

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 271 Selection and Duties of County Officers

SPONSOR(S): Cortes

TIED BILLS: IDEN./SIM. BILLS: SJR 132

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	7 Y, 4 N	Miller	Miller
2) Judiciary Committee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

HJR 271 proposes to amend the State Constitution by removing the authority by county charter to alter the manner of selecting the county tax collector, sheriff, property appraiser, supervisor of elections, or clerk of the circuit court. The Joint Resolution would limit the authority to abolish any of the five county offices and transfer all duties prescribed by general law to another office to only a special law approved by the county electors. As a result, the office of tax collector would be filled only by vote of the county electors and for terms of four years unless the office was abolished and its duties transferred to another office. One or more of the county offices could be abolished and its duties transferred to another office only by special law approved by the county voters. As proposed in the joint resolution, the clerk of the circuit court would be the ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of county funds unless otherwise provided by special law approved by the county voters.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. HJR 271 provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

HJR 271 impacts state funds to the extent that the cost of placing the constitutional amendment on the ballot must be administered by the Department of State. The department has estimated the printing and publication costs for advertising a joint resolution and other necessary materials could be at least \$108,459.33, possibly greater, depending on the final wording of the joint resolution and the resulting ballot language. This estimate is based on the cost to advertise constitutional amendments for the 2016 general election which was \$117.56 per word.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.

The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Article VIII of the State Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties¹ and has the authority to choose to create municipalities.²

Pursuant either to general³ or special law, a county government may be adopted by charter approved by the county voters. A county without a charter has such powers of self-government as provided by general⁴ or special law.⁵ A county with a charter has all powers of self-government *not inconsistent* with general law or special law approved by the county voters.⁶ Article VIII, s. 6(e), of the Florida Constitution incorporates by reference sections of the 1885 Constitution, providing unique authorization⁷ for specific home rule charters including those of Duval⁸ and Miami-Dade Counties.⁹ Currently, twenty Florida counties have adopted charters.¹⁰

The present Constitution creates five specific county officers: sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court (collectively, the Five Constitutional Offices/Officers).¹¹ The clerk of the circuit court also serves as the ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of county funds. Each officer is elected separately by the voters of the county for terms of four years. These officers have duties prescribed in general law.¹²

The selection and appointment of county officers has always been a matter of uniform policy applicable throughout Florida. The office of sheriff and clerk of the court have been an integral part of county

¹ Art. VIII, s. 1(a), Fla. Const.

² Art. VIII, s. 2(a), Fla. Const.

³ Section 125.60, F.S.

⁴ Ch. 125, Part I, F.S.

⁵ Art. VIII, s. 1(f), Fla. Const.

⁶ Art. VIII, s. 1(g), Fla. Const.

⁷ Article VIII, s. 6(e), Fla. Const., states that specific provisions for Duval, Miami-Dade, Monroe, and Hillsborough Counties “shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article.”

⁸ The consolidated government of the City of Jacksonville was created by ch. 67-1320, Laws of Florida, adopted pursuant to Art. VIII, s. 9, Fla. Const. (1885).

⁹ In 1956, an amendment to the 1885 Florida Constitution provided Dade County with the authority to adopt, revise, and amend from time to time a home rule charter government for the county. The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status. Article VIII, s. 11(5) of the 1885 State Constitution, now incorporated by reference in art. VIII, s. 6(e), Fla. Const. (1968), further provided the Metropolitan Dade County Home Rule Charter, and any subsequent ordinances enacted pursuant to the charter, may conflict with, modify, or nullify any existing local, special, or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami-Dade Charter can only be altered through constitutional amendment, general law, or County actions approved by referendum. *Chase v. Cowart*, 102 So. 2d 147, 149-50 (Fla. 1958).

¹⁰ Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. The Local Government Formation Manual 2017-2018, Appendix B, at 98-103.

¹¹ Art. VIII, s. 1(d), Fla. Const. In a separate subsection, the Constitution requires counties to be governed by a board of county commissioners unless otherwise provided in their respective charters, if any. Art. VIII, s. 1(e), Fla. Const., which is not affected by the joint resolution.

¹² See ch. 30, F.S. (stating certain duties of the sheriff as a Constitutional officer); ch. 197, F.S. (stating certain duties of the tax collector as a Constitutional officer); ch. 193, Part I, F.S. (stating certain duties of the property appraiser as a Constitutional officer); ch. 102, F.S. (stating certain duties of the supervisor of elections as a Constitutional officer); and ch. 28, F.S. (stating certain duties of the clerk of the circuit court as a Constitutional officer).

government in Florida since 1822.¹³ Beginning in 1845, the Governor appointed the sheriff and the clerk of the court in each county as a continuation of statutory authority.¹⁴ In contrast, by law the General Assembly annually appointed the county tax assessor.¹⁵ With the adoption of the Constitution of 1868, the Governor appointed not only the sheriff and the clerk of the court but also the county tax assessor and tax collector (both subject to the consent of the Senate), and the county treasurer, surveyor, superintendent of common schools, and the five county commissioners.¹⁶ However, since 1885 the sheriff, clerk of court, assessor of taxes, and tax collector generally have been elected by the county voters.¹⁷ Exceptions to this constitutional requirement were made by the statewide electorate in 1934¹⁸ and 1956.¹⁹ As discussed below, while the Constitution of 1968 authorized revision or abolition of the county constitutional offices under certain conditions, the majority of counties retain the elected constitutional officers with only a few acting to abolish these provisions.

The Five Constitutional Offices may be altered only through charter provision or by special act approved by the voters of the county.²⁰ All non-charter counties have the Five Constitutional Officers with statutorily prescribed duties. The charters of eight counties have changed the manner of selection of at least one of the Five Constitutional Officers or restructured or abolished at least one of the Five Constitutional Offices and transferred the powers to another county office.²¹

Brevard County

Brevard County “expressly preserved” the offices of the sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court as departments of county government, rather than constitutional offices.²² The county reiterated the ability to transfer or add to the powers of each of the county officers.²³ The county has transferred the powers of the clerk of circuit court as auditor, and custodian of county funds to the county manager.²⁴ Each of the officers remains elected for four year terms.²⁵

Broward County

¹³ Ch. 1, ss. 7, 10, Acts of the Legislative Council of the Territory of Florida (1822), at <http://edocs.dlis.state.fl.us/fldocs/leg/actterritory/> (last accessed 2/25/2017).

¹⁴ The Constitution of 1838 authorized the General Assembly to provide for the appointment, election, or removal of officers not otherwise expressly addressed in the Constitution. Art. VI, s. 19, Fla. Const. (1838). That Constitution also carried over all act of the Territorial Legislative Council not in conflict with the Constitution until otherwise changed by law. Art. XVII, s. 1, Fla. Const. (1838).

¹⁵ Ch. 10, s. 9, Laws of Fla. (1845). The General Assembly was the name for the Legislature under the 1838 Constitution. At this time the sheriff acted *ex officio* as the county tax collector. Ch. 10, s. 19, Laws of Fla. (1845).

¹⁶ Art. V, s. 19, Fla. Const. (1868).

¹⁷ Art. VIII, s. 6, Fla. Const. (1885, as amended); art. VIII, s. 1(d), Fla. Const. (1968).

¹⁸ General election of 1934, approving among other amendments SJR 113, creating art. VIII, s. 9, Fla. Const. (1885, as amended). This amendment authorized the Legislature to provide by law for the consolidation of government in Duval County but required the continuation of offices of sheriff and clerk of court.

¹⁹ General election of 1956, approving among other amendments SJR 1046, creating art. VIII, s. 11, Fla. Const. (1885, as amended). This amendment authorized the voters in Dade County to adopt a home rule charter, including the abolishment of any constitutional office provided the powers of that office were properly transferred and exercised.

²⁰ Art. VIII, s. 1(d), Fla. Const.

²¹ Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia Counties.

²² Brevard County Florida, Code of Ordinances, Charter, Art. 4, s. 4.1, available at

https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances (last accessed 2/25/2017).

²³ Brevard County Florida, Code of Ordinances, Charter, Art. 4, ss. 4.2.1, 4.2.2, 4.2.3, 4.2.4 & 4.2.5, available at https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances (last accessed 2/25/2017).

²⁴ Brevard County Florida, Code of Ordinances, Charter, Art. 2, s. 2.9.4, and Art. 4, s. 4.2.1, and Code of Ordinances, ch. 2, ss. 2-68 & 2-73, available at https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances (last accessed 2/25/2017).

²⁵ Brevard County Florida, Code of Ordinances, Charter, Art. 4, s. 4.1.1, available at

https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances (last accessed 2/25/2017).

Broward County has not altered the constitutionally elected offices and duties of the sheriff, property appraiser, and supervisor of elections.²⁶ However, the office of the tax collector was abolished and the duties were transferred to the Department of Finance and Administrative Services, headed by the Finance and Administrative Services Director appointed by the county administrator.²⁷ Though the clerk of the circuit court retains the status of constitutional officer, the clerk's constitutional duties as clerk of the county commission were transferred to the county administrator and the clerk's fiscal duties were transferred to the Department of Finance and Administrative Service.²⁸

Clay County

Clay County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.²⁹ Although the clerk of the circuit court also retains the status of constitutional officer, the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county manager.³⁰

Duval County (Consolidated Government of the City of Jacksonville)

The Charter of the City of Jacksonville has not altered the constitutionally elected offices and duties of the sheriff or the clerk of the circuit court.³¹ The clerk retains the status of constitutional officer but the clerk's duties as clerk of the county commission were transferred to the Council Secretary and the constitutional duties as auditor were transferred to the Council Auditor.³² While the City Charter does not refer to the supervisor of elections, the property appraiser, or the tax collector as constitutional officers, each must be elected.³³ All Five Constitutional Officers are limited to two consecutive full terms in office, after which the incumbent officer must wait a term before again being eligible for the same office.³⁴

Miami-Dade County

Miami-Dade County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections, and property appraiser, transferred these powers to the mayor, and granted the mayor the discretion to sub-delegate the powers.³⁵ The duties of the sheriff were transferred to the Police Department, the director

²⁶ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I, Charter, "Definitions", Oct. 24, 2016, available at https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances (last accessed 2/25/2017).

²⁷ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I, Charter ss. 3.03 & 3.06, Oct. 24, 2016, available at, https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances (last accessed 2/25/2017).

²⁸ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I, Charter, "Definitions" & ss. 3.03.G & 3.06.B, Oct. 24, 2016, available at https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances (last accessed 2/25/2017).

²⁹ CLAY COUNTY FLORIDA, Home Rule Charter, Article III, s. 3.1, 2014 Edition, available at, <http://www.claycountygov.com/about-us> (last accessed 2/25/2017).

³⁰ CLAY COUNTY FLORIDA, Home Rule Charter, Article III, ss. 3.1 & 2.3, 2014 Edition, available at <http://www.claycountygov.com/about-us> (last accessed 2/25/2017).

³¹ Duval County currently lacks the authority to alter the methods by which the clerk of the circuit court or the sheriff are elected, nor can the County abolish the offices. See ch. 92-341, s. 1, Laws of Fla.; Charter and Laws of the City of Jacksonville, Florida Part A, ss. 8.01, & 12.06, available at https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA (last accessed 2/25/2017); Art. VIII, s. 6(e), Fla. Const, (1968), incorporating by reference Art. VIII, s. 9, Fla. Const. (1885, as amended in 1934).

³² Charter and Laws of the City of Jacksonville, Florida, Part A, s. 12.06, available at, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA; JACKSONVILLE COUNTY FLORIDA, Code of Ordinances, Title II, ss. 11.103 & 13.103, available at, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA (last accessed 2/25/2017).

³³ Charter and Laws of the City of Jacksonville, Florida, Part A, ss. 9.02, 10.02, & 11.02, , available at https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA (last accessed 2/25/2017).

³⁴ Charter and Laws of the City of Jacksonville, Florida, Part A, ss. 8.04, 9.04, 10.04, 11.04, & 12.11, available at https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA (last accessed 2/25/2017).

³⁵ MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I, s. 9.01, Nov. 4, 2014, available at https://www.municode.com/library/fl/miami - dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH (accessed

of which is appointed by the mayor.³⁶ The duties of the tax collector were transferred to the Department of Finance, the director of which is jointly appointed by the mayor and the clerk of court.³⁷ The county property appraiser, although not retained as a constitutional office, remains an elected position.³⁸ The duties of the supervisor of elections were transferred to the Elections Department, the director of which is appointed by the mayor.³⁹ The clerk of the circuit court remains a constitutional, elected officer with some changes in duties.⁴⁰ Although the clerk is still the clerk of the County Commission, the clerk's financial recorder and custodian duties were transferred to the Department of Financial Services and the clerk's auditing duties were transferred to the Commission Auditor.⁴¹

Orange County

Orange County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser,⁴² and supervisor of elections.⁴³ Although the clerk of the circuit court also retains the status of constitutional officer,⁴⁴ the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county comptroller.⁴⁵ The county charter provides for term limits: beginning with terms commencing after January 1, 2015, a constitutional officer may serve four consecutive full terms before having to sit out at least one election cycle for that position.⁴⁶

Osceola County

Osceola County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections. The clerk of the circuit court retains the status of an elected constitutional officer but the clerk's duties as clerk of the county commission, auditor, and custodian of funds were transferred to the county manager.⁴⁷

12/19/2016). In the Charter, the supervisor of elections is referred to as the "supervisor of registration" and the property appraiser as the "county surveyor." *See, id.* at Part I, s. 9.01.C..

³⁶ Historically, the Miami-Dade Police Director was appointed by the county manager. This appointment power was subsequently reallocated to the mayor when the office of county manager was abolished. *See* Miami-Dade County Florida, Code of Ordinances, ss. 2-91, 2-92 & 1-4.4 available at https://www.municode.com/library/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTXIIMIDEPODE (last accessed 2/25/2017).

³⁷ MIAMI-DADE COUNTY FLORIDA, Constitutional Amendment and Charter, Part I, s. 5.03, Nov. 4, 2014, available at https://www.municode.com/library/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH (last accessed 2/25/2017).

³⁸ MIAMI-DADE COUNTY FLORIDA, Constitutional Amendment and Charter, Part I, s. 5.04.A, Nov. 4, 2014, available at https://www.municode.com/library/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH (last accessed 2/25/2017).

³⁹ Though the Miami-Dade charter and ordinances do not expressly so state, the supervisor of elections is an appointed official. See MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments>

(<http://miamidade.gov/wps/portal/Main/departments>). *See also* Miami-Dade County Florida, Code of Ordinances, s. 12-11(a).

⁴⁰ MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments> (last accessed 2/25/2017).

⁴¹ MIAMIDADE.GOV, Miami-Dade County Finance Department, <http://www.miamidade.gov/finance/> (last accessed 2/25/2017); MIAMI-DADE COUNTY FLORIDA, Constitutional Amendment and Charter, Part I, s. 9.10, Nov. 4, 2014, available at https://www.municode.com/library/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH (last accessed 2/25/2017).

⁴² At one point the county abolished the constitutional offices of sheriff, tax collector, and property appraiser but ultimately reconstituted the constitutional offices. ORANGE COUNTY FLORIDA, Charter, s. 703, Oct. 31, 2016 available at https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances (last accessed 2/25/2017).

⁴³ ORANGE COUNTY FLORIDA SUPERVISOR OF ELECTIONS, *About the Supervisor*, <http://www.ocflections.com/aboutbillcowles.aspx> (accessed 12/19/2016).

⁴⁴ ORANGE COUNTY FLORIDA, Code of Ordinances, Part I, s. 2-66, Oct. 31, 2016 available at https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances (last accessed 2/25/2017).

⁴⁵ ORANGE COUNTY FLORIDA, Code of Ordinances, Part I, s. 2-67, Oct. 31, 2016 available at https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances (last accessed 2/25/2017).

⁴⁶ Orange County Florida, Charter, s. 703.D, Oct. 31, 2016 available at https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances (last accessed 2/25/2017).

⁴⁷ OSCEOLA COUNTY FLORIDA, Home Rule Charter, Article III, s. 3.01, Aug. 11, 2015, available at https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534 (last accessed 2/25/2017).

Volusia County

In 1970 the Legislature approved a charter government for Volusia County that was adopted by the county voters in a referendum.⁴⁸ The charter abolished the constitutional offices of the sheriff, tax collector, supervisor of elections, and property appraiser,⁴⁹ transferring these powers to new charter offices. The duties of the sheriff were transferred to the Department of Public Safety,⁵⁰ later to be divided with the Department of Corrections.⁵¹ The duties of the tax collector were transferred to the Department of Finance.⁵² The duties of the property appraiser were transferred to the Department of Appraisal.⁵³ The duties of the supervisor of elections were transferred to the Department of Elections.⁵⁴ The sheriff, property appraiser, and supervisor of elections are elected directors of their respective offices.⁵⁵ The tax collector is appointed by the county manager and confirmed by the county council.⁵⁶ The clerk of the circuit court remains a constitutionally elected officer⁵⁷ except that the clerk's constitutional duties as clerk of the county commission and auditor and custodian of county funds were transferred to and divided between the Department of Central Services and the Department of Finance.⁵⁸

Selection & Removal Procedures

In addition to whether the Five Constitutional Officers are elected or appointed, some counties provide in their charters for term limits, recall procedures, or the non-partisan election of these officers. While not expressly identified in art. VIII, s. 1(d), of the Constitution, these additional "selection and removal procedures" are not interpreted as affecting the selection of the Five Constitutional Officers.

There is no constitutional or statutory prohibition limiting the ability of charter counties to impose additional selection and removal procedures on the Five Constitutional Officers. The broad home rule power of counties allows them to act so long as the action taken is not "inconsistent with general law, or . . . special

⁴⁸ Ch. 70-966, Laws of Fla. The charter was adopted in a referendum held on June 30, 1970.

⁴⁹ Ch. 70-966, s. 601.1, Laws of Fla.

⁵⁰ Ch. 70-966, s. 601.1(2), Laws of Fla.

⁵¹ VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1(2),

https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed 3/2/2017).

⁵² Ch. 70-966, s. 601.1(1)(a), Laws of Fla., now codified as VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1(1), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed 2/25/2017).

⁵³ Ch. 70-966, s. 601.1(3), Laws of Fla. The department was later renamed the Department of property appraisal. VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1(3), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed 2/25/2017).

⁵⁴ Ch. 70-966, s. 601.1(4), Laws of Fla., now codified as VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1(4), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed 2/25/2017).

⁵⁵ VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter ss. 401, 601.1(1)(b), & 602.1, https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed 3/2/2017).

⁵⁶ VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 2-111(a), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed 2/25/2017); Organizational chart, <http://www.volusia.org/government/county-council/government-organizational-chart.shtml> (last accessed 2/25/2017).

⁵⁷ Ch. 70-966, s. 503, Laws of Fla.

⁵⁸ Ch. 70-966, s. 601.1(1)(b), Laws of Fla.; VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I, Charter s. 601.1 (1)(b) & (5) https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO (last accessed 2/25/2017).

law.⁵⁹ This suggests that counties can currently modify their selection or removal procedures within the existing art. VIII, s. 1(d) framework through charter amendment or special law.⁶⁰

Term Limits

Three charter counties have imposed term limits on one or more of the Five Constitutional Officers.⁶¹ Although the imposition of term limits on the Five Constitutional Officers is neither constitutionally or statutorily prohibited nor expressly endorsed, the imposition of term limits currently is interpreted to be within the broad home rule power of charter counties.⁶²

Recall

Five counties have charters expressly providing for the recall of one or more of the Five Constitutional Officers.⁶³ Regardless of whether a county charter includes a recall provision, counties have independent statutory authority to conduct a recall of any of the Five Constitutional Officers.⁶⁴

Non-partisan Elections

Seven counties require non-partisan elections for some or all elections of the Five Constitutional Officers.⁶⁵ Non-partisan election of the Five Constitutional Officers is neither constitutionally nor statutorily prohibited and is therefore within the broad home rule power of charter counties.⁶⁶

1885 Constitutional Provisions Incorporated by Reference

The Florida Constitution of 1968 expressly incorporated from the 1885 Constitution four sections providing for consolidated or home rule government in four counties:⁶⁷ Duval,⁶⁸ Monroe,⁶⁹ Dade (later renamed Miami-Dade),⁷⁰ and Hillsborough.⁷¹ These incorporated provisions were to “remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article.”⁷² Whether amending art. VIII, s. 1(d) alone would be

⁵⁹ Art. VIII, s. 1(g), Fla. Const.

⁶⁰ Current statute and case law supports this principle. See s. 100.361, F.S. (providing that whether or not a charter county adopts a recall provision, the county may exercise recall authority); *Telli v. Broward County*, 94 So. 3d 504, 512-13 (Fla. 2012) (allowing charter counties to adopt term limits on county commissioners and explicitly overruling a prior case which barred this in the case of the Five Constitutional Officers).

⁶¹ Duval, Orange, and Sarasota Counties.

⁶² *Telli v. Broward County*, supra at n. 52.

⁶³ Brevard, Clay, Duval, Miami-Dade, and Sarasota Counties.

⁶⁴ Section 100.361, F.S.

⁶⁵ Lee, Leon, Miami-Dade, Orange, Palm Beach, Polk, and Volusia Counties. The Legislature expressly provided for non-partisan elections under the charter for Volusia County. Ch. 70-967, Laws of Fla.

⁶⁶ See Art. III s. 11(a)(1), Fla. Const. (prohibiting the Legislature from enacting special laws which alter local election procedure but excepting charter counties); Ch. 105, F.S. (providing for non-partisan elections and procedure).

⁶⁷ Art. VIII, s. 6(e), Fla. Const.

⁶⁸ Art. VIII, s. 9, Fla. Const. (1885).

⁶⁹ Art. VIII, s. 10, Fla. Const. (1885).

⁷⁰ Art. VIII, s. 11, Fla. Const. (1885). Included within the home rule powers authorized by the amendment to the 1885 Constitution was the authority to change the County’s name. Art. VIII, s. 11(1)(h), Fla. Const. (1885). In 1997, the County adopted ordinance 97-212, amending the charter and changing the official name to Miami-Dade County. Art. 10, s. 10.01, Miami-Dade County Home Rule Charter, at https://www.municode.com/library/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH_ART10NACO (accessed 12/19/2016).

⁷¹ Art VIII, s. 24, Fla. Const. (1885). In 1983, Hillsborough County enacted a new charter pursuant to art. VIII, s. 1, Fla. Const. (1968), rather than art. VIII, s. 24 (1885 Constitution), incorporated by reference through art. VIII s. 6(e), Fla. Const. See Hillsborough County Florida, Charter, art. 1, s. 1.01, November 2012, available at

https://www.municode.com/library/fl/hillsborough_county/codes/code_of_ordinances_part_a?nodeId=CHHICO_APXALESTPROR_NO83-9 (accessed 12/19/2016).

⁷² There is a strong presumption that where constitutional language is readopted, the legislature is aware of existing judicial interpretations and accordingly readopts the prior judicial construction unless the constitutional language is changed to abrogate it.

sufficient to make its provisions applicable to these four counties is unclear. Accordingly, the joint resolution specifies that notwithstanding art. VIII, s. 6(e), of the present Constitution, the manner of selection, length of terms, or abolition of office and transfer of powers of the property appraiser for all counties shall be controlled exclusively by art. VIII, s. 1.

Effect of the Joint Resolution

If the joint resolution is adopted and the proposed amendment is approved by the voters, the resulting limitation on revising the status of certain county officers and the requirement to elect the tax collector to a term of 4 years will have no impact on non-charter counties⁷³ or those charter counties that retained the Five Constitutional Officers without any changes to their selection or authority.⁷⁴ Also unaffected by the proposed amendment would be a county whose charter was created by special law and approved by the county voters in a referendum for that purpose, provided the charter did not 1) retain the constitutional tax collector but 2) provide for selecting the tax collector in a manner other than election.⁷⁵ Those counties which by charter changed the selection or authority of any of the Five Constitutional Officers⁷⁶ will be required to revise their charters and ordinances to conform to the current constitution provision or to seek to abolish the constitutional office and transfer its powers through a special act adopted by referendum.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The joint resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

The joint resolution also creates a new section in art. XII of the Constitution, providing the amendment would become effective beginning January 5, 2021. This delay would allow the affected counties time either to change their charters to comply with the new constitutional scheme and elect the Five Constitutional Officers in the 2020 general election or, alternatively, to seek a special act for approval by referendum of the county voters.

B. SECTION DIRECTORY:

As this legislation is a joint resolution proposing a constitutional amendment, it does not contain bill sections. The joint resolution proposes to amend art. VIII, s. 1(d) of the State Constitution, to prohibit selecting the constitutional supervisor of elections by any method other than election for a term of 4 years, and to limit the authority for counties to alter the manner of selecting certain county officers or to abolish a county office and transfer all duties prescribed by general law to another office. To allow sufficient time for compliance by those counties needing to conform their charters and ordinances to the amendment if adopted, the joint resolution creates a new section in art. XII of the Constitution to provide for the amendment to take effect on January 5, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Fla. House of Representatives v. League of Women Voters of Fla., 118 So. 3d 198, 205 (Fla. 2013); *Fla. Dep't of Revenue v. City of Gainesville*, 918 So. 2d 250, 264 (Fla. 2005); *Advisory Opinion to Governor*, 96 So. 2d 541, 546 (Fla. 1957); *State ex rel. West v. Butler*, 69 So. 771, 780-82 (Fla. 1915).

⁷³ Baker, Bay, Bradford, Calhoun, Citrus, Collier, DeSoto, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Pasco, Putnam, Santa Rosa, St. Johns, St. Lucie, Sumter, Suwannee, Taylor, Union, Walton, and Washington Counties.

⁷⁴ Alachua, Charlotte, Columbia, Hillsborough, Lee, Leon, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Wakulla Counties.

⁷⁵ Volusia County. See ch. 70-966, Laws of Fla.

⁷⁶ Brevard, Broward, Clay, Duval, Miami-Dade, Orange, and Osceola.

The joint resolution does not have a fiscal impact on state revenues.

2. Expenditures:

Article XI, s. 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately before the week the election is held. The Department of State, Division of Elections stated the average cost per word to advertise an amendment to the State Constitution was \$117.56 for 2016. The department has estimated the publication costs for advertising the joint resolution will be at least \$108,459.33, possibly greater, depending on the final wording of the joint resolution and the resulting ballot language.⁷⁷

The department normally is the defendant in lawsuits challenging proposed amendments to the Florida Constitution. The cost for defending these lawsuits has ranged from \$10,000 to \$150,000, depending on a number of variables.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have a fiscal impact on local revenues.

2. Expenditures:

The joint resolution will have no impact on non-charter counties, a charter county whose charter was created by special act of the Legislature and approved by those county electors voting in a referendum for that purpose (provided the charter did not alter the manner of selecting the constitutional tax collector), or those charter counties that retained the Five Constitutional Officers without any changes to their selection or authority. Those seven counties whose charters changed the selection or authority of any of the Five Constitutional Officers will incur an indeterminate negative fiscal impact to the extent of having to revise their charters and ordinances to conform to the revised constitutional requirement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

See, Fiscal Impact on State Government and Local Governments, above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The joint resolution will not create a general law requiring a county or municipality to spend funds or take an action requiring expenditures, reducing the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate, or reducing the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

⁷⁷ 2017 Agency Legislative Bill Analysis, Department of State, HB 1 (2/15/2017), available to Legislators and staff at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=9871> (last accessed 3/2/2017), and a copy of which is maintained on file by the Local, Federal & Veterans Affairs Subcommittee.

Adoption of Proposed Amendment

Article XI, s. 1 of the State Constitution, provides for proposed changes to the Constitution by the Legislature:

SECTION 1: Proposal by legislature. – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.⁷⁸ The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published.⁷⁹

Sixty percent voter approval is required for a proposed constitutional amendment to pass. A proposed amendment or revision approved by the requisite vote of the electors is effective as an amendment to or revision of the state constitution on the first Tuesday after the first Monday in January following the election.⁸⁰ This joint resolution proposes a new section to art. XII, the schedule to the state constitution, providing the amendment will not go into effect until January 8, 2019.

Term Limits on Constitutional Officers

Imposing term limits on some or all of the Five Constitutional Officers could be seen as impacting the manner in which these officers are selected, an authority that will be removed if the amendment proposed in the joint resolution is approved by the voters. The current interpretation of art. VIII, s. 1(d) by the Florida Supreme Court is that charter counties have the ability to impose term limits on elected county officers.⁸¹ However, while this interpretation references the present authority of charter counties to revise the manner of selecting the Five Constitutional Officers, the Court clearly based its decision on the “broad home rule authority granted charter counties under the Florida Constitution”⁸² and the fact that the Constitution does not expressly prohibit the imposition of term limits by charter counties on the Five Constitutional Officers.⁸³ Therefore, removing the authority of a charter county to change the manner of election or to abolish and reconstitute the powers of the Five Constitutional Officers under county offices will not impact the ability of charter counties to impose term limits on elected county officers.

Non-Partisan Elections of Constitutional Officers

Amending art. VIII, s. 1(d) to restrict the ability of counties in their charters to choose the Five Constitutional Officers “in another manner therein specified” could be interpreted to limit the ability of charter counties to require that the Constitutional Officers be selected in non-partisan elections. However, because the Constitution prohibits neither the Legislature, through general law, nor charter counties from requiring non-partisan elections for county officers,⁸⁴ imposing non-partisan election

⁷⁸ Art. XI, s. 5(a), Fla. Const.

⁷⁹ Art. XI, s. 5(d), Fla. Const.

⁸⁰ Art. XI, s. 5(e), Fla. Const.

⁸¹ *Telli v. Broward County*, supra at n. 53, adopting with approval the rationale of the dissent in *Cook v. City of Jacksonville*, 823 So. 2d 86, 95-96 (2002) (Anstead, J., dissenting).

⁸² *Telli v. Broward County*, supra at n. 53, 512.

⁸³ *Id. See also State ex rel. Askew v. Thomas*, 293 So. 2d 40, 42-43 (Fla. 1974).

⁸⁴ See n. 59, supra.

requirements may well be interpreted as outside of the scope of art. VIII, s. 1(d), just as term limits were so found by the Florida Supreme Court of Florida.⁸⁵

Recall of Constitutional Officers

Recall of county officers by charter counties is statutorily authorized.⁸⁶ The amendment proposed by this joint resolution would have no impact on the ability of charter counties to recall the Five Constitutional Officers.

B. RULE-MAKING AUTHORITY:

The resolution does not provide authority or require implementation by administrative agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁸⁵ See *Telli v. Broward County*, supra at n. 53.

⁸⁶ Section 100.361, F.S.