



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Unfinished Business

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H.2.

7/11/2023

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### **Subject:**

Transfer of \$32,072.36 in District 3 ARPA Funds to Brevard Public Schools

### **Fiscal Impact:**

\$32,072.36 in District 3 ARPA funds

### **Dept/Office:**

District 3 Commission Office

### **Requested Action:**

Board approval to transfer \$32,072.36 in District 3 ARPA funds to Brevard Public Schools

### **Summary Explanation and Background:**

On March 21, 2023, the District 3 Commissioner offered to the School Board half of the cost of printing and mailing new voter registration cards using his District 3 ARPA funds due to redistricting.

On May 30, 2023, the School Board voted to realign their districts with the commission districts, and accept the offered funding.

On June 12, 2023, the District 3 Commissioner sought Board approval for the transfer of the \$32,072.36 in District 3 ARPA funds to Brevard Public Schools for the purpose of covering partial costs resulting from the School Board redistricting process. The District 4 Commissioner requested that the item be brought forth at a regular Board meeting, the first of which being July, 11, 2023.

### **Clerk to the Board Instructions:**



July 24, 2023

**M E M O R A N D U M**

**TO:** Jill Hayes, Budget Office Director

**RE:** Item H.2., Transfer of \$32,072.36 in District 3 American Rescue Plan Act (ARPA) Funds to Brevard Public Schools

**This is to correct the memorandum dated July 12, 2023.** The Board of County Commissioners, in regular session on July 11, 2023, approved transferring \$32,072.36 in ARPA funds from the District 3 tranche to the Brevard County Supervisor of Elections for the purpose of covering partial costs resulting from the School Board redistricting process; authorized for the amount to be returned after 90 days if the School Board does not pay its half; **and authorized Commissioner Tobia to draft a letter to the School Board regarding a potential charter amendment in reference to permanently realigning the Brevard County Commission and Brevard County School Board districts.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

Kimberly Powell, Clerk to the Board

/ds

cc: Each Commissioner  
Finance



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July 12, 2023

**M E M O R A N D U M**

**TO:** Jill Hayes, Budget Office Director

**RE:** Item H.2., Transfer of \$32,072.36 in District 3 American Rescue Plan Act (ARPA) Funds to Brevard Public Schools

The Board of County Commissioners, in regular session on July 11, 2023, approved transferring \$32,072.36 in ARPA funds from the District 3 tranche to the Brevard County Supervisor of Elections for the purpose of covering partial costs resulting from the School Board redistricting process; and authorized for the amount to be returned after 90 days if the School Board does not pay its half.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

*Kimberly Powell*  
Kimberly Powell, Clerk to the Board

/ds

cc: Each Commissioner  
Finance  
Budget

School Board Redistricting Funds

H. 2.

**Motion:**

I move to transfer \$32,072.36 in ARPA funds to the Brevard County Supervisor of Elections for the purpose of covering partial costs resulting from the School Board redistricting process.

*to be returned after 90 days if S.B. does not pay half.*

Charter Amendment Ballot Language

**Motion:**

I move to authorize the County Attorney's Office to proceed with providing a report to the Board regarding a potential charter amendment, including draft ballot language, in reference to permanently realigning the Brevard County Commission and Brevard County School Board districts, at his earliest convenience.



**County Attorney's Office**  
2725 Judge Fran Jamieson Way  
Building C, Room 308  
Viera, Florida 32940

**BOARD OF COUNTY COMMISSIONERS**

**TO:** Commissioner John Tobia  
**FROM:** Morris Richardson, County Attorney  
**SUBJECT:** Aligning County Commission and School Board Districts  
**DATE:** July 11, 2023

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**Question:** What action must be taken to require that Brevard County Commission and Brevard County School Board member districts coincide?

**Short Answer:** The Brevard County Home Rule Charter must be amended.

**Analysis:**

Both the Brevard County Board of County Commissioners and the School Board of Brevard County consist of five single-member districts, with each member elected only by qualified electors who reside in the same district as the commissioner or school board member, respectively. Both the county commission and school board districts must be as nearly equal in population as practicable. However, in Brevard County, the county commission and school board districts have not always been coterminous.

Recently, the School Board of Brevard County adopted a resolution amending its district boundaries to conform to the Board of County Commissioners' district boundaries. You asked what action must be taken to ensure that the county commission and school board district boundaries remain aligned for the purpose of reducing voter confusion and eliminating redundancies in the redistricting process.

Affirmatively requiring that the district boundaries remain coextensive would require an amendment to the Brevard County Home Rule Charter, as described herein below.

**County Commission Districts**

Article VIII of the Florida Constitution establishes the authority for home rule by counties in Florida. Pursuant either to general or special law, a county government may be adopted by charter approved by the county voters. Section 125.60, Florida Statutes. A charter county has all powers of self-government not inconsistent with general law or special law approved by the county voters. Fla. Const. art. VIII, § 1(g).

The Florida Constitution requires that the counties be divided into county commission districts of contiguous territory that are as "equal in population as practicable."

(e) **Commissioners.** Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

Fla. Const. art. VIII, § 1.

Section 124.01, Florida Statutes, sets forth additional requirements for the drawing of commission districts:

(3) The board of county commissioners shall, from time to time, fix the boundaries of the county commissioners' districts so as to keep them as nearly equal in proportion to population as practicable, provided that changes made in the boundaries of county commissioner districts pursuant to this section may not be made in the 270 days before a regular general election for the board of county commissioners. Districts may not be drawn with the intent to favor or disfavor a candidate for county commission or an incumbent county commissioner based on the candidate's or incumbent's residential address. Any ordinance enacted or adopted by a county on or after July 1, 2023, which is in conflict with this subsection is void.

Pursuant to the Brevard County Home Rule Charter, the Brevard County Board of County Commissioners is composed of five members. There are five county commission electoral districts, each of which elects one commissioner. Section 2.1, Brevard County Home Rule Charter.

The Charter provides the following regarding the drawing of commission districts:

**Sec. 2.2. - Redistricting.**

In the first odd-numbered year after each decennial census, or more frequently where allowed by this section, the Board of County Commissioners shall cause the county to be divided into County Commission districts of contiguous territory as nearly equal in population as practicable. Redistricting shall be the responsibility of a Committee appointed in the same manner as a Charter Review Commission under this Charter.

The recommendations of the Committee shall be made directly to the Board of County Commissioners which shall approve or disapprove them without amendment. In its recommendation the Committee shall, to the extent practicable, preserve the several municipalities and geographically cohesive racial or ethnic minority communities from fragmentation. Redistricting more

frequently than decennially shall be permitted only where the population of a district has been changed by more than 25% since the last redistricting.

### **School Board Districts**

Members of the School Board of Brevard County are elected on a single-member representation basis. Section 8.1, Brevard County Home Rule Charter.

Section 1001.36, Florida Statutes, provides that each school district “shall be divided into at least five district school board member residence areas ... which shall, as nearly as practicable, be equal in population.” The statute provides additional requirements for drawing district boundaries:

(2) A district school board may make any change that it deems necessary in the boundaries of any district school board member residence area at any meeting of the district school board, provided that such changes are not made in the 270 days before a general election and that no change that would affect the residence qualifications of any incumbent member disqualifies such incumbent member during the term for which he or she is elected. Residence areas may not be drawn with the intent to favor or disfavor a candidate for district school board member or an incumbent district school board member based on the candidate’s or incumbent’s residential address. Any resolution adopted by a district school board on or after July 1, 2023, which is in conflict with this subsection is void.

Section 8.1 of the Brevard County Home Rule Charter provides that the school district shall be divided into school board residence areas “being as nearly equal in population as is practicable, as provided by general law.”

### **Alignment of County Commission and School Board Districts**

The general law requirements for county commission and school board districts are virtually identical. Of particular importance, both county commission and school board districts must be as equal in population as is practicable.

This was not always the case for school board districts. Until 1977, Florida law required that school board member residence districts have, as nearly as practicable, the same number of qualified electors, rather than a nearly equal population. Section 230.04, Florida Statutes (1961). Accordingly, the Attorney General opined that a school board could not use county commission districts based on equality of population as a basis for school board member residence districts, unless such districts happened to contain a nearly equal number of qualified electors. See Fla. AGO 069-28.

Because the law now directs division into county commission and school board districts on the basis of equality of population, the districts may lawfully coincide. In fact, research by this office and the District 3 Commissioner's staff found that in at least 28 Florida counties, the county commission and school board district boundaries are coterminous. It appears that in most of these counties, the school board decided to use the county commission districts as the basis for the school board member residence districts. In several counties, the county commission and school board closely collaborated in the redistricting process.

We did not find any county in which alignment of the school board and county commission was formally required, by charter or otherwise.

#### **Amending the Charter to Require that County Commission and School Board Districts Coincide**

Mandating that county commission and school board member residence districts coincide would necessitate amendments to the Brevard County Home Rule Charter. At a minimum, Charter sections 2.2. – Redistricting and 8.1 – Election of school board members would require amendment.

Pursuant to section 7.3.1. of the Charter, the Board of County Commissioners has the authority to propose Charter amendments. Board initiated proposals require the affirmative vote of not less than four Board members, and the proposed amendments must be consistent with the Florida Constitution and with general law.

Pursuant to section 7.4.1.1. of the Charter, for any proposed amendment sponsored by the Board of County Commissioners, the County must empanel 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 the Charter. The panel members shall have demonstrated experience in Florida local government law and shall either be licensed to practice law in Florida or have retired from a Florida law practice or the Florida judiciary within the past five years.

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 the 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 a countywide general election or at an earlier special election called for that purpose. Passage of a proposed Charter amendment requires approval by a vote of at least 60 percent of the registered electors voting on the measure in the special election.



If at least two members of the panel find that the proposed amendment is not consistent with the Florida Constitution, general law, or the Charter, then the proposal is considered rejected and is returned to the Board of County Commissioners for further action if any is to be done.

The Florida courts have consistently construed the phrase “inconsistent with general law” to mean “contradictory in the sense of legislative provisions which cannot coexist.” *Emerson v. Hillsborough County*, 312 So. 3d 451, 457 (Fla. 2021) (citations omitted).

A local ordinance or charter provision that interferes with the operation of a statute “cannot coexist” with that statute. In brief, the Florida Constitution prohibits any charter county from supplanting or overriding state law through either an ordinance or a charter provision.

*Id.*

In order to be consistent with general law, any proposed Charter amendment relating to county commission and school board redistricting must provide a procedure for drawing district boundaries such that the resulting districts are as nearly equal in population as practicable. The proposed amendment must prohibit changes from being made in the district boundaries in the 270 days before a general election. The proposed amendment must also prohibit boundaries from being drawn with the intent to favor or disfavor a candidate or incumbent county commission or school board member based on the candidate’s or incumbent’s residential address.