

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Ethics and Elections

BILL: CS/SJR 648

INTRODUCER: Community Affairs Committee and Senator Hutson

SUBJECT: County Officers

DATE: January 7, 2016

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Present | Yeatman | CA | Fav/CS |
| 2. | Carlton | Roberts | EE | Pre-meeting |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SJR 648 proposes to amend the Florida Constitution by limiting the authority 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, 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 4 years. 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. 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.

II. Present Situation:

Article VIII of the Florida 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. Any county not having a chartered form of consolidated government may, pursuant to the provisions of ss. 125.60-125.64, F.S., locally initiate and adopt by a majority vote of the qualified electors of the county a county home rule charter.⁴ A special constitutional provision provides unique authorization for the Miami-Dade County home rule charter.⁵ Currently, 20 Florida counties have adopted charters.⁶

Charter Commission

Creation of Charter Commission

After the adoption of a resolution by the board of county commissioners, or upon the submission of a petition to the county commission signed by at least 15 percent of the qualified electors of a county requesting that a charter commission be established, a charter commission shall be appointed within 30 days of the adoption of the resolution or filing of the petition.⁷ The charter commission must be composed of an odd number of not less than 11 nor more than 15 members.⁸ The members of the commission must be appointed by the board of county commissioners of the county or, if so directed in the initiative petition, by the legislative delegation. No member of the Legislature or the board of county commissioners may be a member of the charter commission.⁹

¹ Art. VIII, s. 1(a), Fla. Const.

² Art. VIII, s. 2(a), Fla. Const.

³ Section 125.60, F.S.

⁴ *Id.*

⁵ 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).

⁶ 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 101-107.

⁷ Section 125.61(1), F.S.

⁸ Section 125.61(2), F.S.

⁹ *Id.*

Duties of Charter Commission

The charter commission must meet within 30 days after appointment for organization purposes and must elect a chair and vice chair from its membership.¹⁰ The charter commission must conduct a comprehensive study of county government operations and of the ways in which the county government might be improved or reorganized.¹¹ Within 18 months after its initial meeting, unless such time is extended by resolution of the board of county commissioners, the charter commission must present a proposed charter to the board of county commissioners.¹² The charter commission must conduct 3 public hearings at intervals of not less than 10 nor more than 20 days regarding the proposed charter. At the final hearing, the charter commission must incorporate any amendments it deems desirable, vote upon the proposed charter, and forward the charter to the board of county commissioners for the holding of a referendum.¹³

Submission of the Charter to the Voters¹⁴

Upon submission of the charter to the board of county commissioners, the board must call a special election to determine whether the qualified electors approve the proposed charter. The referendum election must be held not more than 90 nor less than 45 days after the receipt of the proposed charter.

If a majority of voters favor the adoption of the proposals in the new charter, the charter becomes effective on January 1 of the next year or at such other time as provided by the charter. Once adopted by the electors, the charter may be amended only by a vote of the county electors. If a majority of voters reject the adoption of the proposals in the new charter, a new referendum may not be held for two years following the date of the referendum.

After the acceptance or rejection of the proposed charter by the qualified electors, the charter commission is dissolved, and all property of the charter commission becomes property of the county.

Differences between Charter Counties and Non-Charter Counties¹⁵

Structure

The structure of the government of a non-charter county is specified in the Florida Constitution and in the Florida Statutes. As a result, non-charter counties may only change the structure of county government through amendments to the Florida Constitution or the Florida Statutes. In contrast, the structure of a charter county is specified in the charter as approved by the county's electorate. This flexibility allows a charter county to alter its structure in order to meet the needs of the county.

¹⁰ Section 125.62, F.S.

¹¹ Section 125.63, F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ Section 125.64, F.S.

¹⁵ The Florida Association of Counties, *Basic Differences between Charter and Non-Charter Counties* (Mar. 2008), available at <http://www.fl-counties.com/docs/legal-documents-links/basic-differences-between-charter-and-non-charter-counties-pdf.pdf?sfvrsn=0> (last visited Nov. 19, 2015).

Powers of Self-Government

A non-charter county has such powers of self-government as provided by general¹⁶ or special law.¹⁷ Alternatively, a charter county has all powers of self-government *not inconsistent* with general law or special law approved by the county voters.¹⁸ Accordingly, charter counties may take any action as long as it does not conflict with state law, whereas non-charter counties may only do what state law allows them to do.

Initiative, Referendum, and Recall of County Officers

The Florida Statutes do not provide for initiative¹⁹, referendum²⁰, or recall²¹ of county officers in a non-charter county. As a result, non-charter counties do not have the power to take these actions. On the other hand, a charter county may provide for initiative, referendum, and recall of county officers in its charter.

Administrative Code

The Florida Statutes do not require an administrative code for non-charter counties. As a result, a non-charter county may not require an administrative code. Conversely, charter counties may require an administrative code in its charter which details all regulations, policies, and procedures.

Utility Taxation

A non-charter county may not levy a utility tax in an unincorporated area of the county. However, a charter county may provide for the levying of such a tax in an unincorporated area of the county.

Special Acts

In a non-charter county, the Legislature can adopt a special act, and it is effective without the approval of the electors. However, in a charter county, a special act adopted by the Legislature is not effective unless the special act is also approved by a vote of the local electorate.

Municipal Ordinances

In a non-charter county, if there is a conflict between a municipal ordinance and a county ordinance, the municipal ordinance prevails within that municipality. On the contrary, an ordinance from a charter county will prevail over a conflicting municipal ordinance if such an instance is provided for in the county charter.

¹⁶ Ch. 125, Part I, F.S.

¹⁷ Art. VIII, s. 1(f), Fla. Const.

¹⁸ Art. VIII, s. 1(g), Fla. Const.

¹⁹ Initiative is the ability of citizens to petition to call for a referendum to consider charter revisions.

²⁰ Referendum is the ability of citizens to review and make periodic recommendations for revisions to the charter which are consistent with the petition and charter review requirements stipulated by the charter.

²¹ Recall is the ability of citizens to remove a county commissioner from office for those reasons consistent with the Florida Statutes and the petition requirements stipulated in the charter.

County Officers under the Florida Constitution

The Florida 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).²² 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 4 years. These officers have prescribed duties provided for in general law.²³

The five constitutional offices can only be altered through charter provision or by special act approved by the voters of the county.²⁴ All non-charter counties have the five constitutional officers with statutorily 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.²⁵

Brevard County

Brevard “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.²⁶ The county reiterated the ability to transfer or add to the powers of each of the county officers.²⁷ The county has transferred the powers of the clerk of circuit court as auditor, and custodian of county funds to the county manager.²⁸ Each of the officers remains elected for 4 year terms.²⁹

Broward County

Broward County has not altered the constitutionally elected offices and duties of the sheriff, property appraiser, and supervisor of elections.³⁰ 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

²² Art. VIII, s. 1(d), Fla. Const. In a separate subsection, the constitution provides for 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.

²³ See ch. 30, F.S. (setting forth certain duties of the sheriff as a constitutional officer); ch. 197, F.S. (setting forth certain duties of the tax collector as a constitutional officer); ch. 193, Part I, F.S. (setting forth certain duties of the property appraiser as a constitutional officer); ch. 102, F.S. (setting forth certain duties of the supervisor of elections as a constitutional officer); ch. 28, F.S. (setting forth certain duties of the clerk of the circuit court as a constitutional officer).

²⁴ Art. VIII, s. 1(d), Fla. Const.

²⁵ Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia Counties.

²⁶ BREVARD COUNTY FLORIDA, Code of Ordinances, Part I s. 4.1, *available at* https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534.

²⁷ BREVARD COUNTY FLORIDA, Charter, Part I ss. 4.2.1, 4.2.2, 4.2.3, 4.2.4 & 4.2.5, *available at* https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534.

²⁸ BREVARD COUNTY FLORIDA, Code of Ordinances, s. 2-73, *available at* https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534.

²⁹ BREVARD COUNTY FLORIDA, Code of Ordinances, Part I s. 4.1.1, *available at* https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534.

³⁰ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter, “Definitions”, *available at* https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.

administrator.³¹ 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.³²

Clay County

Clay County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.³³ 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.³⁴

Duval County

Duval County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.³⁵ 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.³⁶

Miami-Dade County

Miami-Dade County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections,³⁷ and property appraiser,³⁸ transferred these powers to the mayor, and granted the mayor the discretion to sub-delegate the powers.³⁹ The duties of the sheriff were transferred to

³¹ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter ss. 2.12 & 3.06, *available at*, https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.

³² BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter, "Definitions" & s. 3.03G., *available at* https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances.

³³ CLAY COUNTY FLORIDA, Home Rule Charter, Article III, s. 3.1, 2014 Edition, *available at*, <http://www.claycountygov.com/about-us>.

³⁴ CLAY COUNTY FLORIDA, Home Rule Charter, Article III, ss. 3.1 & 2.3, 2014 Edition, *available at* <http://www.claycountygov.com/about-us>.

³⁵ 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. Duval County currently does not have the authority to abolish the office of the sheriff or the clerk of court. Art. VIII, s. 6(e), Fla. Const., (1968), incorporating by reference Art. VIII, s. 9, Fla. Const. (1885, as amended in 1934). 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).

³⁶ 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, 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.

³⁷ 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, available at https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

³⁸ 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, available at https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

³⁹ MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.01, available at https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

the police department, the director of which is appointed by the mayor.⁴⁰ The duties of the tax collector were transferred to the department of finance,⁴¹ the director of which is jointly appointed by the mayor and the clerk of court.⁴² The county property appraiser, although not retained as a constitutional office, remains an elected position.⁴³ The duties of the supervisor of elections were transferred to the elections department, the director of which is appointed by the mayor.⁴⁴ The clerk of the circuit court remains a constitutional, elected officer with some changes in duties.⁴⁵ 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.⁴⁶

Orange County

Orange County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser,⁴⁷ and supervisor of elections.⁴⁸ Although the clerk of the circuit court also retains the status of constitutional officer,⁴⁹ the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county comptroller.⁵⁰

Osceola County

Osceola County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.⁵¹ 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.

⁴⁰ 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.

⁴¹ 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/>.

⁴² MIAMI-DADE COUNTY FLORIDA, Constitutional Amendment and Charter, Part I s. 5.03, *available at* https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

⁴³ MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments>.

⁴⁴ 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>.

⁴⁵ MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments>.

⁴⁶ MIAMIDADE.GOV, Miami-Dade County Finance Department, <http://www.miamidade.gov/finance/>; MIAMI-DADE COUNTY FLORIDA, Constitutional Amendment and Charter, Part I s. 9.10, *available at* https://www.municode.com/library/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH.

⁴⁷ 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, *available at* https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

⁴⁸ ORANGE COUNTY FLORIDA SUPERVISOR OF ELECTIONS, *About the Supervisor*, <http://www.ocfelections.com/aboutbillcowles.aspx>.

⁴⁹ ORANGE COUNTY FLORIDA, Code of Ordinances, Part I s. 2-66, *available at* https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

⁵⁰ ORANGE COUNTY FLORIDA, Code of Ordinances, Part I s. 2-67, *available at* https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances.

⁵¹ OSCEOLA COUNTY FLORIDA, Home Rule Charter, Article III s. 3.01, *available at* https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534.

Volusia County

Volusia County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections, and property appraiser. The county transferred these offices' powers to new charter offices. The duties of the sheriff were transferred to and divided between the department of public safety and the department of corrections.⁵² The duties of the tax collector were transferred to the department of finance.⁵³ The duties of the property appraiser were transferred to the department of property appraisal.⁵⁴ The duties of the supervisor of elections were transferred to the department of elections.⁵⁵ The sheriff, property appraiser, and supervisor of elections are elected directors of their respective offices.⁵⁶ The tax collector is appointed by the county manager and confirmed by the county council.⁵⁷ 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.⁵⁸

Existing Selection and Removal Procedures for Constitutional Officers in Charter Counties

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

⁵² 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.

⁵³ 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.

⁵⁴ 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.

⁵⁵ 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.

⁵⁶ 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.

⁵⁷ 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/>.

⁵⁸ CLERK OF THE CIRCUIT COURT, VOLUSIA COUNTY FLORIDA, Overview, <https://www.clerk.org/html/about.aspx#Overview>; 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.

⁵⁹ Art. VIII, s. 1(g), Fla. Const.

⁶⁰ Current statute and case law also 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

Term Limits

Three charter counties have imposed term limits on one or more of the five constitutional officers.⁶¹ Although the imposition of term limits on the five constitutional officers is not constitutionally or statutorily prohibited, or expressly endorsed, the imposition of term limits currently is interpreted to be within the broad home rule power of the charter.⁶²

Recall

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

Non-partisan Elections

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

III. Effect of Proposed Changes:

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 counties⁶⁷ and those charter counties that retained the five constitutional officers without any changes to their selection or authority.⁶⁸ Charter counties that changed the selection or authority of any of the five constitutional officers will be required to revise their charters and ordinances to conform to the revised constitutional requirement.⁶⁹

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.

(Fla. 2012) (allowing charter counties to adopt term limits on county commissioners and explicitly overruling a prior case which barred this in the case of the five constitutional officers).

⁶¹ Duval, Orange, and Sarasota Counties.

⁶² *Telli v. Broward County*, supra at n. 60.

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

⁶⁴ Section 100.361, F.S.

⁶⁵ Lee, Leon, Miami-Dade, Orange, Palm Beach, Polk, and Volusia Counties.

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

⁶⁷ 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.

⁶⁸ Alachua, Charlotte, Columbia, Hillsborough, Lee, Leon, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Wakulla Counties.

⁶⁹ See supra at n. 25.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions in Article VII, section 18 of the Florida Constitution do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XI, section 1 of the Florida Constitution authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

Article XI, section 5(a) of the Florida Constitution and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”⁷⁰

Article XI, section 5(d) of the Florida 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 6th 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 Florida 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.⁷¹

Article XI, section 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose.

⁷⁰ *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

⁷¹ 2016 Agency Legislative Bill Analysis, Department of State, HJR 165.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Charter counties that changed the selection or authority of any of the five constitutional officers will incur an indeterminate negative fiscal impact to the extent of having to revise their charters and ordinances to conform to the revised constitutional requirement.

Article XI, section 5(d) of the Florida 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 6th 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 Florida 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.⁷²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

No statutes are affected. However, the amendment proposed by this joint resolution, if approved by the electorate and implemented by the Legislature, would amend Article VIII, section 1 of the Florida Constitution.

⁷² 2016 Agency Legislative Bill Analysis, Department of State, HJR 165 (10/27/2015).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on December 1, 2015:

Makes tax collectors subject to the same provisions of the joint resolution as the other four constitutional officers. Specifically, the amendment removes an exception which permitted a tax collector to be selected in a manner other than by election when provided by county charter or special law. As a result, a tax collector may now only be chosen through an election by the county's electors.

- B. **Amendments:**

None.