

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 165 Selection and Duties of County Officers

SPONSOR(S): Local Government Affairs Subcommittee; Artiles and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SJR 648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	11 Y, 0 N, As CS	Walker	Miller
2) Judiciary Committee	16 Y, 2 N	Aziz	Havlicak
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

CS/HJR 165 proposes to amend the State Constitution by removing the authority to alter the manner of selecting certain county officers and limiting the ability to abolish a county office and transfer all duties prescribed by general law to another office, either by charter counties or by special law approved by the county electors. As a result, the offices of sheriff, property appraiser, supervisor of elections, tax collector, and clerk of the circuit court would be filled only by vote of the county electors and for terms of four years. One or more of these 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. CS/HJR 165 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.

CS/HJR 165 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 the joint resolution and other necessary materials could be \$96,130.79 to \$100,735.77, 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 2014 general election which was \$135.97 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 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 Five Constitutional Offices can only be altered through charter provision or by special act approved by the voters of the county.¹³ All non-charter counties have the Five Constitutional Officers with statutorily

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 2015-2016*, Appendix B, at 101-07.

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).

¹³ Art. VIII, s. 1(d), Fla. Const.

prescribed duties. Eight charter 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.¹⁴

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.¹⁵ The county reiterated the ability to transfer or add to the powers of each of the county officers.¹⁶ The county has transferred the powers of the clerk of circuit court as auditor, and custodian of county funds to the county manager.¹⁷ Each of the officers remains elected for four year terms.¹⁸

Broward County

Broward County has not altered the constitutionally elected offices and duties of the sheriff, property appraiser, and supervisor of elections.¹⁹ 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.²⁰ Though the clerk of the circuit court also retains the status of constitutional officer, the clerk’s constitutional duties as clerk of the county commission were transferred to the county administrator.²¹

Clay County

Clay County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.²² 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 administrator.²³

Duval County

Duval County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.²⁴ The clerk of the circuit court 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.²⁵

¹⁴ Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia Counties.

¹⁵ 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 (accessed 12/15/2015).

¹⁶ 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 (accessed 12/15/2015).

¹⁷ 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 (accessed 12/15/2015).

¹⁸ 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 (accessed 12/15/2015).

¹⁹ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter, “Definitions”, Oct. 21, 2015 *available at* https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.

²⁰ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter ss. 2.12 & 3.06, Oct. 21, 2015 *available at*, https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.

²¹ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter, “Definitions” & s. 3.03G., Oct. 21, 2015 *available at* https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.

²² CLAY COUNTY FLORIDA, Home Rule Charter, Article III s. 3.1, 2014 Edition, *available at*, <http://www.claycountygov.com/about-us>.

²³ CLAY COUNTY FLORIDA, Home Rule Charter, Article III ss. 3.1 & 2.3, 2014 Edition, *available at* <http://www.claycountygov.com/about-us>.

²⁴ 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* JACKSONVILLE COUNTY FLORIDA, Charter and Related Laws, Part A. ss. 8.01, 9.01, 10.01 & 11.01, *available at* https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA; Art. VIII, s. 6(e), Fla. Const. (1968), incorporating by reference Art. VIII, s. 9, Fla. Const. (1885, as amended in 1934).

²⁵ JACKSONVILLE COUNTY FLORIDA, Charter and Related Laws, Part A. s. 12.06, *available at*, https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA; JACKSONVILLE COUNTY FLORIDA,

Miami-Dade County

Miami-Dade County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections,²⁶ and property appraiser,²⁷ and transferred these powers to the mayor, and granted the mayor the discretion to sub-delegate the powers.²⁸ The duties of the sheriff were transferred to the Police Department, the director of which is appointed by the mayor.²⁹ The duties of the tax collector were transferred to the Department of Finance,³⁰ the director of which is jointly appointed by the mayor and the clerk of court.³¹ The county property appraiser, although not retained as a constitutional office, remains an elected position.³² The duties of the supervisor of elections were transferred to the Elections Department, the director of which is appointed by the mayor.³³ The clerk of the circuit court remains a constitutional, elected officer with some changes in duties.³⁴ 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.³⁵

Orange County

Orange County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser,³⁶ and supervisor of elections.³⁷ Although the clerk of the circuit court also retains the status of constitutional officer,³⁸ the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county comptroller.³⁹

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.

²⁶ Referred to in the Miami-Dade Charter as the "supervisor of registration." See 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.

²⁷ Referred to in the Miami-Dade Charter as the "county surveyor." See 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.

²⁸ 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.

²⁹ 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.

³⁰ 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. See also MIAMIDADE.GOV, Miami-Dade County Finance Department, <http://www.miamidade.gov/finance/> (accessed 10/27/2015).

³¹ 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.

³² MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments> (accessed 10/27/2015).

³³ 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> (accessed 10/27/2015).

³⁴ MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments> (accessed 10/27/2015).

³⁵ MIAMIDADE.GOV, Miami-Dade County Finance Department, <http://www.miamidade.gov/finance/> (accessed 10/27/2015); 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.

³⁶ 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, Sept. 28, 2015 *available at* https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

³⁷ ORANGE COUNTY FLORIDA SUPERVISOR OF ELECTIONS, *About the Supervisor*, <http://www.ocfelections.com/aboutbillcowles.aspx> (accessed 10/28/2015).

³⁸ ORANGE COUNTY FLORIDA, Code of Ordinances, Part I s. 2-66, Sept. 28, 2015, *available at* https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

³⁹ ORANGE COUNTY FLORIDA, Code of Ordinances, Part I s. 2-67, Sept. 28, 2015, *available at* https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

STORAGE NAME: h0165c.JDC

DATE: 1/13/2016

Osceola County

Osceola County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.⁴⁰ The clerk of the circuit court retains the status of constitutional officer but the clerk's duties as clerk of the county commission, auditor, and custodian of funds were transferred to the county manager.

Volusia County

Volusia County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections, and property appraiser. The county transferred these officers' powers to new charter offices. The duties of the sheriff were transferred to and divided between the Departments of Public Safety and of Corrections.⁴¹ The duties of the tax collector were transferred to the Department of Finance.⁴² The duties of the property appraiser were transferred to Department of Property Appraisal.⁴³ The duties of the supervisor of elections were transferred to the Department of Elections.⁴⁴ The sheriff, property appraiser, and supervisor of elections are elected directors of their respective offices.⁴⁵ The tax collector is appointed by the county manager and confirmed by the county council.⁴⁶ The clerk of the circuit court remains a constitutionally elected officer except that the clerk's constitutional duties as clerk of the county commission were transferred to and divided between the Department of Central Services and the Department of Finance.⁴⁷

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" could be 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 law."⁴⁸ 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.⁴⁹

⁴⁰ 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.

⁴¹ 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.

⁴² 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.

⁴³ 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.

⁴⁴ 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.

⁴⁵ VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter ss. 401 & 601.1(1)(b), https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO.

⁴⁶ 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; VOLUSIA.ORG, Revenue Division-Tax Collection, <http://www.volusia.org/services/financial-and-administrative-services/revenue-services/> (accessed 10/28/2015).

⁴⁷ CLERK OF THE CIRCUIT COURT, VOLUSIA COUNTY FLORIDA, Overview, <https://www.clerk.org/html/about.aspx#Overview> (last visited Oct. 28, 2015); 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.

⁴⁸ Art. VIII, s. 1(g), Fla. Const.

⁴⁹ 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).

Term Limits

Three charter counties have imposed term limits on one or more of the Five Constitutional Officers.⁵⁰ 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.⁵¹

Recall

Five counties have charters expressly providing for the recall of one or more of the Five Constitutional Officers.⁵² 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.⁵³

Non-partisan Elections

Seven counties require non-partisan elections for some or all elections of the Five Constitutional Officers.⁵⁴ 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.⁵⁵

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:⁵⁶ Duval,⁵⁷ Monroe,⁵⁸ Dade (later renamed Miami-Dade),⁵⁹ and Hillsborough.⁶⁰ 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.”⁶¹ Whether amending art. VIII, s. 1(d) alone would be 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 all Five Constitutional Officers for all counties shall be controlled exclusively by art. VIII, s. 1.

⁵⁰ Duval, Orange, and Sarasota Counties.

⁵¹ *Telli v. Broward County*, supra at n. 49.

⁵² Brevard, Clay, Duval, Miami-Dade, and Sarasota Counties.

⁵³ Section 100.361, F.S.

⁵⁴ Lee, Leon, Miami-Dade, Orange, Palm Beach, Polk, and Volusia Counties.

⁵⁵ 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).

⁵⁶ Art. VIII, s. 6(e), Fla. Const.

⁵⁷ Art. VIII, s. 9, Fla. Const. (1885).

⁵⁸ Art. VIII, s. 10, Fla. Const. (1885).

⁵⁹ 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 11/4/2015).

⁶⁰ 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 <http://www.hillsboroughcounty.org/>.

⁶¹ 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. *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).

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 will have no impact on non-charter counties⁶² or those charter counties that retained the Five Constitutional Officers without any changes to their selection or authority.⁶³ Those charter counties which changed the selection or authority of any of the Five Constitutional Officers⁶⁴ 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 8th, 2019. 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 2018 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 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 8, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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 estimated the average cost per word to advertise an amendment to the State Constitution is \$135.97 for this fiscal year. The department has estimated the publication costs for advertising the joint resolution will be at least \$96,130.79 to \$100,735.77, possibly greater, depending on the final wording of the joint resolution and the resulting ballot language.⁶⁵

⁶² 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.

⁶³ Alachua, Charlotte, Columbia, Hillsborough, Lee, Leon, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Wakulla Counties.

⁶⁴ See supra at n. 14.

⁶⁵ 2016 Agency Legislative Bill Analysis, Department of State, HJR 165 (10/27/2015), available to Legislators and staff at <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=5939&yr=2016> (accessed 10/29/2015), and a copy of which is maintained on file by the Local Government Affairs Subcommittee.

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, those charter counties that retained the Five Constitutional Officers without any changes to their selection or authority, or those counties that only revised the manner of selecting the tax collector. Those charter counties which changed the selection or authority of any of the remaining 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:

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.⁶⁶ 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.⁶⁷

⁶⁶ Art. XI, s. 5(a), Fla. Const.

⁶⁷ Art. XI, s. 5(d), Fla. Const.

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.⁶⁸ 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.⁶⁹ 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”⁷⁰ and the fact that the Constitution does not expressly prohibit the imposition of term limits by charter counties on the Five Constitutional Officers.⁷¹ 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,⁷² imposing non-partisan election 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.⁷³

Recall of Constitutional Officers

Recall of county officers by charter counties is statutorily authorized.⁷⁴ 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

On November 4, 2015, the Local Government Affairs Subcommittee adopted one amended strike all to the joint resolution. This amendment makes tax collectors subject to the same provisions of the joint resolution as

⁶⁸ Art. XI, s. 5(e), Fla. Const.

⁶⁹ *Telli v. Broward County*, supra at n. 49, adopting with approval the rationale of the dissent in *Cook v. City of Jacksonville*, 823 So. 2d 86, 95-96 (2002) (Anstead, J., dissenting).

⁷⁰ *Telli v. Broward County*, supra at n. 49, 512.

⁷¹ *Id.* See also *State ex rel. Askew v. Thomas*, 293 So. 2d 40, 42-43 (Fla. 1974).

⁷² See n. 55, supra.

⁷³ See *Telli v. Broward County*, supra at n. 49.

⁷⁴ Section 100.361, F.S.

the other four constitutional officers. The amendment also provides that any of the Five Constitutional Offices may be abolished and its duties transferred to other officers through special act subject to approval of the county's electors through referendum. The amendment clarifies that the proposed constitutional amendment is applicable to all counties irrespective of the provisions in art. VIII, s. 6(e) of the Constitution. Finally, the amendment creates art. XII, s. 34 of the Constitution which delays the implementation of the constitutional amendment until January 8, 2019, in order to provide affected charter counties time to amend their charters and hold elections.

This analysis is drawn to the joint resolution as amended.