



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.21.

9/13/2022

Subject:

Proposed Charter Amendment to the Brevard County Home Rule Charter, Section 2.6, Commissioner Salary

Fiscal Impact:

None to the current budget; if approved by the voters, there would be an impact to the fiscal year 2024/2025 budget.

Dept/Office:

County Attorney's Office

Requested Action:

At the Board's request, this Resolution has been prepared for the Board's consideration. Approval of this Resolution also constitutes approval to have this Resolution upon approval by the three-person attorney panel to authorize the County Manager to forward this resolution to the Supervisor of Elections, and handle any other matters related to the referendum.

Summary Explanation and Background:

During the August 30, 2022 Board of County Commissioners meeting, the Board discussed a proposal to amend the County Charter, Section 2.6 that would go before the voters on November 5, 2024. The amendment would change the method for compensating commissioners to bring it in line with Florida statute. Florida statute provides a method to compensate county commissioners across the state, according to each county's population, which the legislature has determined to be the most practical basis from which to arrive at an adequate and uniform salary statewide. It is optional for Charter Counties to follow this system. This amendment would change the County Charter to bring the County close to being in line with the State system, by adjusting Commissioner salaries to be 90 percent of the Salary formula that would be provided pursuant in Chapter 145, Florida Statutes.

Clerk to the Board Instructions:

Return a certified copy of the Resolution to the County Manager's Office, the County Attorney's Office and the Supervisor of Elections.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

September 14, 2022

M E M O R A N D U M

TO: Morris Richardson, County Attorney

RE: Item F.21., Resolution for Proposed Charter Amendment to the Brevard County Home Rule Charter, Section 2.6, Commissioner Salary

The Board of County Commissioners, in regular session on September 13, 2022, approved and adopted Resolution No. 22-107, for proposed Charter Amendment to the Brevard County Home Rule Charter, Section 2.6, Commissioner Salary; and approval of this Resolution also constitutes approval to have this Resolution, upon approval by the three-person attorney panel, to authorize the County Manager to forward this Resolution to the Supervisor of Elections, and handle any other matters related to the referendum. Enclosed is a fully-executed Resolution.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".

Kimberly Powell, Clerk to the Board

Encl. (1)

/tr

cc: County Manager
Supervisor of Elections

RESOLUTION 2022-107

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, CALLING A SPECIAL ELECTION ON NOVEMBER 5, 2024, ON THE QUESTION OF WHETHER BREVARD COUNTY SHOULD AMEND THE BREVARD COUNTY HOME RULE CHARTER TO PROVIDE FOR A CHARTER AMENDMENT WHICH AMENDS SECTION 2.6 AS TO COMMISSIONER SALARY TO FOLLOW FLORIDA STATUTE CHAPTER 145, WHICH CHANGE IS CONSISTENT WITH THE FLORIDA CONSTITUTION, GENERAL LAW, AND THE CHARTER; PROVIDING FOR AN EFFECTIVE DATE.

RECITALS

WHEREAS, the Florida legislature enacted Chapter 145 Florida Statutes to provide for the annual compensation for county officers, including commissioners; and

WHEREAS, the Florida legislature enacted Chapter 145 after it determined that a uniform system, and not an arbitrary and discriminatory salary law, was needed to replace the haphazard, preferential, inequitable and probably unconstitutional local law method of paying elected county officers; and

WHEREAS, the Florida legislature has provided a Florida statute to provide uniform compensation to county officials across Florida who have substantially equal duties and responsibilities, taking into account the multitude of changes that have affected these offices within the past decade; and

WHEREAS, the salary schedules laid out by Chapter 145 Florida Statute are based on a classification of counties according to each county's population, which the legislature determined to be the most practical basis from which to arrive at an adequate, uniform salary system; and

WHEREAS, the Brevard County Board of County Commissions has voted to place a Charter amendment on the ballot in 2024 that, if enacted, will bring Brevard County close to the rest of the State by setting commissioner salaries to 90 percent of the salaries calculated by Chapter 145, Florida Statute, effective January 1, 2025.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA:

SECTION 1. AUTHORITY FOR RESOLUTION. This Resolution is adopted pursuant to the authority of the Board under Chapter 125, Florida Statutes, the Brevard County Home Rule

8/30/2022

Charter, Article VII, Section 7.3.1, and Article X, Section 12(d), of the Florida Constitution and any other applicable provision of law.

SECTION 2. FINDINGS. It is hereby found and determined as follows:

A. A charter has been adopted for Brevard County entitled "Brevard County Home Rule Charter."

B. The Brevard County Commission has proposed an amendment to the Brevard County Charter.

C. The Three Person Panel (also known as the "Attorney Review Panel") review of the amendment found the proposal to be consistent with the Florida Constitution, general law, and the Brevard County Charter and to contain a single subject.

D. The general election to be held on November 5, 2024, is an appropriate and desirable date to conduct a concurrent special election on the proposed amendment.

SECTION 3. SPECIAL ELECTION. A special election is hereby called and ordered to be held concurrently with the general election to be held on November 5, 2024, to determine whether or not to amend the Brevard County Home Rule Charter Article 2, Section 2.6, in the manner set forth below.

SECTION 4. NOTICE OF SPECIAL ELECTION. This Resolution shall be published once a week for four consecutive weeks in full as part of the Notice of Special Election, together with a notice in substantially the form attached hereto as Exhibit "A," in Florida Today, a newspaper of general circulation in the County with the first such publication occurring in the fifth week prior to the election provided that the first publication must be at least thirty days but no more than forty-five day prior to the date set for the election.

SECTION 5. PLACES OF VOTING, INSPECTORS, CLERKS. The polls will be open at the voting places on the date of such special election during the hours prescribed by law. All qualified electors shall be entitled and permitted to vote at such special election on the proposition provided below. The places of voting and the inspectors and clerk for the special election shall be those designated by the Supervisor of Elections of Brevard County.

SECTION 6. OFFICIAL BALLOT. The ballots to be used in the special election shall contain a statement of the description of the proposed amendment to the County Charter, and shall be in substantially the following form:

BALLOT
Brevard County, Florida

BREVARD COUNTY CHARTER AMENDMENT, ARTICLE 2, SALARY

Effective January 1, 2025, shall Article 2, Section 2.6 of the Brevard County Charter be amended to provide that the salary of the Brevard County Board of County Commissioners be determined solely as 90 percent of that set forth in Chapter 145, Florida Statutes for county commissioners, as amended from time to time, which state statute provides a uniform method of compensation for county commissioners with similar duties across the state?

_____ YES FOR APPROVAL

_____ NO FOR REJECTION

SECTION 7. CHARTER AMENDMENT. The full text of the amendment reads as follows:

A. Section 2.6 Brevard County Home Rule Charter is hereby amended to read as set forth below. In interpreting the proposed amendment, new language is underlined and deleted language is ~~stricken through~~. The proposed amendment states as follows:

Sec. 2.6. - Salary and other compensation.

~~Salary and other compensation of the County Commissioners shall be the same as that in effect on December 31, 1999. On or before October 1, 2001, and on or before October 1 of every even-numbered year thereafter, the Board of County Commissioners may adopt an ordinance fixing the salaries of Commissioners for the next two years. There shall be no automatic increases in salary or other compensation. An ordinance increasing salary or other compensation shall not become effective until the first day of January in the year following adoption of the ordinance.~~

~~The specified salary shall not exceed the average percentage increase in the salaries of county employees for the fiscal year just concluded, or the percentage change of the consumer price index from the previous year, whichever is less.~~ The salary of the County Commissioners shall be the same as 90 percent of that set forth in Chapter 145, Florida Statutes for members of a board of county commissioners, as the statute may be amended from time to time. All other

compensation must be based on actual expenses incurred in Board directed performance of duties of Commissioners as provided by general law of the State of Florida.

~~An ordinance providing for an increase in salary or compensation shall be subject to nullification under the provisions for initiative provided in Article 5 of this Charter. Except for such nullification, the salary or other compensation of a Commissioner shall not otherwise be decreased during that Commissioner's term of office.~~

B. The above amendment to Article 2, Section 2.6, shall become effective on January 1, 2025 after approval of the electors of Brevard County, and the amendment shall operate prospectively on any Charter amendment proposal submitted to the electors of Brevard County after November 5, 2024.

SECTION 8. PAYMENT OF SPECIAL ELECTION EXPENSES. The County Manager is hereby authorized and directed to approve the payment of lawful expenses associated with conducting the special election and the Clerk of the Board of County Commissioners is hereby authorized and directed to disburse funds necessary to pay such expenses.

SECTION 9. VOTER REGISTRATION BOOKS. The Supervisor of Elections for Brevard County is hereby authorized and requested to furnish to the inspectors and clerks at each place where the votes are to be cast in such special election, applicable portions of the registration books or certified copies thereof showing the names of the qualified electors.

SECTION 10. ELECTION ADMINISTRATION. The special election shall be held and conducted in the manner prescribed by law and, as soon as practicable, shall be returned and canvassed in the manner prescribed by law. The result shall show the number of qualified electors who voted at such special election and the number of votes cast respectively for and against approval of the amendments. Upon certification in the manner prescribed by law, the results shall be recorded in the minutes of the Board of County Commissioners.

SECTION 11. ELECTION RESULTS. If the majority of the votes cast at such a special election shall be "Yes For Approval," the amendments shall pass.

SECTION 12. SEVERABILITY. In the event that any word, phrase, clause, sentence or paragraph hereof shall be held invalid by any court of competent jurisdiction, such holding shall not affect any other word, clause, sentence or paragraph hereof.

SECTION 13. REPEALING CLAUSE. All resolutions or other actions of the County which are in conflict herewith are hereby repealed to the extent of such conflict or inconsistency.

SECTION 14. EFFECTIVE DATE. This resolution shall take effect upon adoption by the Board of County Commissioners.

8/30/2022

DONE, AND ADOPTED in Regular Session of the Board of County Commissioners of Brevard County, Florida, this 13 day of Sept., 2022.

ATTEST:



Rachel M. Sadoff, Clerk
(SEAL)

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA


BY: _____
Kristine Zonka, Chair

As approved by the Board on 9/13/2022

Reviewed for legal form and content:



County Attorney

EXHIBIT A

**NOTICE OF REFERENDUM ELECTION ON AMENDMENTS TO BREVARD COUNTY HOME RULE
CHARTER, SECTION 2.6**

Notice is hereby given that a referendum election shall be held to consider a certain amendment to the Brevard County Home Rule Charter, Section 2.6. The referendum election shall be held on November 5, 2024, at which the question described in the following resolution number 22-___ adopted by the Board of County Commissioners of Brevard County, Florida, on the ___ day of September 2022 shall be submitted to the electors:

[RECITE RESOLUTION]

TALLAHASSEE
 1500 Mahan Drive
 Suite 200
 Tallahassee, Florida 32308
 (850) 224-4070 Tel
 (850) 224-4073 Fax



TAMPA
 2502 Rocky Point Drive
 Suite 1060
 Tampa, Florida 33607
 (813) 281-2222 Tel
 (813) 281-0129 Fax

PLANTATION
 8201 Peters Road
 Suite 1000
 Plantation, Florida 33324
 (954) 315-0268 Tel

Reply to Tallahassee

September 6, 2022

Christine M. Schverak, Esquire
 Interim County Attorney
 Brevard County Attorney's Office
 2725 Judge Fran Jamieson Way, Suite 308
 Viera, Florida 32940

Re: Review of Proposed Charter Amendment – Commissioners' Salaries

Dear Ms. Schverak:

In accordance with the Independent Contractor Professional Services Contract entered into between Brevard County and the law firm of Nabors, Giblin & Nickerson, P.A. on August 3, 2022, I previously reviewed six Charter Amendments proposed by the Brevard County Charter Review Commission. On September 1, 2022, I was provided an additional Charter proposal relating to the establishment of the salaries of County Commissioners.

Pursuant to Section 7.4.1 of the Brevard County Charter, a panel of three persons is assembled to review proposed amendments of the Brevard County Charter Review Commission prior to submission to the electors of the County. The substance of that review requires a consideration of "whether the proposed Amendment and ballot language embraces one subject only, and is consistent with the Florida Constitution, general law and this Charter."

My review has been based on the following criteria:

I. Ballot Language

The question of consistency of ballot language with general law is chiefly controlled by section 101.161(1), Fla. Stat. (2022):

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(1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word “yes” and also by the word “no,” and shall be styled in such a manner that a “yes” vote will indicate approval of the proposal and a “no” vote will indicate rejection. The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. .

..

* * *

The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

...

II. Single Subject

The “single subject” restriction on amendments to the Constitution and charters has a twofold purpose. The first is to prevent “logrolling”, a practice where an amendment containing unrelated provisions, some of which electors might support, is proposed to get an otherwise disfavored provision passed. *Advisory Opinion to Att’y Gen. re: Limited Casinos*, 644 So. 2d 71, 73 (Fla. 1994). The second is whether the amendment affects separate functions of the government and other provisions of the charter. *In re Advisory Opinion to Att’y Gen. - Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994). In determining whether a provision complies with the single subject requirement, the courts generally determine whether there is a natural or logical connection between the provisions.

III. Consistency with Constitution

County charter provisions, as with any legislative act, must be consistent with the express provisions of the Florida Constitution.

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IV. Consistency with General Laws

Charter provisions will also be considered invalid if they are “inconsistent with general law” as provided in Article VIII, Section 1(g) of the Florida Constitution. As established by case law, the term “inconsistent” in this context means “contradictory in the sense of legislative provisions which cannot coexist.” *State v. Sarasota County*, 549 So. 2d 659 (Fla. 1989); *Pinellas County v. City of Largo*, 964 So. 2d 847, 854 (Fla. 2d DCA 2007).

V. Consistency with the Charter

Finally, as set forth in Section 7.4.1, a review of the proposed amendments shall also be conducted to determine whether they are inconsistent with other provisions of the Charter. Similar to the analysis for determining whether a provision is inconsistent with general law, a separate analysis is performed to determine whether the proposed amendment is inconsistent with the other provisions of the Charter. This requires a determination as to whether the proposed amendment and the existing Charter provisions are “contradictory in the sense of legislative provisions that cannot coexist.” *State v. Sarasota County*, *id.*

Based on the foregoing criteria, I advise the Charter Review Commission and the Board of County Commissioners as to my opinion on the proposed Amendment as set forth below:

A. **RESOLUTION 2022-____ A RESOLUTION TO PROVIDE FOR A CHARTER AMENDMENT WHICH AMENDS SECTION 2.6 AS TO COMMISSIONER SALARY TO FOLLOW CHAPTER 145, FLORIDA STATUTES.**

Background:

The Resolution seeks to amend Section 2.6 of the Brevard County Charter relating to the salary and other compensation of the County Commissioners. The proposed Amendment would eliminate the current procedures for the establishment of Commission salaries and replace it with a provision that requires that “[t]he salary of the County Commissioners shall be the same as 90 percent of that set forth in Chapter 145, Florida Statutes for members of a board of county commissioners, as the statute may be amended from time to time.”

First, the proposed Charter Amendment satisfies the word limitations for the ballot title and summary as contained in section 101.161, Florida Statutes. Though I would note that the inclusion of some of the language within the ballot summary may be misleading. The last clause of the ballot summary states that the approval of the Charter Amendment, “which provides a

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uniform method of compensation for county commissioners with similar duties across the state,” implies that the proposed Charter Amendment, if approved, would be uniform with other counties across the state. I do not believe that is correct. I believe that the language used in the ballot summary as to uniformity with other counties was referring to the provisions of Chapter 145, Florida Statutes, and not the Charter Amendment. The proposed Amendment uses the salary amount from the statute but only approves ninety percent of that amount. Therefore, I do not believe that the Amendment would be uniform with other counties across the state. It is recommended that this language be clarified.

As to the consistency with the Florida Constitution and general law, there appears to be issues with the proposed Amendment. There are no appellate court opinions on the issue of whether a county charter may lawfully regulate salaries of county commissioners. Our analysis of the issue first examines the Constitution to determine if the power is assigned to another body. We next consider whether charter regulation of salaries is inconsistent with general law.

On the issue of compensation, the Constitution directs: “The powers, duties, compensation and method of payment of state and county officers shall be fixed by law.” Art. II, §5(c), Fla. Const. The requirement that compensation “shall be fixed by law,” as construed long ago by the Supreme Court, means that the power to set salaries for county officers is expressly required of the Legislature. *Board of Comm'rs v. Savage*, 58 So. 835 (Fla. 1912). Moreover, the Legislature's compensation setting power cannot be delegated to another entity. *State ex rel. Buford v. Spencer*, 87 So. 634 (Fla. 1921).

Had the Constitution used the phrase “compensation shall be as provided for by law,” instead of as “fixed by law,” our opinion would have been that the Charter may establish salaries of the County Commissioners pursuant to the Florida Statutes authorizing them. See, Savage at 340, upholding local salary setting for certain officers where the Constitution stated “shall be provided for by law” but struck as unconstitutional local salary setting which the Constitution stated “shall be fixed by law.”

By its terms, Article II's fixed-by-law requirement applies to “County Officers.” Subsection (1)(d) of the Local Government Article, Article VIII is entitled “County Officers” and addresses the following officials: sheriff, tax collector, property appraiser, supervisor of elections and clerk of the circuit court. In contrast, subsection (e) is entitled “Commissioners” and relates to the board of county commissioners as the governing body of the county. Common rules of construction would generally ascribe different meanings to two different terms used within the same document. However, the term “County Officers” is used in so many places in the Constitution that to give “County Officers” a meaning that excludes county commissioners would upset the common understanding and application of many provisions. For example, construing “County Officers” to exclude county commissioners would mean that the Governor does not have the constitutional power to remove a county commissioner for cause. The Supreme Court has

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broadly interpreted the term “County Officers” under the Governor’s constitutional removal powers in consideration as to whether the power extends to district school board members. In *In re Advisory Opinion to the Governor- Sch. Bd. Member- Suspension Auth.*, 626 So. 2d 684 (Fla. 1993), the Supreme Court concluded that the term “County Officers” encompasses school board members; thus indicating that the extent of the phrase “County Officers” may reach further than simply the officials listed in the Local Government Article, Article VIII, section 1(d).

The charters of several counties, including Brevard County, provide for an adjustment to salaries instead of relying on the statutory formulae. There is a single reported district court of appeal opinion upholding a charter salary cap for county commissioners: *Citizens for Term Limits & Accountability, Inc. v. Lyons*, 995 So. 2d 1051 (Fla. 1st DCA 2008). But the *Lyons* opinion addresses only the issue of whether the referenda ballot language and title were sufficiently clear to inform the voters of the chief purpose of the charter amendment. The court did not address the issue of whether the constitutional requirement that the Legislature fix county officer salaries applied to county commissioners. Consequently, the *Lyons* case is not instructive on whether a charter may lawfully establish commissioner salaries.

The second test a salary charter provision must pass is whether establishing salaries by charter is “inconsistent with general law,” and therefore contrary to Article VIII, section 1(g). Section 125.83(4), Florida Statutes, provides general provisions for county charters and salaries:

The county charter shall provide that the salaries of all county officers shall be provided by ordinance and shall not be lowered during an officer's term in office.

Chapter 145, Florida Statutes, provides for population-based formulae for all county officials including county commissioners. On the issue of charter officials, section 145.012 states: “This chapter [145] applies to all officials herein designated in all counties of the state, except those officials whose salaries are not subject to being set by the Legislature because of the provisions of a county home rule charter. . .” More specifically, section 145.031(2) provides:

No member of a governing body of a chartered county or a county with a consolidated form of government shall be deemed to be equivalent of a county commissioner for the purpose of determining the compensation of such member under his or her respective charter.

The Attorney General has opined¹ on two occasions that section 125.83(4) may be unconstitutional in that it violates the constitutional requirement in Article II, section 5(c) that the

¹ Op. Atty. Gen 77-88 and Op. Atty Gen. 81-7.

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Legislature fix compensation by law. However, the early cases relied upon by the Attorney General in those opinions were decided under an 1885 constitutional provision that was carried forward in substantially the same form in the 1968 Constitution. In particular, the case of *State ex rel. Buford v. Spencer*, 87 So. 634 (Fla. 1921), which was relied upon by the Attorney General struck down a law allowing county commissioners to fix salaries of other county officers as destroying uniformity contemplated by the constitutional requirement that compensation shall be fixed by law. In evaluating the opinions, it is important to recognize that the concept of uniform county government has been superseded in the 1968 Florida Constitution by the specific recognition of county charters. Further all laws of the State of Florida are presumed to be valid until determined by a Court of competent jurisdiction. This presumption continues to exist even if questioned by an Opinion of the Attorney General.

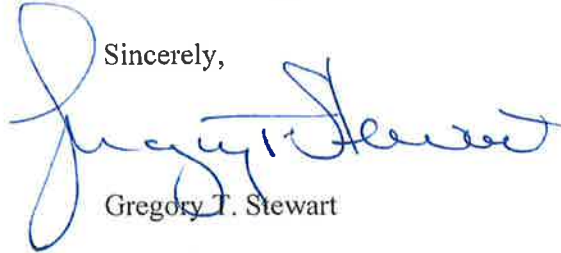
Though the Florida Constitution does not provide carte blanche authority to charter counties, it is still necessary to determine that the provision under consideration is not consistent with General Law. Section 125.83(4), Florida Statutes, includes a specific statutory directive to establish county commission salaries by ordinance. In addition, section 145.031(2), Florida Statutes provides a specific exemption from the uniform population based formulae, that would otherwise apply. These provisions clearly indicate that an ordinance establishing county commission salaries is not inconsistent with general law. Based upon the foregoing, we believe that the Charter may be amended to modify the manner that county commission salaries are established.

Conclusion as to Resolution 2022- ____:

- (1) The Ballot title and Summary satisfies the word limitations of section 101.161, Florida Statutes, however, the language should be clarified to clearly provide what the last clause of the Ballot Summary is referencing.
- (2) The text of the proposed Amendment does not violate the "single subject" requirement.
- (3) The text of the proposed Amendment is consistent with the Constitution of the State of Florida.
- (4) The text of the proposed Amendment is consistent with the general laws of Florida.
- (5) The text of the proposed Amendment is consistent with the other provisions of the Charter.

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Thank you for allowing our Firm to be of assistance to the County and the Charter Review Committee. Should you require any additional information, please feel free to contact me.

Sincerely,

Gregory T. Stewart

GTS:pad

cc: Paul Gougelman
Jim Liesenfelt



James C. Dinkins, Esq.
Board Certified in City, County, and Local Government Law
55 W. Church St.
Orlando, FL 32801
(239) 810-2682

To: Morris Richardson, Esq., County Attorney
From: Jamy Dinkins, CivForge Law, PA
Date: September 6, 2022
Re: County Commission proposed Charter amendment

The foregoing is a review of a proposed Resolution of the Brevard County Board of County Commissioners placing a proposed Charter amendment on the ballot relating to the calculation of the salary of County Commissioners. The Resolution has not yet been adopted by the Board of County Commissioners. This memorandum is designed to advise the County Commission on the legality of the proposal, but does not provide policy advice.

Overview

The proposed Resolution revises section 2.6 of the Charter to accomplish, broadly, the following:

- Repeal the existing method for and restrictions on determining Commissioner salaries; and
- Create a new method for determining Commissioner salaries based on existing Florida Statutes.

The proposed ballot summary describes the complete repeal of the existing method for determining compensation and the replacement of that method with one tied to the statutory calculation method.

Assumptions and limitations of review

This memorandum does not pass on the validity of the adoption of the Resolution or subsequent actions of the Brevard County Board of County Commissioners, the Brevard County Supervisor of Elections, or the voters. We assume that all procedural actions taken by any of those bodies are proper, timely, and sufficient to adopt the proposal and incorporate it into the County Charter, and thus only pass on whether the proposal, from a substantive perspective, is consistent with applicable law, including the Florida and Federal Constitutions, applicable statutes, and the County Charter.

Procedural matters

While this memorandum does not address procedural matters generally, it does consider certain formal requirements surrounding ballot questions generally. Pursuant to section 101.161, Florida Statutes, there are certain requirements for ballot language and proposal contents in referenda elections. One such requirement is that the ballot summary be fair

and unambiguous, be limited in length, and phrase the question in a particular manner. In addition, there is a requirement that the amendment embrace a single subject.

Single subject requirement

Florida law is replete with single-subject requirements for legislation and constitutional amendment, most prominently in the Constitution's limitation on the power of the legislature to adopt bills that "embrace but one subject and matter properly connected therewith," in article III, section 6, and the limitation on the initiative method to amend the constitution to proposals that "embrace but one subject and matter directly connected therewith." Art. IX, Sec. 3, Fla. Const. Though the difference in these provisions is minor (amounting to a single word), the Florida Supreme Court views the "directly connected" language as more narrow. *Fine v. Firestone*, 448 So. 2d 984, 988-89 (Fla. 1984).¹ Generally, a proposal embraces one subject if it has "a natural relation . . . as component parts or aspects of a single dominant plan or scheme." *Id.* at 990 (quoting *City of Coral Gables v. Gray*, 19 So. 2d 318 (Fla. 1944)). Essentially, there must be a "oneness of purpose" in order for the proposal to meet the single-subject test, and affects a single function of the existing governmental structure. *Id.* While charter amendments proposed by the County Commission are not subject to the single-subject requirement, the analysis is helpful in determining whether the ballot language is misleading.

The proposed Resolution addresses a single subject, namely, the method of calculating salaries for County Commissioners. The process of government affected is singular: payment for certain government officials. There is a oneness of purpose embraced in the proposed Resolution that lends clarity to its understanding and does not tend to mislead voters.

Ballot language

There are three basic, and one more complex, requirements for a ballot summary. First, the caption of the ballot summary must be fifteen words or fewer. § 101.161(1), Fla. Stat. Second, the body of the ballot summary must be 75 words or fewer. *Id.* Third, the question posed must be phrased such that a "yes" vote indicates approval of the proposal and a "no" vote indicates rejection of the proposal. The question itself is clearly phrased such that a "yes" vote indicates approval, while a "no" vote indicates rejection, and the summary meets the word limitation requirements.

The more complex requirement is that the language be a clear and unambiguous explanatory statement of the chief purpose of the measure. *Id.* While courts have interpreted this requirement using various rules and tests, they can be summarized as an overall requirement that the ballot language fairly advise the voter of the decision to be made sufficiently to enable the voter to intelligently cast their ballot. See *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982)(collecting cases). This includes a requirement that the function of government to be affected is fairly identified, *Fine*, 448 So. 2d at 989, and that

¹ This analysis considers the more narrow view, as the "directly connected" language appears in the Brevard County Charter, albeit in a section not applicable to amendments proposed by the County Commission.

the ballot language not be misleading, *Florida Department of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

Ballot language can be misleading if it omits material information in such a way that a voter relying on the summary would believe the measure accomplishes something different from what the amendatory language actually does. Thus, an omission was material in a proposed property tax exemption amendment when it would have caused voters to believe it extended eligibility for the exemption where it did not, *Roberts v. Doyle*, 43 So. 3d 654, 659-61 (Fla. 2010), or where the scope of laws to be repealed under a repealer clause was not disclosed, *In re Advisory Opinion to Attorney General*, 632 So. 2d 1018, 1021 (Fla. 1994).

The chief purpose of Resolution 2022-006 is to change the method for calculating salaries of County Commissioners. This purpose is adequately captured in the summary, which articulates the repeal and replacement of the existing language with the new method, based on existing Florida statutes.

The ballot language must also not be misleading. *Slough*, 992 So. 2d at 147. A ballot summary is misleading if it inaccurately states information about the proposal or if it omits material information from the summary. *Advisory Op. to Att’y Gen.*, 632 So. 2d at 1021. The proposed ballot summary states that section 2.6 of the charter is to “be replaced in its entirety.” However, the actual text amending the charter does not replace every component of existing section 2.6—in fact, the sentence “All other compensation must be based on actual expense incurred in Board directed performance of duties of Commissioner as provided by general law of the State of Florida.” The summary would lead voters to believe they were removing this provision, leaving the County Commission without guidance as to expense reimbursement.

Being simply misleading is likely insufficient to defeat a ballot summary, however.² The misstatement must also be material. *Askew*, 421 So. 2d at 157 (Overton, J., concurring). The concept of reimbursement for expenses is somewhat less important than the change in salary calculation method described in the ballot summary, however, for many voters, an assurance that the public treasury will not finance lavish expenses for elected officials may be just as important as the salary itself. Given there are no true examples of misleading ballot summaries where the courts found the misstatements to be immaterial, It would be difficult to conclude with confidence that the inaccurate statement found in the ballot summary here is immaterial.

² While every case that addresses misleading ballot statements has rejected those statements, they all indicate that the offending statements were “materially” misleading. We can presume, therefore, that some misstatements may not be material, but have no precedent to assist with determining what the threshold for materiality is. This memorandum adopts a conservative viewpoint that a misstatement is immaterial only if it is the functional equivalent of a rounding error; that is, saying “reduce by half” when the actual reduction is 50.3%, or similar. *Cf. Carroll v. Firestone*, 497 So. 2d 1204 (Fla. 1986)(rejecting a challenge that a ballot summary was misleading because it did not specifically state that the monies deposited in the “Education Lotteries Trust Fund” were not obligated to be used for education when there was no explicit statement that the monies would be appropriated in any particular way).

The ballot summary as written in the proposed resolution is insufficient to meet the requirements that the summary be clear, unambiguous, and not misleading.

Consistency with general law

A County Charter is the purest form of the exercise of home rule power granted by the Florida Constitution. In the absence of federal or state law (or constitutional authority) to the contrary, the charter is the paramount law of a county. *Hollywood, Inc. v. Broward Cnty.*, 431 So. 2d 606, 609 (Fla. 1983). Regulating the salaries of county officers is unquestionably within the power of the County, so long as it does not run afoul of state or federal provisions.

Chapter 145 of the Florida Statutes, which is referenced in the proposed Resolution, sets forth a uniform method of establishing salaries for County Commissioners. While this may, on its own, be enough to defeat an attempt to alter those salaries by an individual county, there is specific language in section 145.012, Florida Statutes, that allows the provisions of a county charter to alter the method of calculating county officers' salaries. In other words, the proposed amendment is specifically permitted by chapter 145.

As it does not otherwise conflict with general law, the substance of the proposal is proper and would be enforceable if challenged.³

Suggested correction to ballot language

The flawed ballot summary, fortunately, is easily remedied. The only portion that could create confusion is the implication that the entirety of the existing language is to be repealed. Simply removing that implication is likely sufficient to resolve the misstatement. Ballot language such as the following would likely be approved by a court if challenged:

Effective January 1, 2025, shall Article 2, Section 2.6 of the Brevard County Charter be amended to provide that the salary of the Brevard County Board of County Commissioners be determined solely as 90 percent of that set forth in Chapter 145, Florida Statutes for county commissioners, as amended

³ While there may be a constitutional question arising from a reduction in salary for those County Commissioners elected prior to the adoption of the amendment, if adopted, it is likely that question is irrelevant. It could be argued that an elected officer has a property right in a salary as it exists at the time of their election, and for those County Commissioners elected in 2022 (or who take office between now and the 2024 referendum via appointment or special election), the existing salary may be vested. However, it is extraordinarily unlikely that the application of the new formula would cause the salary to decrease; currently, County Commissioners earn \$58,145 in salary while the new formula, based on the most recent calculations of the Legislature's Office of Economic and Demographic Research, indicates the new salary of County Commissioners would be \$87,205.50. In order for the proposed formula to render a salary below the current salary, the population of Brevard County would need to decline by more than 75%. Because the likelihood of this is so remote, a full analysis of the employment law question is unwarranted.

from time to time, which provides a uniform method of compensation for county commissioners with similar duties across the state?

This revision eliminates the potentially misleading “replaced in its entirety” language. It also adds “solely” to clarify that the additional salary provisions in the current version of section 2.6 (such as those limiting salary increases to the average increase for county employees or those providing for nullification) are eliminated by the amendment.

Conclusion

While the proposed Resolution is substantively proper, and does not conflict with general law, the proposed ballot summary is materially misleading in that it states that section 2.6 of the Charter is to be replaced in its entirety, while in fact some of the original language is to remain. Revising the ballot summary as described, however, would resolve the issue.



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September 6, 2022

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Re: Proposed charter amendment regarding County Commission salaries

Dear Mr. Richardson and County Commissioners:

Thank you for the opportunity to review the proposed County Charter amendment the County Commission is considering proposing to the voters. I have drafted a memorandum regarding the proposal at the request of Mr. Liesenfelt, detailing the reasons behind my views on the proposal's consistency with the Florida Constitution, general law, and the County Charter.

As is detailed in the memorandum, these views address only legal sufficiency—I do not express an opinion as to the substantive merits of the proposal itself. As there was a defect in the proposed ballot summary I was presented, I have offered an alternative for the County Commission to consider.

I remain available to assist the County with anything further regarding these proposals or any other matters. I appreciate your trust in including my firm in this process.

Best,

CivForge Law, P.A.
James C. Dinkins
Managing Shareholder

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September 6, 2022

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Re: Review of Proposed 2022 Charter Amendment – Salary for the Board of County Commissioners

Dear Mr. Richardson:

We have reviewed a charter amendment proposed on August 31, 2022 by the Brevard County Board of County Commissioners.

Our review was performed in accordance with the requirements of Subsection 1 of Section 7.4.1 of the Brevard County Charter regarding whether the proposed amendment and its ballot language embrace one subject only and is consistent with the Florida Constitution, general law and the Brevard County Charter.

This letter provides a summary of the review standards in the Brevard County Charter concerning embracing only “one subject” and the consistency of a charter amendment with the Florida Constitution, general law and the Brevard County Charter. It then provides an outline and analysis of the proposed charter amendment reviewed against such standards.

In sum, the proposed charter amendment to determine a County Commissioner's salary at 90 percent of that set forth in Chapter 145 of the Florida Statutes qualifies for placement on the ballot.

Review Standards for the Proposed Charter Amendment

1. **Requirement for the proposed charter amendment to embrace only one subject.** The Florida Supreme Court has explained that the essence of the one-subject requirement is whether the proposal “may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme.”¹ The single-subject rule prevents logrolling, where separate issues are rolled into a single initiative in order to

¹ *Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984) (quoting *City of Coral Gables v. Gray*, 19 So. 2d 318 (Fla. 1944)).

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September 6, 2022

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aggregate votes and secure approval of an otherwise unpopular issue.² The “one subject only” requirement for a proposed charter amendment is a requirement that the Brevard County electors have chosen to apply to proposed charter amendments.³

2. **Requirement for the proposed charter amendment to be consistent with the Florida Constitution.** Subsection 1(g) of Article VIII of the Florida Constitution provides broad home rule powers to charter counties:

Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances. [Emphasis added].

3. **Requirement for the proposed charter amendment to be consistent with general law.** Subsection 101.161(1) of the Florida Statutes requires a summary of the charter amendment to be printed on the ballot in clear and unambiguous language followed by the word “yes” and “no,” styled in such a manner that a “yes” vote will indicate approval of the proposal and a “no” vote will indicate rejection. The ballot summary must be embodied in the enabling resolution and shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.

And, as stated above, Subsection 1(g) of Article VIII of the Florida Constitution requires the proposed amendment to be “not inconsistent with general law. . . .”

4. **Requirement for the proposed charter amendment to be consistent with the Brevard County Charter.** The language the proposed charter amendment must be reviewed and analyzed in light of the existing provisions in the Brevard County Charter.

Analysis of the Proposed Charter Amendment

Proposed Ballot Language:

BREVARD COUNTY CHARTER AMENDMENT, ARTICLE 2, SALARY

Effective January 1, 2025, shall Article 2, Section 2.6 of the Brevard County Charter be replaced in its entirety to provide that the salary of the Brevard County Board of County Commissioners be determined as 90 percent of that set forth in

² *In re Advisory Op. to Att’y Gen. – Save Our Everglades*, 636 So. 2d 1336 (Fla. 1994); *Advisory Op. to Att’y Gen. re Limited Casinos*, 644 So. 2d 71 (Fla. 1994).

³ Generally county charter amendments proposed by a charter review commission are not subject to a statutory or constitutional single-subject requirement. *Charter Review Comm’n of Orange Cty. v. Scott*, 647 So. 2d 835 (Fla. 1994).

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September 6, 2022

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Chapter 145, Florida Statutes for county commissioners, as amended from time to time, which provides a uniform method of compensation for county commissioners with similar duties across the state?

Analysis: Subsection 125.01(1) of the Florida Statutes provides that home rule powers of a county may be exercised “To the extent not inconsistent with general or special law . . .” Sec. 1(g) of Article VIII of the Florida Constitution provides in part that a charter county has all powers of local self-government not inconsistent with general law . . .” Sec. 5(c) of Article II of the Florida Constitution provides that “The powers, duties, compensation and method of payment of state and county officers shall be fixed by law.”

Unless the legislature has preempted a particular subject relating to county government by either general or special law, a county governing body has full authority to act through the exercise of its home rule power.⁴ The legislature has preempted the particular subject relating to salaries of county commissioners, *except with respect to charter counties*.⁵

The proposed amendment embraces only one subject and is consistent with the Florida Constitution, general law and the Brevard County Charter. The proposed charter amendment qualifies for placement on the ballot.

Sincerely,

GrayRobinson, P.A.



Heather M. Ramos

HMR/jg

⁴ *Speer v. Olson*, 367 So. 2d 207 (Fla. 1978).

⁵ Secs. 145.012, 145.301(2), Fla. Stat.