuinely believe in democracy and effective representation, then I honestly don't see how you can be opposed. The fact that this particular issue because people don't like the way a particular school board member voting on something. It could have just as easily gone the other way. It could have been the shoe on the other foot. So, I don't think the issue is relevant. The fact is there is a deficiency in the system, that the only position that you can't recall, to Mr. Trettis's point earlier, where in some cases time is of the essence and we can't wait four years. So, I just want to set the record straight because I am honestly again, insulted, offended by this. People asked me about this, I said yes, absolutely, as Mr. Haridopolos said, happy to look into that and support and sponsor the proposal, so.

Mike Haridopolos: Thank you. I think Mr. White, you are next.

Bob White: I just wanted to give you a chance to clarify your remarks because it sounded to me like you were impugning the integrity of Mr. Trettis by suggesting that he was here serving as a lackey for Randy Fein. Was that your intention? Because that is what it sounded like.

Liz Mikitarian: No, I am drawing attention to this multi-member board that Mr. Fein has been very public about this as his wish.

Bob White: Well I am no big fan of Randy Fein.

Liz Mikitarian: That is fine.

Bob White: You suggested, I don't think there is anybody that could have interpreted it any other way. That it was only because of his influence over members of this body that this was even being introduced in the first place. And I don't think for a second that Blaise Trettis would be doing the bidding of Randy Fein. Now do you want to clarify that, is that your position or not?

Liz Mikitarian: No, I don't think so. What my point is that remember, ma'am I can't read your name (gesturing to Ms. Schmitt). You stated before that the County Commission has no business dictating to the School Board. You were referring a different issue.

Sue Schmitt: I did not really say it that way, okay?

Liz Mikitarian: Right, I am paraphrasing maybe.

Sue Schmitt: I was responding to Mr. Trettis.

Liz Mikitarian: So, what I am asking for, is for you all to dig deep and find out what is actually behind this issue.

Mike Haridopolos: Okay, thank you. Mr. Trettis.

Blaise Trettis: I will just state for the record, if it was a Bible I would swear on it. I have not spoke to Randy Fein or anyone else in the world about my proposal. I heard two commentators at the last meeting make this suggestion. From there, this is entirely mine, I spoke to no one. That is all.

Marie Rogerson: Mr. Chairman, I have a question.

Mike Haridopolos: Yes, Ms. Rogerson.

Marie Rogerson: I would love some clarification. You used the word impropriety. Could you explain what you mean by that?

Liz Mikitarian: Perceived impropriety. That is what I am asking. That you rise above that, so that there won't be any questions like I have.

Marie Rogerson: For us to be able to rise above it, I need to understand what you mean by it. So, could you clarify what you are perceiving as impropriety?

Liz Mikitarian: Well even in statements that we have heard today on other issues. They were very politically backed statements, and you know talking about mask mandates as part of the push behind this. That is a politically charged issue.

Marie Rogerson: Okay, so you are saying that the impropriety is people saying their opinion? That is your version of impropriety?

Liz Mikitarian: I am not sure I understand your question.

Marie Rogerson: Okay, impropriety for me would be rule breaking, doing things you are not supposed to do, violating Sunshine Laws. So, if any of that, you have heard of that, you have seen that, and that should be addressed. So, that was my hope. Is that if you

have seen any impropriety like that please let us know so that we can rise above that kind of thing.

Liz Mikitarian: Yes

Marie Rogerson: Just your statement now of somebody making a statement that seems political to you isn't, while you may not agree with it, doesn't rise to the level of impropriety for me. So, is there something impropriety level that you think we should address?

Liz Mikitarian: Well I mean to be specific, and I am just telling you my opinion.

Marie Rogerson: Yeah, absolutely

Liz Mikitarian: This has been a push in our community to recall one of the School Board members. I am not defending her, I am not saying anything about her. But it was very very public, and now the item has been brought before you council members, or committee members, I guess I should say. I am just asking you to do the due diligence, and make sure that any actions that you do take are above reproach. Because right now, it is not above reproach. I am not pointing fingers.

Marie Rogerson: Could you clarify that? Because you are saying it is not above reproach.

Liz Mikitarian: I just explained it. This has been a public

Mike Haridopolos: Let me interject here, I think it would be easier.

Liz Mikitarian: I am sorry.

Mike Haridopolos: Again, just to be really clear, whatever proposal comes through, we are going to discuss it. And in this particular proposal, you, in essence we are going to now have four meetings about this. So, there will be no rush to judgement. If this becomes a very emotional issue, which it clearly already has, we will have three bites of the apple after today. And again, I want to make it abundantly clear. I didn't know what to expect in taking this position, like we all did. And what's so great about our open Sunshine State Community, whatever you want to call it, is that whoever has the proposal, you are going to have these fifteen members take a good look at it, spend at least three meetings discussing it, having opportunities from the public to make many comments. Some factual, some not, and then move forward. So, I think that this is a great opportunity to start this discussion. I appreciate it. And if you could share your full comments with Melissa, we will make sure that the entire committee has it. Then I think all those go online anyway, so the whole public can read all about your comments as well, so.

Liz Mikitarian: I will just end with, I understand your words, and I believe that should be the process, but you just made a motion to pursue discovery on this point.

Mike Haridopolos: And again, that goes to the point that you brought up. The way that I have always operated, and the way we operate in the State of Florida is everything is transparent, and the more transparency we have the better. And so, the more information we have, and that has been our guiding principle throughout. We want to make informed

decisions so that the County Commissioners can make an informed decision after we have. So, we are going to do that, and anyone in the audience here or watching can send in their comments, and that is a beautiful thing about this. So, thanks Ms. Mikitarian. Great to see you, appreciate your time

Liz Mikitarian: I appreciate your time.

Mike Haridopolos: All right we have Pamela Castellana. Thanks for joining us today.

Pamela Castellana: Thank you, it is good to be here this afternoon. I can't think of anything better to do on a gorgeous day. (Laughter) And I am sure you can't either. Every single thing that the group Mom's for Liberty is using as an excuse to allow for the recall of a school board member was put in place under the four years that their founder was on the school board. The same group organized their recall Jennifer Jenkins group well before masks were on the table, which is Mr. Trettis's reason for using this recall, he keeps using the mask reason. It was in place well before this was an issue. They were then declaring that her attire, her manner addressing the public was a reason to recall her. There was a recall held about the policies that were put in place that these Mom's for Liberty people are opposing, and that was on August of 2020 when Jennifer Jenkins won that election. Mr. Trettis's entire proposal is preposterous and based on misrepresentation of the facts of August 2021. I don't know whether out of malice or ignorance, but in either case, I am appalled that this bilevel of incompetence serving to write our Charter's our counties Charter for the next ten years. The mask policy as approved by the school board last year was never indefinite. On October 4th, the Brevard School Board set metrics in place giving the Superintendent the power to rescind the policy when Brevard Counties positive case rate reached 50 out of 100,000 cases. That allowance was approved by three of the Board Members: Misty Belford, Cheryl McDougall and Jennifer Jenkins.

That threshold was reached two weeks later, and the opt out was added well in advance of November. But sure, go ahead and add school board to the list of elected officials that can be recalled. I don't have a problem with that. State statute requires evidence of malfeasance. You keep asking what is different. Mr. Trettis is defining it different because his proposal wants to leave room for an unpopular vote as reason enough to recall an elected-official. He says that because School Board makes health policies, they should be limited. County Commissioner has the same power over all of us, yet a vote on policy is not acceptable for reasons of recall. So, go ahead, and the next time the County Commission votes to lift the spending cap, the next time the County Commission votes to lift the spending cap imposed by Brevard County citizens on the Sheriff's budget without ever seeing the line item version, expect a recall effort. The next time a municipality votes to make handing someone a bottle of water through your car window illegal, expect a recall effort. The next time a County Commissioner accepts money from a developer the day before approving the said developer's project request, expect a recall effort. It's a dangerous game of retaliation politics that our State seems to be reveling in right now, all because a loud minority of voters, and in this case, a group whose founder cannot accept her loss.

Mike Haridopolos: Thank you so much

Pamela Castellana: Thank you, questions?

Mike Haridopolos: I see no questions. We have Sanjay Patel

Sanjay Patel: (in audible)

Mike Haridopolos: Whatever, it is your two minutes.

Sanjay Patel: Good afternoon Chairman and committee members. I am here today for two reasons: First of all, to call into question the composition of any committee that includes an individual like Vic Luebker. His very presence here calls into question the credentials of the entire body. This is a man who makes public statements daily that are vile, obscene, xenophobic, misogynistic, duplicitous, and ridiculous. He uses words to describe local residents.

Mike Haridopolos: Mr. Patel, I don't think this is to what we are talking about today, lets talk about the school board issue on the agenda items.

Sanjay Patel: it is really relevant because it calls into question the folks who are assembled here to make decisions about our County, and the direction and future of this County. So, from my perspective, Brevard deserves better than a few folks that are representing this committee today. More importantly I am here to encourage this body to consider bringing a real change to Brevard. Consider creating the role of an Ombudsman, or other protector of the public's trust. Think about eliminating the influence of big money, and especially developer money here in Brevard County. Consider amendments to address the critical affordable housing facing our County, or the toxic deadly water in the lagoon. Currently this body is focused on small issues that don't really matter. I would urge you to seriously consider the public records of those that are assembled here as part of this committee, and focus your aim on something bigger than retribution for the election of a woman who dared to protect our County's kids amidst a pandemic. Thank you.

Mike Haridopolos: And just to reiterate, whoever has a proposal can send an email to Melissa, and we will consider every proposal. All right we have Daniel, it looks like Willemin from Satellite Beach. Welcome.

Daniel Willemin: Thank you, its Willemin but I don't fault you for that.

Mike Haridopolos: Sorry about that.

Daniel Willemin: I am not going to need the two minutes. I am going to be very simple with you guys. As you notice the shirt I got on. I am here because you broke something. Well you haven't quite broke something yet, but you could. Have you ever heard the saying if it's not broke, don't fix it? I will tell you what, if you start to allow recall votes for school board members for stuff like that, you know who will get recalled next? I guarantee you, all the book burners, and all the bullies who shot down freedom of speech and cut of the cameras. That is who is going to be up for recall next. That is all I have got to say on the matter. Thank you for your time.

Mike Haridopolos: Thank you sir. Vicky Impoco. Welcome.

Vicky Impoco: Hello again, my name is Vicky Impoco. I am a twenty-two-year Satellite Beach resident, homeowner, taxpayer and engaged citizen. I would like to thank all of you, the committee, for opportunity to speak today concerning the proposed school board member recall measure. It is my understanding that our Governor already has the authority to remove a school board member for malfeasance criminal behavior. Is that true? Okay. This recall effort, to me appears to be nothing more than grandstanding when those measures and laws are already in place, and political retribution. And I too find it especially disturbing that a certain member of this committee has been a vocal proponent of recall of a current school board member. He should recuse himself and abstain from the vote. This recall proposal will do nothing but increase the (inaudible) in our community and waste precious tax dollars. That is all.

Mike Haridopolos: Thank you so much for coming in. Karen Colby.

Karen Colby: Hey you all. Someone left their mask up here. Thank you for your time and effort that you are putting to this effort. I want to put a few misconceptions to bed. First of all, it is not about any one school board member. It is about the policy in general. I don't think that anybody should be immune from being recalled in the sState of Florida. I don't think that one particular position, like school board rep makes that person impervious from removal. I think it is imperative as American's that we use the Constitution to take care of business. We don't need for Governor DeSantis to see something. When we see a situation developing that was never here before and is all of a sudden becoming untenable for our children, the mental health issues that we face, the retention rates of teachers, the bus driver crisis, the schools that have not been repaired that was said to be repaired by any sitting board member. It is not one person that any other group is wanting to remove. I am not speaking for anybody but myself right now. I would remove every single one of them for violating the Governor's law. However, three of them did.

However, those are the three that if this action takes place that we can do, it will be three names, it will not be one, in my opinion. Because I have the right to bring this forth, just as much as any group does. So, working with that group, I can tell you that we will not just be after one person. If the three people are going to continue to violate the law in the state of Florida, we will remove them. If anybody that is on the city council's of Indian Harbor Beach, Indialantic..yada yada, and they misbehave in a way that takes a set place and turns it into mayhem itself and refuses to be answerable, they are not the Pope, they can be removed. They are not Supreme Court Justices, they can be removed by me, by being told they are too old and being removed and let's let somebody new in, okay so nobody on the school board is a Supreme Court Justice, nobody is a Pope, and nobody on the school board, including Dr. Mullins is extremely safe from removal. If you guys help us get this on the initiative on the Charter so that we can take care of business. I assure you it will apply to anybody and everybody who violates the Governor's law. That is the fact, no feelings. Any questions?

Mike Haridopolos: Any questions? All right, thanks for coming in.

Karen Colby: Thank you, and there is a mask there, it is nasty. (laughter)

Mike Haridopolos: Okay, Sandra Sullivan Do you want to speak on this issue? Which issue would you like to speak on?

Sandra Sullivan: A couple of the Charter Amendments.

Mike Haridopolos: Which ones, because we already pushed one back on term limits, did you want to talk on which one?

Sandra Sullivan: I apologize for coming in because of the budget meeting. I was going to bring up two proposals to bring forward.

Mike Haridopolos: Sure, we will give you two minutes, and of course, I know you have been emailing back and forth with Melissa so thank you.

Sandra Sullivan: Thank you. Sandra Sullivan, South Patrick Shores. I came her to talk about two proposals I put forth. I have attended the County Commission meetings for over three years and I see that we have three commissioners who do not regularly attend staff briefings, many of them do not attend their boards that they sit on. I think that we could with an expand, with a growing Brevard County that we need at this point, a Commissioner that does not have a full-time job. So that was one of the proposals I put forth, so that moving forward we will look at having commissioners that can dedicate the time, as I think is the issue there.

The second one is that in coming to meetings for three years and trying to get items on an agenda, there is no formal way to do that. The, I think it is 3.4.10, it gives speak up Brevard, but it is once a year. So, to put in a proposal during the busiest month, I don't know about you guys but I am buying presents for my kids, and shopping, and I got kids off of school. It is just an insanely busy time to put something in. It seems appropriate, it should be anytime during the year, but also a process to get an agenda item, whether it is a process, like you don't want anyone coming up with anything. You want a way to qualify them to put something on an agenda so maybe it is specified by way saying a number of petitions or some other qualifier as a methodology to be able to have citizen driven agenda items. Thank you.

Mike Haridopolos: Thank you very much, any questions? Thank you, And Ms. Sullivan I know you have been or work with Melissa on those proposals, and just like everything else we will put those before the board here. Thanks. All right we have Joseph Cholewa. Sorry, welcome

Joseph Cholewa: It's Cholewa Hello, my name is Joseph Cholewa. I am listening to the opposing arguments, and what I don't think they understand, and it just all comes down to the fact that policies that they were voting on harmed our children. I am a father of three, we were pretty, um we had a pretty good understanding of the efficacy of masks, the harm that Covid had on children, and yet they still pushed policies despite the Governor's orders, despite that it violated our parental rights. So, if they don't understand that when a person who is an elected official makes policy that we know is harming our children on a social, emotional, intellectual perspective, we know that it is harming their ability to get a proper education. I don't know what else to say, but I think that every elected official should be held accountable, whether you are a school board member or a Governor. I don't think anyone has special privileges or we are here to, or elected officials are here to improve people's lives, not to dictate how to live them. And I hope that when you review this, that you support bringing in the school board member as someone that could be recalled because like I said, nobody should be held, or every person should be held accountable to the same standards that we have across the state. Thank you.

F. Attorney Memo-Term Limits-

Mike Haridopolos: Thank you. Any questions. All right we have Nick, Nick do you want to come up on the term limits issue, and then we will start wrapping up.

Matt Nye: Mr. Chairman, could you remind everyone how frequently this Commission meets because a couple of people have talked about timing.

Mike Haridopolos: I believe every six years. Right? Yes.

Nick Tomboulides: Hello, Nick Tomboulides. Executive Director, US Term Limits. Also, a ten-year Brevard County resident. I live in District I. I reviewed the memo on the legality of County Commissioner term limits. I noticed there was a big problem there. In that your attorney omitted the idea of there being a conflict of interest when a County Commission or that County Commission's appointees take a look at the idea of term limits. It seems to violate a very basic principle of ethics and law in government. Because on one hand, you have constituents. County Commissioners have a duty to those constituents, and to discharge their duty to those constituents, those Commissioners are very supportive of the eight-year term limits law. But on the other hand, if that eight-year term limits law isn't repealed, each County Commissioner will lose power, prestige, influence, salary and health benefits. So, there is a very clear conflict of interest. I think even a first-year law student who couldn't see this would probably flunk out of school for not being able to see what you guys have not been able to see, yet.

And I would tell you that I think the only way that we can objectively look at term limits in this county, would be for the people to bring forward an amendment to the Charter, through a citizen initiative. Because term limits are the most popular issue in America. There is a poll from Scott Rasmussen, and eighty two percent of Americans support term limits. That includes eighty seven percent of Democrats, eighty three percent of Republicans, and seventy six percent of Independent voters. The Governor has eight-year term limits, the Agriculture Commissioner has eight-year term limits, the Attorney General has eight year-term limits, State Legislators have eight year-term limits, the President of the United States has an eight-year term limit. So, if anyone on the Commission or on this panel believes that a local County Commissioner in Brevard County Florida needs more time to learn their job than the leader of the Free World, then I would say please resign because you are in the wrong profession. So please kill this proposal, thank you.

Mike Haridopolos: Questions?

Nick Tomboulides: I would love to take questions.

Mike Haridopolos: Thanks for your time, I appreciate it. Okay, we are all, anyone else wish to speak. Oh, we have got one more coming. Thank you so much. (deputy delivers speakers card to Chairman) Robert Burns, welcome Mr. Burns.

Robert Burns: Good afternoon, my name is Robert Burns (inaudible) in regards to the recall, I believe that every elected official should have the capacity to be recalled. If the voters put them there, I believe the voters should be able to take them away. But unfortunately, it doesn't matter what I think, it matters what the Statue says. It is my understanding that no state-wide elected official can be recalled according to the way our

current Statute is set up, in addition to what Mr. Trettis said, school board officials. So, my question was going to be does the County have the legal authority to institute this? And I think that is what you talked about in the beginning, you were going to get the attorney to draft a memo. But what I would like to do is solicit that you take it a step further and ask, to make a motion to ask the County Commission to request the AGO because I think this is a state-wide issue. It is not going to be unique to Brevard County. This is going to be unique to every Charter County here. So, I would like to try to get an AGO- Attorney General Opinion on the matter for the entire State, as opposed to, I am not doubting the capacity or competence of our legal counsel at all. I just think that might help in getting Brevard County on the map in leading this effort state-wide.

Mike Haridopolos: Thank you, are there any questions. Blaise.

Blaise Trettis: Not a question, but a statement that the legal memorandum is something that has to be done before an Attorney General opinion can be sought. And that is one of the reasons that I made the motion for the memorandum because that is really sort of my thinking on the next step, which is to seek an Attorney General opinion because this has never been done before. There is not going to be any case law, on any close to the same facts. But still an Attorney General opinion, it specifically addresses this proposal would be very useful to have, and very influential I think. So, I just wanted to point that out, that this legal memorandum is a step towards the Attorney General opinion.

Robert Burns: That is definitely the difference between a lawyer and a Google lawyer, so thank you for that Mr. Trettis.

Mike Haridopolos: Thank you Mr. Burns.

Cole Oliver: You know in thinking of that question, and part of the legal analysis that we have coming Mr. Gougelman, if we could also get a brief history of what current offices in the state are subject to recall. My understanding from at least the statute, and I am not saying there is not other stuff out there, other than section 100.361, but that only applies to the municipalities and charter counties. I would just like, if there is more general law in the statute I would like to see it, second, I would like to know if this process moves forward, who pays for the elections, just that fall on the general burden of the County. And what the cost of special elections are.

Mike Haridopolos: I think that is a great motion, if you could add that, it would be fantastic.

Tom Jenkins: Mr. Chairman, I have a question.

Mike Haridopolos: Yes, Mr. Jenkins for a question.

Tom Jenkins: Could we also find out what legal avenues are available to accomplish this in addition to the Charter. I mean is it state law, is it the legislature has to do it? Are there other avenues where this can be implemented? I don't know the answer to that.

Mike Haridopolos: Mr. Gougelman, add that to your list, okay?

Sue Schmitt: Mr. Chairman.

Mike Haridopolos: Ms. Schmitt.

Sue Schmitt: I was going to ask something very similar to that because looking at the Charter and the very last page where the School Board is mentioned. I am not even sure why the School Board is even in the County Charter because the County Commission doesn't have any say so over the School Board. However, the legislature certainly does, and I was curious if we could get something on that because even with the recall for the County Commission, it mentions Florida Statute, and that might be, I don't know. But I would like some information on that for the next meeting.

Mike Haridopolos: Mr. Gougelman did you hear that loud and clear?

Paul Gougelman: Could you repeat that?

Mike Haridopolos: Ms. Schmitt if you could repeat that again.

Sue Schmitt: The whole thing?

Mike Haridopolos: She just wants clarification on the options on the state law and what we can and cannot do.

Blaise Trettis: Mr. Chair.

Mike Haridopolos: Mr. Trettis

Blaise Trettis: There is a local bill filed by Randy Fein this session which creates School Districts in Brevard County. So, I would submit that would be a reason why the School Board can be in the Charter, and why the people of Brevard County have the authority to making the Charter to recall elections. But I would appreciate it if Mr. Gougelman could look into the effect of this local bill which I am almost certain will pass in the next month. Thank you.

Mike Haridopolos: All right any other questions? Any more legal work for Mr. Gougelman (laughter). Okay, so obviously our break has served well. We have a lot more issues before us. I think there will be a lot more coming our way soon. And again, we want to reiterate that any folks who have some suggestions on how we can improve the County bring those proposals to us. Melissa has been very organized and she and Jim have been fantastic giving us the information as quickly as possible. And on the two items we handled today, the Charter Cap and Recall of School Board Members, just for clear recollection for anyone tuning in now. We have now gone through a public meeting once on the Charter Cap and zero times on the School Board Members. Term limits. Again, I think we are going to see additional proposals as you have seen through your email about full time County Commissioners and other items that I think people have been discussing. So, are there additional questions? Mr. Trettis for a question.

Blaise Trettis: I would just like to point out that the procedure of this Commission has a list of what items should be in the agenda. One of the items in the procedure is new business. That is not in our agenda, but I would like to bring up new business. If that is okay with the Chair.

Mike Haridopolos: Without objection, no problem.

Blaise Trettis: So, the procedure now in rule seventeen provides that for a recommendation or proposal for this Commission to pass and go to the County Commission, needs ten votes of the Commission. And I have looked at the nineteen Charters of the, the nineteen Charter counties in Florida, and very few of them have that two thirds requirement. Most of them are just a majority. And what I would like to propose, and I will make a motion shortly, is to reduce that number of votes required for passage from ten to eight. But really is the main reason it is needed is because eight is a quorum. So, if you think about it, we could go to a vote on all of the proposals that are made. Only eight members show up for a vote which is a quorum, which means business can be conducted but no proposal could possibly pass because it takes ten votes for passage. And I think that is wrong, and I also think the majority should rule. I don't know why it is ten, I think it should be eight. So, I make a motion to change rule seventeen Charter Amendment of Rules of Procedure Brevard County Charter Review Commission as amended September 23, 2021, to change the number of Charter Review Commission members needed to vote approval of a Charter Amendment recommendation to be transmitted to the Board of County Commissioners from ten members to eight members.

Matt Nye (?): I will second.

Mike Haridopolos: All right so the motion is in front of us, is there discussion on the proposed rule change? Mr. Neuman.

Dave Neuman: I would just like to talk about my support on that. I think it is a great idea. There are a lot of checks and balances that go on with this board that we kind of discuss with the public here. I mean not only do we have ourselves and our opinions, who are just a few. But we have obviously the County Commission that is going to have to go through that. And ultimately and the most important one is you folks out in the public that are listening and watching what is going on. So honestly, I think a simple majority is not only more efficient, it also gives a lot more issues the opportunity to shine, and allows people to have their voices heard. So, I am all in on this.

Mike Haridopolos: Other opinions? Mr. Fisher

Robin Fisher: I disagree with that motion. You know when you look at County Commission, certain issues require super majority vote, which is four out of the five. And I think that this Charter Review Committee has some major issues that would affect the citizens and elected boards for years to come. And so, I really believe that treating it as a super majority is, it needs to be at the level just because of the importance of making sure we don't make some decisions that could affect us for years.

Mike Haridopolos: Others? Mr. White

Bob White: Just to take exception to what Mr. Fisher was saying is that we are not the final decision-making body here. The County Commission they are the final decision-making body.

Tom Jenkins: I think you are wrong.

Bob White: The County Commission isn't even going to be the final decision maker, that's

Robin Fisher: I don't believe you are right on that Mr. White.

Mike Haridopolos: Let's go one at a time.

Bob White: Yes, in terms of we make a final decision in terms of whether we are going to recommend something to the County Commission, sure. But then the County Commission has to pass it along to the

Robin Fisher: They are mandated to, they don't have a choice.

Blaise Trettis: I could explain that.

Mike Haridopolos: One at a time because everyone has, we have had a lot of people speak. Mr. Jenkins go ahead.

Tom Jenkins: I was just going to say that my recollection was that if the Charter Review Commission passes it forward, the County Commission has to put it on the ballot unless there is a legal reason not to.

Mike Haridopolos: Mr. Liesenfelt do you want to comment on that?

Blaise Trettis: Can I speak?

Mike Haridopolos: Mr. Gougelman will you please explain that answer so that everyone can ask questions if necessary.

Paul Gougelman: This goes back to the original Charter, (inaudible) there was

Sue Schmitt: Can Paul please go to the microphone?

Paul Gougelman: I am sorry, I think this will be better. This goes back to the original Charter Commission. And the arrangement is that when the Charter Review Commission recommends something, it is more than just a recommendation. It is something that needs to be put on the ballot. There was some discussion about this, Mr. Fisher had asked regarding term limits, and there was discussion about this back in 2000, and the issue ended up going to court. And the Circuit Court decided that is in fact the case. So, you all are the final stop. Whatever you come to is your final decision, whether you determine it as a recommendation or otherwise, that is what it will be to go on the ballot.

Mr. Haridopolos: Mr. Trettis did you want to ask a question of our legal counsel?

Blaise Trettis: Well 7.4.1 of the County Charter says: "Independent review of proposed Charter amendments.

"For any proposed amendment sponsored by the County Commission or the Charter Review Commission, the county Commission, at the county's expense shall empanel a panel of three persons to determine whether the proposed amendment and ballot language embraces one subject only and is consistent with the Florida Constitution, general law and this Charter."

Then it goes on to say those three people are lawyers, and then it goes on to say, that if two of the three agree these lawyers, that it doesn't violate the Constitution or general

law, then it goes to the ballot. Are you saying that you agree to this language that is in this Charter, but it is illegal?

Paul Gougelman: No, I am not saying that language is necessarily illegal, maybe, it may be, but that is the next step. Once you make your final decision, it goes to that three-attorney panel for their review. If they find it as consistent with general and special law, the Constitution, then it goes on the ballot. And this was specifically the question that was addressed back in 2000. I will also tell you to, that language applies to the Charter Review Commission determinations, but if the County Commission wants to propose something, it has to go through a legal review.

Mike Haridopolos: Mr. Trettis for a follow up.

Blaise Trettis: My follow up is that I have looked at all nineteen charters of the Charter counties in Florida, and Brevard County is the only County that has this three- lawyer veto panel.

Paul Gougelman: That is correct.

Blaise Trettis: And I am going to file a proposal to eliminate this from our Charter. It is so un-democratic that three lawyers paid by the County Commission can prevent a proposal from going to the people after it makes it through all of our process. It is so wrong, it needs to be deleted, and at the next meeting you will be able to hear about it. And it is especially offensive to one of my proposals on the Charter Cap because the County Commissioners are against it. They don't want it to go to the ballot. And for them to be able to hire three lawyers, and those three lawyers, knowing that, well they know the way their employer wants the vote to go, conflict of interest too. So, you will see that at the next meeting.

Mike Haridopolos: And just to clarify Mr. Gougelman, if this panel whether it be eight votes or ten votes in the end should recommend something. It is not a vote by the County Commissioners. It is simply to this panel. So, the only check on this board would be those three lawyers. Is that correct?

Paul Gougelman: Yes, that is correct

Mike Haridopolos: Are there further questions? Mr. Moore.

Kendall Moore: I think we are now on two separate issues. I think we may ask our legal counsel to go down the road again of a potential memo that addresses the question of the County Commission of May vs. Must. I think the constitutional review of the lawyers is a separate issue from once it reaches the County Commission, whether or not their obligation is they May or Must in terms of placing it on the ballot. I think that is what Mr. Gougelman has weighed in on. Secondly, Mr. Trettis to your point, Mr. Nye and some of us were here on the last go around. I am not in favor of reducing it to eight, I am in fact in favor of it remaining at ten, or at the very least of nine. As we talked about the majority of the County Commission, and anything that would require three votes, each County Commissioner has appointed three members to this board and so to effectively get to what would amount to three commission districts full of votes, that is at least nine. We went to that plus one, and I certainly would not be of a mindset to going down to something that is less than that, a particular nine threshold.

Particularly if Mr. Gougelman is correct on his may versus must. This becomes the last threshold opportunity, and to me something as important as putting it on the Charter, at least the total number of representing a minimum of three commission districts would be a minimum threshold in my mind and so I would be in favor of it remaining at ten. So, I would not be supportive of what you have placed as a motion on the floor today.

Mike Haridopolos: Okay. Just to be clear. Notwithstanding Mr. Trettis's argument, odds are if it passes our group, whether it be at eight or ten votes, this will go to the voters. Let's just be real clear on that. So, what we have is a motion on the floor about moving from ten to eight, hold on we are not there yet. I just want to make sure that everyone knows that we are back, thank you Mr. Gougelman for clarifying that. So, we are back on the motion. The motion is to move from ten to eight. Are there comments or questions about that move from ten to eight?

Robin Fisher: I have a question.

Mike Haridopolos: Mr. Fisher for a question.

Robin Fisher: If you go through this motion and get a vote, do you have to have ten members approve it?

Mike Haridopolos: (laughter) Actually what I would like to do, and I think I have said this now seventeen times. We are not going to have a vote on anything for at least another couple of meetings. I would like to table this issue for our next meeting so we can think about it a little bit. It is an important decision, because we have, I think some people are under the misdirection that we, they thought that the County Commission would have a check on us, so to speak. They do not. And this is a very serious job in which we are undertaking, and I think that people have expressed that very well today. So, what I would like to do is table this motion going from ten to eight, so we can think about it. There is not going to be any votes taken anyway, for another three to four meetings anyway. So, why don't we table that for now if no one objects, and we can continue this discussion in our future meetings if that is okay with everyone.

Sue Schmitt: Mr. Chairman, if you table this, you need a motion to table because there is a motion on the floor.

Mike Haridopolos: Sure. All those in favor say "aye" (unanimous) all those opposed say "nay". The "ayes" have it. So, it is tabled, thanks for asking. So, on the, when is our next scheduled meeting Melissa?

Melissa Brandt: March 10th.

Mike Haridopolos: March 10th, bad day for a meeting. When is the next one after that?

Melissa Brandt: March 24th, I believe.

Mike Haridopolos: Ms. Schmitt do you have a question?

Sue Schmitt. I just wanted to ask if the staff could put some information together for us?

Mike Haridopolos: Sure.

Sue Schmitt: I have had some people contact me. In regard to Charter and non-Charter counties, on the salaries for the salary for the County Commissioners, and also the budgets and populations whether they are Charter or non-Charter, and also the last time the County Commission got an increase. That is all. That should take up a week. (laughter).

Mike Haridopolos: All right, we are, is there any other new business as Blaise brought up, thanks Blaise appreciate that. Other items for new business? All right so our next scheduled meeting is the 10th of March. Would there be any objection to move, cancel that meeting and go to the 24th of March? Okay without objection, we will cancel the 10th of March, and our next scheduled meeting will be the 24th of March. What time was that at Melissa?

Jim Liesenfelt: Hang on Mr. Chairman. It is scheduled for 1:00 pm.

Mike Haridopolos: 1:00 pm. Okay. So, our next scheduled meeting will be March 24th at 1:00 pm. I think given the interest that we have provoked today, we will be using this room if we could. And with that next meeting we will be getting into the second reading of the Charter Cap, we will be getting into the first meeting of the Recall of School Members, and any other proposals that might come in. For those folks who want to get new proposals in, I would recommend you get them in quickly because that will allow all of the members to review those, and we can actually take it up in its first reading next time as opposed to what we had to do today with the School Board. And odds are, given the volume of proposals that are coming forth, we would not have this luxury that we had today of taking up the School Board issue on reading number zero. So, with that if there are no other business.

G. Adjournment:

Mike Haridopolos: Mr. Neuman moves to arise.

Dave Neuman: I was going to make a motion to adjourn.

Mike Haridopolos: Accepted, have a great day. Meeting adjourned at 4:32 pm.

Good afternoon.

My name is Liz Mikitarian from Titusville.

I am an educator and advocate for children and communities. I know several of the members of this body. I worked personally with some of you when a past school board member pushed a criminally questionable 8 million dollar software deal while closing our children's schools at the same time. Some of you even helped me support a candidate trying to defeat that same incumbent school board member. So I am experienced in calling out our school board members.

You are serving on this advisory board with a responsibility to offer your expertise and research findings to the County Commission.

Chair Haridopoulos in your minutes stated "we vote with as much information as possible"

So please ask yourselveswhy is this issue before you right now ?

I want to provide more information. State representative Randall Fine has publicly supported the request before you and may have even initiated this action through Moms for Liberty and perhaps even through members sitting here this afternoon. Public servants must not be allowed to influence any other board or committee to facilitate his/her personal revenge agenda. Please do not think that this charter change request is anything more than that agenda.

What you are hearing and potentially taking part in is a retaliation against the Brevard Public School district. A group who claim to be simply a bunch of really involved local parents, is not accurate information based on the research I have done before addressing you today. I would be glad to supply specific information upon request.

If you as a public committee take this item forward, it will be precedent setting and will be used across the state and potentially the country to attack school boards. Is that your intention?

The cost to this county will be unreasonable to put on recall elections every time someone on the school board makes a decision that a small group simply does not like. The governor can remove a school board member for malfeasance, but I have to tell you that the bar is set very high on that action to actually prevent unsubstantiated attacks on school board members like this action appears to be.

Up front cost could be up to \$300 an hour for a feasibility study? If you could fight for me to get that same amount, I would gladly go back into the classroom to fill one of the many vacant teacher positions here in Brevard.

I also I remind you that the County Commission seems to be focused right now on saving money as proposed by Commissioner Tobia.

I am extremely concerned that the wording in this proposal actually mentions disagreement on mask mandates as CAUSE for YOU to take action. Do not recommend a charter change based on what has become a partisan battle ground.

So....I request that one of you make a motion now to table this item until there can be no questions about it being an act of retaliation. Anything less would show complicity by your committee.

I'll end by stating that the irony is not lost on me that Moms for Liberty presented this request to you on January 6th. Please now consider my request .



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: March 17, 2022

SUBJECT: Requested information on County Commissioners salaries, County budgets and County population

At the February 17, 2022 Charter Review Commission meeting, the Commission requested that staff provide information comparing the 19 Charter Counties vs the Non-Charter counties statewide to determine:

- County Commissioner Salaries
- Budget
- Population

Attached you will find the information in one spreadsheet that includes each County, the County's Charter status, Commission Salaries, County Budget and County estimated population.

The data source for County Commission salaries is from the Florida's Legislature's Office of Economic and Demographic Research and the Florida Association of Counties. For those Charter Counties that do not follow State Statute to set their Commissioners' salaries, staff contacted the individual counties.

As there is no single repository for adopted County budgets, staff researched all 67 County websites for the budget data.

Finally, the County population data is the 2021 estimate from the University of Florida's Bureau of Economic and Business Research.

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

Thank you.

County	Charter	Statute	Actual Salary	Statutory Salary	Charter Notes	County Budget (FY21-22 unless noted)	Budget Notes	Population
Alachua	X	X	\$ 82,930			\$ 1,137,872,544		284,607
Baker			\$ 34,872			\$ 45,703,787		28,692
Bay			\$ 72,428			\$ 465,188,542		178,282
Bradford			\$ 34,941			\$ 69,684,840		27,955
Brevard	X		\$ 58,145	\$ 96,895		\$ 1,651,123,043		616,742
Broward	X	X	\$ 106,176			\$ 5,622,040,050		1,955,375
Calhoun			\$ 29,902			\$ 28,714,007		13,683
Charlotte	X	X	\$ 75,294			\$ 158,673,776		190,570
Citrus			\$ 67,114			\$ 3,988,490,010		155,615
Clay	X		\$ 35,000	\$ 79,248	Confirmed by phone - Jackie Slabaugh	\$ 677,632,781		221,440
Collier			\$ 91,131			\$ 1,754,250,500		382,680
Columbia	X	X	\$ 48,308			\$ 89,543,937		69,809
DeSoto			\$ 37,898			\$ 103,820,555		34,031
Dixie			\$ 30,672			\$ 12,108,516		16,804
Duval	X		\$44,100-\$70,502	\$ 105,753	Duval does not have a County Commission/ they are Council Member seats	\$ 3,453,656,141	Tentative approval 9/14/21	1,016,809
Escambia			\$ 86,619			\$ 568,262,165		324,458
Flagler			\$ 59,637			\$ 123,246,369		119,662
Franklin			\$ 28,973			\$ 11,093,781		12,364
Gadsden			\$ 41,135			\$ 54,068,836	Tentative with updates	43,813
Gilchrist			\$ 31,240			\$ 51,504,292		18,126
Glades			\$ 29,591			\$ 36,857,753		12,130
Gulf			\$ 29,985			\$ 64,683,043		14,824
Hamilton			\$ 29,931			\$ 44,702,456		13,226

County	Charter	Statute	Actual Salary	Statutory Salary	Charter Notes	County Budget (FY21-22 unless noted)	Budget Notes	Population
Hardee			\$ 34,487			\$ 64,248,656		25,269
Hendry			\$ 39,268			\$ 87,108,018		40,540
Hernando			\$ 76,203			\$ 623,106,376		196,540
Highlands			\$ 57,654			\$ 157,374,201		102,065
Hillsborough	X		\$ 105,239	\$ 106,176		\$ 7,482,674,315	bi-ennial budget approval	1,490,374
Holmes			\$ 31,853			\$ 32,269,008		19,665
Indian River			\$ 69,121			\$ 428,052,912		161,702
Jackson			\$ 41,262			\$ 27,575,039		47,198
Jefferson			\$ 29,869			\$ 38,985,257		14,590
Lafayette			\$ 27,386			\$ 20,836,841		7,937
Lake			\$ 89,665			\$ 600,955,967		400,142
Lee	X	X	\$ 100,289			\$ 2,342,679,672		782,579
Leon	X		\$ 83,945	\$ 84,904		\$ 294,199,442		295,921
Levy			\$ 39,532			\$ 113,147,676		43,577
Liberty			\$ 27,305			\$ 8,137,480	FY20-21	7,464
Madison			\$ 31,483			\$ 27,755,065	FY19-20	18,122
Manatee			\$ 91,913			\$ 2,154,627,389		411,209
Marion			\$ 89,764			\$ 1,063,667,363		381,176
Martin			\$ 69,644			\$ 526,490,922		159,053
Miami - Dade	X		\$ 6,000	\$ 106,176	Reimbursement of all reasonable and necessary expenses as may be approved by the board.	\$ 9,301,605,000		2,731,939
Monroe			\$ 50,348			\$ 458,710,533		83,411
Nassau			\$ 53,586			\$ 327,883,310		93,012

County	Charter	Statute	Actual Salary	Statutory Salary	Charter Notes	County Budget (FY21-22 unless noted)	Budget Notes	Population
Okaloosa			\$ 78,142			\$ 452,374,525		213,204
Okeechobee			\$ 39,679			\$ 114,821,435		39,148
Orange	X		\$ 56,083	\$ 106,176		\$ 5,361,451,020		1,457,940
Osceola	X	X	\$ 91,103			\$ 1,967,627,271		406,460
Palm Beach	X	X	\$ 106,176			\$ 5,989,209,333		1,502,495
Pasco			\$ 95,385			\$ 1,735,958,222		575,891
Pinellas	X	X	\$ 105,800			\$ 2,926,217,650		964,490
Polk	X		\$ 45,439	\$ 99,453		\$ 2,132,844,075		748,365
Putnam			\$ 49,187			\$ 216,958,750		73,673
St. Johns			\$ 82,244			\$ 1,298,036,820		285,533
St. Lucie			\$ 86,517			\$ 615,683,653		340,060
Santa Rosa			\$ 74,603			\$ 192,587,570		191,911
Sarasota	X		\$ 92,935	\$ 92,935	Charter determines that they accept what is set by the State. Confirmed by phone - Robin, Commissioners Secretary	\$ 1,535,552,427		441,508
Seminole	X		1-3: \$93,922.42 4-5: \$91,989.51	\$ 93,829	Salaries are split based upon population of area. Confirmed by phone - Rebecca HR.	\$ 878,750,674		477,455
Sumter			\$ 65,423			\$ 303,360,686		134,593
Suwannee			\$ 40,865			\$ 109,902,290		43,676
Taylor			\$ 32,715			\$ 61,085,831		20,957
Union			\$ 30,228			\$ 8,600,949		15,799

County	Charter	Statute	Actual Salary	Statutory Salary	Charter Notes	County Budget (FY21-22 unless noted)	Budget Notes	Population
Volusia	X		City Council: \$47,798 County Chair: \$57,357	\$ 95,596	City Council Members - The salary of a council member shall be 50% percent of that prescribed by law for the office of county commissioner. The salary for the county chair shall be 60% percent of that prescribed by law for the office of county commissioner. Article III Sec. 304	\$ 1,146,307,385		563,358
Wakulla	X	X	\$ 36,801			\$ 124,167,687		34,311
Walton			\$ 49,471			\$ 239,091,454		77,941
Washington			\$ 33,741			\$ 141,830,779		24,995



MEMORANDUM

TO: Chairman and Members of the Charter Review Commission
FROM: Paul Gougelman, Charter Commission General Counsel
SUBJECT: Recall
DATE: March 13, 2022

BACKGROUND:

At a recent meeting of the Charter Review Commission (“CRC”) meeting, two citizens asked that the CRC establish a right of recall for School Board Members. At the request of Member Matt Nye, the CRC asked for information regarding the recall of School Board Members, and whether it was possible. In addition, Member Blaise Trettis has drafted a proposal and submitted it for review.

Member Marie Rogerson also asked whether the County’s Constitutional Officers, including the Sheriff, the Property Appraiser, the Tax Collector, the Supervisor of Elections, and the Clerk of the Court, could be subject to recall.

SHORT ANSWER:

1) Mr. Trettis has submitted a proposal to amend the charter by providing for the recall of school board members. Is the proposal consistent with Florida law and the Florida Constitution. According to a 1971 opinion of the Attorney General, it may not be constitutional to provide in a county charter for the recall of a school board member. See Analysis, Section II.D. below. Mr. Trettis is considering requesting an opinion of the Attorney General. In addition, although it is a close question, the proposal may be inconsistent with general law set forth in Section 100.361, Florida Statutes. This is based on the implied preemption of the issue by the Florida Legislature. See Analysis, Section II.C. below. See *also* Analysis, Section IV., below.

2) Per Mr. Oliver: In Florida what offices are subject to recall? ANSWER: The only offices specifically provided for recall by general law are charter county commissioner and city council member. This is pursuant to Section 100.361, Florida Statutes. See Analysis, Section II.A. below.

3) Per Mr. Oliver: Who pays for a special election for recall or for filling a vacancy after a successful recall of an official? ANSWER: Pursuant to Section 100.361,

Florida Statutes, two separate petitions must be submitted for the recall of an official to be placed on the ballot. According to general law, the cost of the determination of whether eligible voters have signed each of the petitions is the responsibility of the party seeking the recall. §100.361(2)(g) and (3)(e), Fla.Stat. The recall statute does not specify who has the responsibility for paying for the recall election and the election to fill the vacancy. The Supervisor of Elections has asked the County Attorney to provide her with information in that regard, and we await further information in that regard. See Analysis, Section II.E. below.

4) Per Mr. Jenkins: Other than the County Charter, what other legal avenue is available for recall in Florida? ANSWER: The only avenue available for recall is pursuant to Section 100.361, Florida Statutes, a copy of which is attached. There is no other process provided. Thus, the recall of school board members would have to be provided by act of the Legislature. See Analysis, Section III., below.

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

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

7) Per Mr. Trettis: May the County Charter provide for the recall of School Board Members? ANSWER: The Trettis Recall Proposal appears inconsistent with the Florida Constitution as provided by a 1971 Attorney General Opinion. See Analysis, Sections II.D. and IV., below. A closer question is presented with regard to whether the proposal is inconsistent with Section 100.361, Florida Statutes, pursuant to the concept of implied preemption. See Analysis, Sections II.C. and IV., below. Additionally, certain provisions of the Trettis Recall Proposal may not be invalid but do not track concepts in the Article IV, Section 7 of the Florida Constitution and Section 100.361, Florida Statutes. See Analysis, Sections II.D. and IV., below. 8) Per Ms. Rogerson: May the County Charter provide for the recall of county constitutional officers such as sheriff, tax collector, supervisor of elections, clerk of court, or property appraiser? ANSWER: More likely than not, a court of law would determine that recall of the Sheriff, Tax Collector, Supervisor of Elections, Clerk of Court, or Property Appraiser is not provided for by Florida law based on the concept of implied preemption. See Analysis, Section V., below.

ANALYSIS: I

Concept of Recall in the United States

The concept of recall first appeared in America in the laws for the General Court of the Massachusetts Bay Colony in 1631. However, due to Alexander Hamilton's efforts, the concept was left out of the U.S. Constitution in 1787. Hamilton explained that it would make an elected official "a slave to all the capricious humors among the people."¹

The leading state with recall provisions is California. Progressives included the concept in the City of Los Angeles Charter in 1903, and it was used over the following years to recall several councilmembers and the mayor for alleged ties with the mob. In 1908, Oregon adopted the concept of recall, and in 1911, the concept was adopted in the state of California.²

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Recall in Florida

A

Background

With regard to the recall of elected officials, the Florida Constitution contains no provisions relating to recall. The Legislature has statutorily provided limited instances in which the voters may recall an elected official. Unlike states such as California, where Governors³ have been subject to recall twice in the last 20 years which events have been extensively reported in the national news media,⁴ there is no right of recall of a Florida Governor, Lt. Governor, member of the Cabinet, state legislator, school board member, or elected member of a special district.

¹ Spivak, Joshua, *The Recall Law of Unintended Consequences*, Washington Post (Oct. 9, 2003).

² The concept was promoted by progressive Republican Governor Hiram Johnson, who later went on to become a historically well-known member of the U.S. Senate from 1916 to 1945. See *Hiram Johnson*, Wikipedia, en.wikipedia.org/wiki/Hiram_Johnson.

³ California Governor Gray Davis was recalled in 2003. The recall of Gavin Newsom in 2019 failed.

⁴ *California governor recall election: Voters reject recall of Gavin Newsom*, Washington Post (Sept. 14, 2019); [Ballotpedia.org/Gavin_Newsom_recall](https://ballotpedia.org/Gavin_Newsom_recall), [Governor_of_California_\(2019-2021\)](https://www.wikiwand.com/en/Governor_of_California_(2019-2021)); Spivak, Joshua, *The Recall Law of Unintended Consequences*, Washington Post (Oct. 9, 2003).

Various cities started sporadically providing for recall of city council members, and the Legislature in 1974,⁵ decided to bring some type of uniformity to the process. Section 100.361, Florida Statutes, was enacted at that time.⁶ Section 100.361(11) provides:

(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.

B

The Florida Recall Statute

As noted above, the only provision in Florida law for recall elections is Section 100.361, Florida Statutes. The statute specifies that it applies to the governing body of either a charter county or a municipality. §100.361(1), Fla.Stat.⁷ Furthermore, the statute is intended to provide a uniform statewide process for recall,⁸ and the statute automatically applies to all municipalities and charter counties whether or not they have adopted recall provisions in their charters or by ordinance.⁹

⁵ §§1, 2, Chap. 74-130, Laws of Fla.

⁶ *Id.* The statute has been amended 14 times.

⁷ Section 100.361(1) provides

(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.

⁸ §100.361(11), Fla.Stat.

⁹ §100.361(12), Fla.Stat. Prior to the time that this provision was adopted as a part of Section 100.361, Florida Statutes, an opinion of the Florida Attorney General, AGO 79-38, and an opinion of the Florida Division of Elections, DE 78-48, had reached this conclusion.

The process was intended to be difficult. Most importantly, recall is only permitted in one of seven circumstances: Malfeasance;¹⁰ Misfeasance;¹¹ Neglect of duty; Drunkenness; Incompetence; Permanent inability to perform official duties; and Conviction of a felony involving moral turpitude.¹² §100.361(2)(d), Fla.Stat. Consequently, the position that “I don’t like the way an official is voting on various issues,” is not a basis in Florida to recall someone.¹³ The foregoing list of offenses are modeled after Article IV, Section 7(a) of the Florida Constitution, which provides the basis for suspension from office, as follows:

- a) By executive order stating the grounds and filed with the custodian of state records, the governor may suspend from office any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor.

(emphasis supplied).

To undertake a recall in Florida one must prepare a petition listing a circumstance meeting one of the seven basis for recall. The petitioner must obtain the signatures in the jurisdiction of the person to be recalled. For example, “[i]n 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.” §100.361(2)(b), Fla.Stat. All of the signatures

¹⁰ “Malfeasance” is defined as a “wrongful, unlawful, or dishonest act.” See Black’s Law Dictionary at 1100 (10th ed. Thomson Reuters 2014).

¹¹ “Misfeasance” is defined as a “lawful act performed in a wrongful manner.” See Black’s Law Dictionary at 1151 (10th ed. Thomson Reuters 2014).

¹² “Moral turpitude” is defined as a “[c]onduct that is contrary to justice, honesty, or morality, esp. an act that demonstrates depravity.” See Black’s Law Dictionary at 1163 (10th ed. Thomson Reuters 2014). Florida courts have defined moral turpitude as “the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society.” Florida courts have specifically held that manslaughter by culpable negligence is a crime of moral turpitude. The courts have also found bookmaking to be a crime of moral turpitude. The courts have determined that a physician selling bogus diplomas and licenses committed a crime of moral turpitude. However, certain crimes, such as possession of a controlled substance have been held not to be a crime of moral turpitude. Scott Harris, Attorneys at Law at www.scott-harris.com/articles/what-is-moral-turpitude/.

¹³ Of course, an artful petitioner could probably find a way to classify a voting record as some type of malfeasance.

must be collected within 30 days. *Id.* The signatures are then verified by the county supervisor of elections.

If the requisite number of signatures are found to exist, the person to be recalled has the right to prepare a response to the charges not exceeding 200 words. §100.361(3)(a), Fla.Stat. The 200 word statement is attached to petitions to recall, including the charges made earlier, and it is circulated with the requirement to secure new signatures by 15% of the electorate. §100.361(3)(c), Fla.Stat. This second petition with new signatures is then verified by the county supervisor of elections.

Once verification by the county supervisor of elections affirms that 15% of the electorate has signed the second petition, the chief judge of the circuit court then fixes a date for a recall election. §100.361(4), Fla.Stat. If the recall is successful, candidates must run at large to fill the vacancy of the person recalled for the remainder of the recalled person's term. §100.361(6), Fla.Stat. This could hypothetically be a large number of individuals.¹⁴

Anecdotally, my observation of most recall elections is that they sometimes become quite vicious. Additionally, one of the favorite techniques of individuals defending against a recall is to file some type of lawsuit to throw a wrench in recall.¹⁵

C

The Concept of Preemption

The statute is attached for your consideration, and as one can instantly see, the process is set forth in almost excruciating detail. As you are aware, the Florida Constitution provides that state law is superior to and in the event of conflict trumps local ordinances and charter provisions.¹⁶ However, what happens when a local ordinance or charter

¹⁴ For example, in the election to succeed California Governor Gavin Newsom, nine Democrats and 24 Republicans ran to fill the vacancy. It mattered not, since the vote to recall Governor Newsom was unsuccessful. Spivak, Joshua, *The Recall Law of Unintended Consequences*, Washington Post (Oct. 9, 2003).

¹⁵ See, e.g., Sanchez v. Lopez, 219 So.3d 156 (Fla. 3d 2017)(Sweetwater); In re Koretsky, 541 So.2d 1362 (Fla. 4th DCA 1989)(Pembroke Park); Moultrie v. Davis, 498 So.2d 993 (Fla. 4th DCA 1986)(Riviera Beach). These are all appellate decisions, and there are numerous decisions of trial courts regarding recalls which have not been appealed.

¹⁶ Art. VIII, §1(f), Fla. Const. of 1968, provides:

(f) NON-CHARTER GOVERNMENT. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special

provision attempts to legislate in an area upon which the Florida Legislature has already legislated but the local ordinance or charter provision is not actually inconsistent with the state law? This is a complicated area of law.

One aspect of this complex area of law is the concept of preemption. Sometimes the Florida statute is so extensive that the entire subject is said to be preempted by the Legislature, notwithstanding the fact that the statute does not expressly provide that it preempts local ordinances or charter provisions. As explained in Tallahassee Memorial Regional Medical Center v. Tallahassee Medical Center, Inc., 681 So.2d 826 (Fla. 1st DCA 1996),¹⁷ there two ways in which a local government ordinance or charter provision may be found to be inconsistent with state law. The first method is when the Legislature has specifically preempted a particular subject area of regulation by language in a state law that states the local ordinances or charter provisions are not permitted. See Speer v. Olson, 367 So.2d 207 (Fla. 1978). This is known as “express preemption” of the subject area by the Legislature. See Santa Rosa County v. Gulf Power Co., 635 So.2d 96, 101 (Fla. 1st DCA 1994). The second method is by a concept known as “implied preemption.” *Id.*¹⁸ In Tallahassee Memorial Regional Medical Center, the court noted that “implied preemption” is a difficult concept, because the resulting preemption is not specifically and expressly set forth in the state statute. “Implied preemption” is “found to exist only in cases where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.” Tallahassee Memorial Regional Medical Center, at 831.¹⁹ According to the court, the scope of the “implied preemption” should be limited to the specific area where the Legislature has expressed their will to be the sole regulator, *Id.*, citing St. Johns County v. Northeast Builders Ass’n, 583 So.2d 635 (Fla. 1991). The

law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

(emphasis supplied).

¹⁷ The Tallahassee Regional Medical Center decision was penned by Judge Jim Wolf. Judge Wolf has a strong background in local law having served as General Counsel for the Florida League of Cities and as City Attorney for the City of West Palm Beach.

¹⁸ Accord Sarasota Alliance for Fair Elections v. Browning, 28 So.3d 880 (Fla. 2010). While not relevant to discussion of this situation, the Florida Supreme Court has actually gone somewhat further by noting the difference between implied *field* preemption and implied *conflict* preemption. West Florida Regional Medical Center v. See, 79 So.3d 1 (Fla. 2012).

¹⁹ Accord D’Agastino v. City of Miami, 220 So.3d 410 (Fla. 2017). “Implied preemption” occurs when the state legislative scheme is pervasive and the local legislation would present a danger of conflict with that pervasive scheme. In other words, preemption is implied when the legislative scheme is so pervasive as to virtually evidence an intent to preempt the particular area or field of operation, and where strong public policy reasons exist for finding such an area or field to be preempted by the Legislature. Thus, preemption does not require explicit words so long as it is clear from the language utilized that the Legislature has clearly preempted local regulation of the subject.

difficulty, of course, is determining how far the implied preemption of the Legislature is intended to sweep. Arguably, a conservative reading of the state law on recall suggests that the Legislature intended to preempt the issue of recall in municipalities and charter counties. Consequently, a county is not permitted to legislate in the area of the area of recall, which would include the recall of school board members. One reason in support of this reading is the title to Section 100.361, Florida Statutes, which is “municipal recall.” As provided in the statute, the term “municipality” also applies to charter counties. §100.361(1), Fla.Stat.²⁰ The sweep of this statute is arguably sufficiently broad to evince a legislative intent that any other type of recall for other officials, other than county commissioners and city council members, is impliedly preempted to State. As a result, only the Legislature could permit the recall of school board officials.

A second reason in support of this reading it set forth in Section 100.361(11), Florida Statutes, which is the statutory provision for recall. That sub-section provides that the legislative intent was to provide for a statewide uniform system for recall. This provision also repeals any charter provisions which are contrary to the statute. Sub-section (11) provides:

(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.

Consequently, it is my conclusion that, although it is a close question, if the issue of recall of a school board member as permitted by a Brevard County Charter provision was to be submitted to a court of law, the court would more likely than not, find that the subject of recall is impliedly preempted to the Florida Legislature by Section 100.361, Florida Statutes.

DThe Position of the Florida Attorney General; A Constitutional Analysis

Although there is little law dealing with this subject, an older opinion of the Florida Attorney General supports a reading of the Florida constitutional provisions regarding counties and charter government as not permitting county charters to regulate the school system. In AGO 71-109, the Attorney General discussed the history of the relationship between counties and school boards. The Attorney General stated that the “public school system has

²⁰ A title of a statute is helpful in construing a statute. Foley v. State, 50 So.2d 179 (Fla. 1951); Fajardo v. State, 805 So.2d 961 (Fla. 2d DCA 2001), *rev. dismissed*, 828 So.2d 391 (Fla. 2002). Courts may look to the title of a statute for resolution of doubt about a statute's meaning and sweep. Almendarez-Torres v. U.S., 118 S.Ct. 1219 (1998).

traditionally been required to be operated and controlled independently of the regular county government.” In that regard, Blake v. City of Tampa, 156 So. 97, 100 (Fla. 1934), held that school property and the county school fund are held by the school board “for the use of the state, to carry on the state's constitutional system of public schools. . . .”, not for the operation of county government. Further, the decision of a school board with regard to the school tax millage is *not* reviewable by a county commission or a property appraiser. State v. Board of Public Instruction for Dade County, 170 So. 602 (Fla. 1936). A school board has the sole duty and responsibility for establishing attendance areas and providing for transportation of school children in the county, not a county commission. Burdeshaw v. Vassar, 24 So.2d 364 (Fla. 1946).

The Attorney General found that “[i]n the light of this historical background, it seems clear that the ‘home rule’ powers· delegated to a county by Art. VIII of the 1968 State Const., as implemented by §125.65, F. S., . . . , would *not* include any power or authority with respect to the free public school system in this state.” (emphasis supplied). The Attorney General stated that “[i]t is an indispensable element of all ‘home rule’ constitutional provisions that the power to legislate locally shall be confined to local affairs. See 37 Am.Jur., *Municipal Corporations*, §106, p. 715. A ‘home rule’ constitutional provision effects a redistribution of existing governmental powers but does not enlarge the functions of government.”

Considering that concept,

the operation of the free public school system has never been a function of county government in this state; and it is now expressly dissociated from county government by the provisions of the 1968 Constitution referred to above. Nor has the operation of the state's free public school system ever been considered a ‘local affair.’[t]he . . . 1968 Constitution contemplates a ‘uniform system of free public schools” in this state. . . . §1, Art. IX, State Const., 1968. . . . In these circumstances it is abundantly clear that a county government has nothing whatsoever to do with the administration of the free public school system in this' state, as provided for by Art. IX of the 1968 State Constitution, Ch. 230, F. S. [now chap. 1000 et seq., F.S.], and other applicable provisions of law. Not being a function of county government, the delegation or “redistribution” of sovereign powers made by §1, Art. VIII, State Canst., 1968, was not intended to and did not confer upon the counties any “home rule” powers in this respect. It necessarily follows that a home rule charter' may not validly deal with this subject.

AGO 71-109. Although Attorney General’s opinions are not binding on a Florida court, they are considered to be persuasive in establishing statutory and constitutional law. Hardee County v. FINR II, Inc., 221 So.3d 1162, 1166 (Fla. 2017).²¹ In consideration of the foregoing, a review of each of the 19 charter county charters indicates that only one of them regulates school districts, namely Brevard County. Art. 8, Brevard County Charter. The Brevard County Charter provides that school board members shall be elected from single-member. This is counter to Section 1001.361, Florida Statutes, which provides for election countywide of school board members.²² In 2022, the Florida Legislature considered legislation that would specifically provide for Brevard County School Board Member election by district.²³ However, the legislation was not adopted by the Legislature.²⁴

E Who Pays for a Recall Election?

²¹ In AGO 90-63, relating to the Pal-Mar Water Control District, the Attorney General was asked whether members of the district board, who are elected and are referred to as “supervisors,” could be recalled. The Attorney General concluded that “[i]n the absence of a statute authorizing the recall of a supervisor of a water control district, the landowners of such a district are not authorized to establish procedures for the recall of a supervisor.”

²² Section 1001.361, Florida Statutes, provides:

1001.361 Election of board by districtwide vote.—Notwithstanding any provision of local law or any county charter, the election of members of the district school board shall be by vote of the qualified electors of the entire district in a nonpartisan election as provided in chapter 105. Each candidate for district school board member shall, at the time she or he qualifies, be a resident of the district school board member residence area from which the candidate seeks election. Each candidate who qualifies to have her or his name placed on the ballot shall be listed according to the district school board member residence area in which she or he resides. Each qualified elector of the district shall be entitled to vote for one candidate from each district school board member residence area. The candidate from each district school board member residence area who receives the highest number of votes in the general election shall be elected to the district school board.

(emphasis supplied). This statute was adopted in 2007. See Chap. 2002-387, Laws of Fla. The Charter’s Article 8 was adopted by the voters in 1998.

²³ See §(2), CS/HB-531 by State Rep. Randy Fine. This local bill includes the following language:

It is the express intent of the Legislature for each member of the board of the Brevard County School District to be elected only by vote of the qualified electors in that member’s individual district and not by general vote of all electors in the county as required by s. 1001.361, Florida Statutes, or any successor statute.

²⁴See CS/HB-531, Florida Senate, <https://m.flsenate.gov>

In the case of recall elections brought pursuant to Section 100.361, Florida Statutes, regarding charter county commissioners and city councilmembers, the statute requires two recall petitions to be submitted after execution by affected electors. The petition signatures are verified by the Supervisor of Elections, and Section 100.361(2)(g) and (3)(e), Florida Statutes, provides that the signatures on both sets of petitions are verified at the cost of the petitioner.²⁵ With regard to the cost of the actual election, the statute is silent with regard to who pays for the actual election. As a result, I have asked the Supervisor of Elections who pays for the election. Ms. Scott has advised that neither the County nor a municipality in the county has been the subject of a recall election during her term. As a result, she has posed the question to the County Attorney.²⁶ We await the County Attorney's resolution of this issue.

III What Avenues are Available For the Removal of a School Board Members?

Mr. Jenkins has asked if there is no vehicle for recall of a School Board Member, what other avenues are available to remove a School Board Member? In the case of a county commissioner who is to be suspended from office, Florida law provides a vehicle by which the Governor may suspend so-called "county officers" and the reasons for which removal may occur. See §§ 112.50 and 112.51, Fla. Stat.²⁷ The basis for suspension is one of several grounds, including malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties. These statutes provide a method of suspension for "county officers" who are not covered for suspension purposes by Article IV, Section 7 of the Florida Constitution.

However, in the case of a School Board Member, the Supreme Court has advised that these statutes are *not* applicable to the suspension of a School Board Member, notwithstanding that School Board Members have been referred to in the past in some cases as "county officers." Such an act of suspension, according to the Court, must be conducted pursuant to and is authorized pursuant to the authority of Article IV, Section 7 of the Florida Constitution. In re Advisory Opinion to the Governor, 626 So.2d 684 (Fla. 1993).²⁸ The basis for removal is one of several grounds, including malfeasance,

²⁵ While the recall statute requires that a verification of a signatory is conducted at a rate of 10 cents per name, Section 99.097, Florida Statutes, provides a methodology by which a random spot check of signatures may be conducted by the Supervisor of Elections.

²⁶ E-mail correspondence from Lori Scott, Brevard County Supervisor of Elections to Brevard County Attorney Abigail Jorandby (Feb. 28, 2022).

²⁷ As set forth in the statutes, removal or suspension is authorized pursuant to grounds of [malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties](#).

²⁸ There is a provision in Florida Statutes, Section 112.51, Florida Statutes, that provides for the suspension of "county officers." The Supreme Court has concluded that this statute is not applicable to School Board Members, and that the process for removal is directly under the Constitution.

misfeasance, neglect of duty, habitual drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.

Hopefully, this responds to your question, but there is a major point here. Although School Board Members, County Commissioners, the Sheriff, the tax collector, the Supervisor of Elections, the Property Appraiser, and the Clerk of Court are all referred to as “county officers” by various provisions of law and cases, the statutes and the Constitution draw a distinction as to how each of these positions is treated with regard to suspension from office. Likewise, it would seem that this same distinction should apply to the recall of “county officers” and that perhaps that is inherent in the purview of the recall statute, Section 100.361.

IV The Trettis Recall Proposal

The Trettis Recall Proposal is substantially modeled after Section 100.361, Florida Statutes, providing for the recall of charter county commissioners and city council members. The Trettis Recall Proposal differs from Section 100.361, Florida Statutes, in a few key instances, as follows:

1) Recall may only occur if the electors in the school board district accomplish the recall. While this mirrors the single-member district concept inherent in Article 8 of the Charter, there is some question as to the legality of having single member districts, especially given that Rep. Fine’s legislation so providing did not pass the Legislature in the 2022 Session.

2) Section 100.361(2)(d), Florida Statutes, provides for the grounds for recall as including Malfeasance; Misfeasance; Neglect of duty; Drunkenness; Incompetence; Permanent inability to perform official duties; and Conviction of a felony involving moral turpitude. The Trettis Recall Proposal lists the grounds for recall as including Malfeasance and casting 3 votes on motions at any School Board meeting.

As a result, the Trettis Recall Proposal is inconsistent with the Florida Constitution based on the Attorney General’s 1971 opinion recounted above. The Trettis Recall Proposal may be inconsistent with Section 100.361, Florida Statutes, based on the concept of implied preemption. Also, the grounds for recall set forth in Section (2)(d) of the Trettis Recall Proposal are inconsistent with concepts set forth Section 100.361(2)(d), Florida Statutes, and Article IV, Section 7 of the Florida Constitution, as discussed above in Analysis Section II.D, *supra*.

V Recall of County Constitutional Officers

The final question presented is whether a county charter can legally provide for the recall of constitutional officers, including the Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, and Clerk of the Circuit Court. Section 5.2 of the currently effective Brevard County Charter provides that the county commissioners are subject to recall as

provided by general law.²⁹ This section also provides that “any elected County officer named in Section 4.2 of . . . [the] Charter may be recalled in the manner provided by general law for removal of a County Commissioner of a charter county.”

When Section 4.2 was originally adopted in 1994, Section 4.2 specifically listed the Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court, and Supervisor of Elections. In 2010, an amendment to the Charter moved those named individuals to Section 4.1.1, but the reference in Section 4.2 in Section 5.2 was not corrected. Thus, the Charter in effect today is worded as follows:

Sec. 5.2. - Recall.

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

Sec. 4.1.1. - Election and compensation.

The Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court, and Supervisor of Elections shall be elected and compensated in the manner provided by law for such officers in noncharter counties.

Sec. 4.2. - Departments headed by elected officers.

The departments of County Government headed by elected officers enumerated in this section are not subject to the supervision of the County Manager.

Consequently, assuming the position of Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court, and Supervisor of Elections may be legally subjected to a recall election, there is an obvious, though likely unintended glitch in the reference to Section 4.2 of the Charter in Section 5.2.

Article VIII, Section 1. (d) of the Florida Constitution of 1968 was amended by the electorate in 2018 to significantly narrow the ability of county charters to legislate with regard to county constitutional officers, such as the Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court, and Supervisor of Elections. The revised section provides:

²⁹ The general law provision, as discussed above, is Section 100.361, Florida Statutes.

SECTION 1. Counties.— ***

(d) COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court. Unless otherwise provided by special law approved by vote of the electors or pursuant to Article V, section 16, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds. Notwithstanding subsection 6(e) of this article, a county charter may not abolish the office of a sheriff, a tax collector, a property appraiser, a supervisor of elections, or a clerk of the circuit court; transfer the duties of those officers to another officer or office; change the length of the four-year term of office; or establish any manner of selection other than by election by the electors of the county.

(emphasis supplied). Notwithstanding the foregoing, the recall of constitutional officers does not appear to be prohibited by Article VIII, Section 1(d).

A review of the charters in the 19 counties that have adopted charter government, reveals that three of the counties provide for the recall of constitutional officers, including Columbia,³⁰ Duval,³¹ and Sarasota.³²

Consequently, the question whether recall of the Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court, and Supervisor of Elections may be provided by the Charter appears to turn on the concept of implied preemption as discussed above.

As noted above, the title of Section 100.361, Florida Statutes is “municipal recall.” As described in the statute that includes charter county commissioners and city council members and no others. Additionally, the intent of the recall statute is to provide a uniform method applicable statewide, as set forth in Section 100.361(11), Florida Statutes.³³ Consequently, it is my conclusion that, although it is a close question, if the issue of recall of a the Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court, or the Supervisor of Elections as permitted by a Brevard County Charter provision was to be

³⁰ See §3.2, Columbia County Charter.

³¹ See §15.01, City of Jacksonville Charter.

³² See §6.3, Sarasota County Charter.

³³ That sub-section provides that the legislative intent was to provide for a statewide uniform system for recall. This provision also repeals any charter provisions which are contrary to the statute. Sub-section (11) provides:

(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.

submitted to a court of law, the court would more likely than not, find that the subject of recall is impliedly preempted to the Florida Legislature by Section 100.361, Florida Statutes, and that recall of the Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court, or the Supervisor of Elections. Is not permitted.

PRG/mb

Florida Recall Statute

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.

Meeting Date
02/03/2022



AGENDA	
Section	
Item No.	Proposal #1

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; Jim Liesenfelt at jim.liesenfelt@brevardfl.gov; and to Paul R. Gougelman, attorney for the Brevard County Charter Review Commission.



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER:

SUBJECT:

PETITIONER CONTACT:

REQUESTED ACTION:

SUMMARY EXPLANATION & BACKGROUND:

Staff Contact:

Melissa Brandt

Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

SUMMARY EXPLANATION & BACKGROUND CONTINUED:

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

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

SECTION 8.2 RECALL ELECTION OF SCHOOL BOARD MEMBERS

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

(2) RECALL PETITION.—

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

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

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

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

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

1. Malfeasance;

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

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

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

(g) *Verification of signatures.*—

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

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

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

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

(3) RECALL PETITION AND DEFENSE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. REASON FOR PROPOSAL

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

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

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

SERVICE OF PROPOSAL

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



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

MEETING DATE:

AGENDA ITEM NUMBER:

SUBJECT:

PETITIONER CONTACT:

REQUESTED ACTION:

SUMMARY EXPLANATION & BACKGROUND:

Staff Contact:

Melissa Brandt

Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

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Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov



2021-2022

CHARTER REVIEW COMMISSION AGENDA REPORT

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SUBJECT:

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SUMMARY EXPLANATION & BACKGROUND:

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Melissa Brandt

Telephone Number:

(321) 301-4438

Email Address:

Melissa.Brandt@brevardfl.gov

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

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

7.3.2 Amendment by petition

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

7.3.2.1

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

7.3.2.2

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

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

7.3.2.3

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

7.3.2.4.⁴

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

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

Section 7.4 Charter Review

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

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

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

~~7.4.1 Independent Review of Proposed Charter Amendments~~

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

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

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

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

REASON FOR PROPOSAL

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

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

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

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

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

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

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

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

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

Incorrect legal standard of review is in Charter. At sections 7.3.2.3; 7.3.2.4 and 7.4.1, the incorrect legal standard for permissible powers of charter self-government is included in the Charter. These three sections say that the three attorney panel is to determine if the proposed amendment “is consistent with the Florida Constitution, general law and this Charter.” Florida Constitution Article VIII, section 1(g) states the permissible scope of powers of county charter government: “Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.”

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

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

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

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

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

SERVICE OF PROPOSAL. This proposal was sent by e-mail by Blaise Trettis on February 25, 2022, to the members of the Brevard County Charter Review Commission and to: Melissa Brandt at Melissa.Brandt@brevardfl.gov; Jim Liesenfelt at jim.liesenfelt@brevardfl.gov; and to Paul R. Gougelman, attorney for the Brevard County Charter Review Commission.

2021-2022 Charter Review Commission

Meeting Schedule

Date	Day	Time	Location	Proposals Due (10 days prior to meeting date)
06-Jan-22	Thursday	5:00 PM	Florida Room	27-Dec-21
20-Jan-22	CANCELLED	CANCELLED	CANCELLED	10-Jan-22
**3-Feb-22	CANCELLED	CANCELLED	CANCELLED	24-Jan-22
**17-Feb-22	Thursday	3:00 PM	Commission Chambers	7-Feb-22
**10-Mar-22	CANCELLED	CANCELLED	CANCELLED	28-Feb-22
**24-Mar-22	Thursday	1:00 PM	Commission Chambers	14-Mar-22
**7-Apr-22	Thursday	3:00 PM	Florida Room	28-Mar-22
**21-Apr-22	Thursday	3:00 PM	Commission Chambers	11-Apr-22
**12-May-22	Thursday	5:00 PM	Commission Chambers	2-May-22
**02-Jun-22	Thursday	3:00 PM	Commission Chambers	23-May-22
**30-Jun-22	Thursday	3:00 PM	Commission Chambers	20-Jun-22
**21-Jul-22	Thursday	3:00 PM	Commission Chambers	11-Jul-22
**4-Aug-22	Thursday	3:00 PM	Florida Room	25-Jul-22

**Denote that the Meeting is Set for a Public Hearing.



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**

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.

**Rules of Procedure
Brevard County Charter Review Commission**

(As Amended September 23, 2021)

- Rule 1. Public Meeting
- Rule 2. Citizens Participation at Meetings
- Rule 3. Place of Meetings
- Rule 4. Call and Notice of Meetings
- Rule 5. Agenda for Regular Meetings
- Rule 6. Recording of Minutes
- Rule 7. Quorum
- Rule 8. Proxy Voting
- Rule 9. Voting Generally
- Rule 10. Official Rule of Order
- Rule 11. Duties of the Chairman
- Rule 12. Duties of the Vice-Chairman
- Rule 13. Duties of the CRC staff person
- Rule 14. Committees
- Rule 15. Policy on Publicity
- Rule 16. Rule Amendments
- Rule 17. Charter Amendments
- Rule 18. Absences
- Rule 19. Procedure for Presenting Charter Amendment Proposals

Rule 1. Public Meetings: All meetings of the Commission, including all meetings of its Committees, shall be open to the public.

Rule 2. Citizen Participation at Meetings: The Commission will allow public comment on all substantive agenda items. Under the agenda item of "Public Comment" any and all interested citizens shall be afforded an opportunity to comment on matters before the Commission or any Committees. The remarks of any citizen should be germane to the agenda or matters to come before the Commission. Each agenda shall include and prescribe a certain portion of the meeting at which "Public Comment" may be made. The Commission may impose reasonable limitations on time allotted to speakers. Each citizen addressing the Commission is asked to avoid being redundant. Citizen's comments will be limited to three (3) minutes in the interest of fairness to all citizens desiring to be heard. This requirement may be waived at the discretion of the Charter Review Commission by majority vote of members.

Rule 3. Place of Meetings: The location of meeting places for the Commission should be based on the following guidelines: Meeting places may be considered in any geographical areas of the county. The meetings of the Commission or Committees should be at a meeting place accessible to the public and large enough to accommodate not only the Commission or Committee, as the case may be, but also interested citizens.

Rule 4. Call and Notice of Meetings: Date, time and place of each regular meeting of the Commission shall be announced at the preceding regular or special meeting of the

Commission, and posted on public bulletin boards in accordance with Brevard County policy. The agenda of each regular or special meeting shall include the scheduling of the date of the next regular meeting. Special meetings may be called by the Chairman of the Commission, or by any ten (10) members of the Commission with at least one member from each district attending and require the ten (10) members of the Commission requesting a special meeting to do so in writing and filed with the CRC staff person. The CRC staff person shall be responsible for e-mailing and mailing a written notice of the date, time and place of meetings to members of the Commission. All such notices shall be mailed and emailed to the members of the Commission at their addresses noted on the *Commissioner Appointee Information Form* and kept by the CRC staff person. It shall be the responsibility of any member of the Commission to notify the CRC staff person of any change of address. The Chairman of each Committee shall be responsible through the CRC staff person, for giving sufficient written, e-mail, and telephone notice of Committee meetings. A written notice of special meetings of the entire Commission shall be given in the same manner as written notices of regular meetings, except that the written notice of a special meeting shall include the purpose for the call of such special meeting.

Rule 5. Agenda for Regular Meetings: The agenda for regular meetings of the Commission shall be generally as follows, subject to amendment or revision by the Commission Chairman:

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Approval of Minutes of Previous Meeting
- V. Reports:
 - A. Chairman
 - B. CRC Staff Person
 - C. Other Members
- VI. Public Comment
- VII. Introduction of Guests and Their Presentations (if applicable)
- VIII. Reports of Committees
- IX. Unfinished Business
- X. New Business
- XI. Adjournment

Rule 6. Recording of Minutes: Meetings of the Commission shall be recorded on recording machines. The tapes of all such meetings shall be preserved as required by law. Failure to tape record a meeting shall not affect the validity of any proceeding. The CRC staff person shall be responsible for ensuring that a recording apparatus is available at each meeting of the Commission. The CRC staff shall further be responsible for the safeguarding of the tapes of such meetings. In addition to the tape recording of the meetings, the CRC staff shall take minutes of the proceedings of the Commission and the Chairman of each Committee or a person designated by such Chairman shall take minutes at all proceedings of the Committee meetings. All records of the Commission, including the tape recordings of meetings, shall be made available to the public during normal business hours. Minutes of all the Committee proceedings shall be filed with the CRC staff person at least once per month.

Rule 7. Quorum: A majority of the members of the Commission or Committee shall constitute a quorum.

Rule 8. Proxy Voting: No member of the Commission or any of its Committees shall have the power to vote by proxy. Only those members physically present shall be entitled to vote.

Rule 9. Voting Generally: Each member present shall vote, unless a conflict of interest exists, in which case said conflict shall be publicly stated prior to the vote and filed in writing with the CRC staff person, as provided by law.

Rule 10. Official Rules of Order: Except as otherwise provided in these Rules and Policies, Robert's Rules of Order Revised (11th Edition) shall apply in matters of procedural conflict for the Commission and Committees.

Rule 11. Duties of the Chairman: The Chairman shall:

- a. Preside at all meetings of the Commission
- b. Serve as speaker for functions and activities.
- c. Be charged with the responsibility of making appointments of all persons on committees.
- d. Call special meetings when necessary

Rule 12. Duties of the Vice-Chairman: The Vice-Chairman shall perform the duties of the Chairman in the Chairman's absence or inability to serve.

Rule 13. Duties of the CRC staff:

- a. Keep accurate minutes of all Commission proceedings.
- b. Be custodian of all records of the Commission.
- c. Keep an address and attendance roster.
- d. Prepare, dispatch, file, and otherwise process all correspondence approved by a Member of the Commission for the Commission as a whole.
- e. Make all minutes available to the public and open for inspection at all reasonable times. The attendance roster shall likewise be open for inspection by any member and by the public at any reasonable time.
- f. Provide for the reproduction or copying of such records as may be requested by the public on a reasonable period of time and at a rate consistent with Brevard County policy.
- g. Maintain accurate records showing the nature, purpose, and amount of all expenditures made on behalf of the Commission.
- h. Coordinate with the Office of the County Manager in connection with the proof and filing of all disbursement requests and other administrative requirements.
- i. Perform other duties as prescribed by the Chairman.

Rule 14. Committees: The Commission may establish Committees as it sees fit to plan and administer ministerial functions of the Commission, or to investigate and report to the full Commission on the studies of special departments or functions of the existing or proposed government, or for any other lawful purpose; provided that no Committee shall have any final authority vested by law in the full Commission.

Rule 15. Policy on Publicity: Every effort shall be made to ensure that the proceedings of the Commission are made available to the media with the goal of seeking maximum public participation in the review process. No attempt shall be made to inhibit the normal processes of the media. The Chairman of the Commission or designee shall be responsible for announcing the position of the Commission to the public and news media. Members of the Commission may make public or private statements of their personal feelings, attitudes, or beliefs at any time. In making such statements, however, members of the Commission shall on every occasion make an affirmative statement that they are speaking as an individual and not on behalf of the Commission as a whole.

Rule 16. Rule Amendments: These rules and policies shall be the by-laws of the Commission and may be amended by an affirmative vote of eight (8) of the members of the Commission with at least one member appointed by each Commissioner present.

Rule 17. Charter Amendments: For a charter amendment recommendation to be transmitted to the Board of County Commissioners for placement on the ballot for voter approval or denial, ten (10) members of the CRC must vote to approve it.

Rule 18. Absences: Absences may be excused by the Chair for good cause. The CRC may review and ratify or overrule the Chair's determination of good cause. If any member of the CRC is absent for three consecutive meetings without good cause. The CRC shall notify the County Commissioner who appointed the absent member and request the appointment of a replacement member.

Rule 19. Procedure for Presenting Charter Amendment Proposals: The procedure for presenting Charter Amendment Proposals shall be as follows:

- a. The member of the Commission, or a resident of Brevard County making the proposal shall introduce the proposal to the Commission.
- b. The members of the Commission shall discuss the proposal presented.
- c. The Commission shall hear any public comment regarding the proposal from any member of the public who has registered to speak with respect to the specific proposal.
- d. The Commission shall have further discussion regarding the proposal, if necessary.
- e. A member of the Commission may then make a motion concerning the proposal.