

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HJR 131 Recall of County Officers and Commissioners

**SPONSOR(S):** Rudman and others

**TIED BILLS:** HB 209 **IDEN./SIM. BILLS:**

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Local Administration, Federal Affairs & Special Districts Subcommittee	17 Y, 0 N	Roy	Miller
2) Ethics, Elections & Open Government Subcommittee			
3) State Affairs Committee			

**SUMMARY ANALYSIS**

Art. VIII, s. 1 of the Florida Constitution provides the framework for county government in Florida, including requiring counties to be governed by a board of county commissioners and establishing the offices of sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court.

The county officers created in the Florida constitution and county commissioners may be removed from office when their terms expire or if suspended by the Governor and removed by the Senate. A county charter also may provide for recall of county commissioners or county constitutional officers, or both.

HJR 131 proposes amending the Florida Constitution to allow the Legislature to provide by general law for the recall of county officers and commissioners. Each chamber of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. Approval of the joint resolution by the Legislature with a three-fifths vote would place the amendment on the ballot for the next general election or at an earlier special election specifically authorized by law for that purpose.

**A joint resolution proposing an amendment to the State 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:

#### Current Situation

##### County Officers and Commissioners

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 counties<sup>1</sup> and has the authority to choose to create municipalities.<sup>2</sup>

Pursuant either to general or special law, a county government may be adopted by charter approved by the county voters.<sup>3</sup> A county without a charter has such powers of self-government as provided by general<sup>4</sup> or special law.<sup>5</sup> A county with a charter has all powers of self-government not inconsistent with general law or special law approved by the county voters.<sup>6</sup> The Florida Constitution provides unique authorization<sup>7</sup> for specific home rule charters including those of Duval<sup>8</sup> and Miami-Dade Counties.<sup>9</sup> Currently, 20 Florida counties have adopted charters.<sup>10</sup>

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).<sup>11</sup> 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.<sup>12</sup> The continuation, duties, or term in office of each of the five constitutional offices may not be altered.

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<sup>1</sup> Art. VIII, s. 1(a), Fla. Const.

<sup>2</sup> Art. VIII, s. 2(a), Fla. Const.

<sup>3</sup> S. 125.60, F.S.

<sup>4</sup> Ch. 125, Part I, F.S.

<sup>5</sup> Art. VIII, s. 1(f), Fla. Const.

<sup>6</sup> Art. VIII, s. 1(g), Fla. Const.

<sup>7</sup> Art. VIII, s. 6(e), Fla. Const., incorporating by reference ss. 9, 10, 11, 24 from article VIII of the 1885 Constitution, states that these specific provisions respectively 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.”

<sup>8</sup> 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).

<sup>9</sup> 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).

<sup>10</sup> 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, Appendix C, p. 106, at <https://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&Committeed=3227&Session=2023&DocumentType=General+Publications&FileName=2022+Local+Government+Formation+Manual.pdf> (last visited Jan. 28, 2023).

<sup>11</sup> Art. VIII, s. 1(d), Fla. Const.

<sup>12</sup> 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).

Other provision for the county government duties of the Clerk of the Court may be made as provided under article V, section 16 of the Florida Constitution or by special act approved by the voters of the county.<sup>13</sup>

The Constitution also provides that each county, except as otherwise provided by a county charter, is governed by a board of county commissioners composed of five or seven members serving staggered four-year terms.<sup>14</sup> Each county must be divided into districts that are contiguous and as nearly equal in population as practicable, which are redrawn after each decennial census. One commissioner must reside in each district as provided by law.

The default method created by general law provides that each county has a five-member commission, with a commissioner representing each district elected at-large by all voters of the county.<sup>15</sup> Subject to approval in a referendum of the county's voters, the commission may alternatively be structured as:

- A five-member board, with each member elected only by the qualified electors who reside in the same county commission district as the commissioner; or
- A seven-member board, with five members elected only by the qualified electors who reside in the same county commission district as the commissioner and two members elected at-large.<sup>16</sup>

Most counties use the default five-member board, elected at-large method, while 20 counties elect commissioners from single-member districts and seven counties use the seven-member board system.<sup>17</sup>

### Recall of Officials

General law provides for the recall of members of the governing body of a municipality or charter county. The recall process begins with a petition of the electors of the district (or the entire governmental unit if the subject member is elected at large).<sup>18</sup> The petition must include the name of the member sought to be recalled and a statement of grounds for the recall.<sup>19</sup> The statement of grounds must describe malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or conviction of a felony involving moral turpitude.<sup>20</sup> A separate petition is required for each member sought to be recalled.<sup>21</sup>

The recall petition must be signed by the greater of a set population threshold based on size of the municipality, county, or district, or ten percent of the registered voters of the municipality, county, or district.<sup>22</sup> The petition process must be completed within 30 days after the first signature is obtained and the completed petition must be submitted to the clerk of the municipality or county by the chair of the recall committee.<sup>23</sup> After receipt of the petition, the clerk is responsible for submitting the petition to the supervisor of elections for the purpose of verifying signatures.<sup>24</sup>

If the requisite number of signatures has been obtained, and the supervisor of elections determines a sufficient number of signatures are valid, the clerk of the county or municipality must serve a certified

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<sup>13</sup> Art. VIII, s. 1(d), Fla. Const.

<sup>14</sup> Art. VIII, s. 1(e), Fla. Const.

<sup>15</sup> S. 124.011(1), F.S.

<sup>16</sup> S. 124.011(1)(a)-(b), F.S.

<sup>17</sup> Fla. Association of Counties, County Districting, <https://www.fl-counties.com/county-districting> (last visited Jan. 26, 2023). On November 8, 2022, the voters of Alachua County approved an amendment to s. 2.2(A) the county charter and now require county commissioners to be elected only by the qualified electors within their respective districts. See ch. 2022-257, Laws of Fla.

<sup>18</sup> S. 100.361(1), F.S.

<sup>19</sup> S. 100.361(2)(a), F.S.

<sup>20</sup> S. 100.361(2)(a), F.S.

<sup>21</sup> S. 100.361(2)(a), F.S.

<sup>22</sup> S. 100.361(2)(b), F.S.

<sup>23</sup> S. 100.361(2)(f), F.S. The recall committee consists of all electors of the municipality, county, or district making charges contained in the statement of grounds for recall, as well as those signing the recall petition. One member of the recall committee must serve as the chair. S. 100.361(2)(c), F.S.

<sup>24</sup> S. 100.361(2)(g), F.S.

copy of the petition to the member for which a recall is sought.<sup>25</sup> The member has five days after service within which to file a defensive statement with the clerk. Upon receipt of the defensive statement, the clerk, within five days, must prepare a sufficient number of copies of the petition and defensive statement, and copies of the names, addresses, and oaths on the original petition. The clerk must deliver these copies to the chair of the sponsoring committee and obtain a receipt from the chair. The clerk's prepared copies are referred to as the "Recall Petition and Defense."<sup>26</sup>

The Recall Petition and Defense must be signed by at least 15 percent of the electors.<sup>27</sup> The chair of the recall committee has 60 days from the delivery of the "Recall Petition and Defense" to obtain signatures and file the petition with the clerk. The clerk, after assembling the petitions and checking witness oaths, must deliver the petition to the supervisor of elections, who verifies signatures, purges all names stricken, and certifies within 30 days if the petition contains the requisite number of signatures.<sup>28</sup> The supervisor must report his or her findings to the governing body.

If the required signatures are not obtained, the clerk must report this information to the governing body, file the petitions with the county supervisor of elections, and terminate the proceedings.<sup>29</sup> The petitions cannot be used again. If the required signatures are obtained, the clerk must serve notice on the member being recalled and deliver to the governing body a certificate stating the percentage of qualified voters who signed.

If the member does not resign within five days of the receipt of the final notice, the chief judge of the judicial circuit sets the date for a recall election to occur no less than 30 days and no more than 60 days after the expiration of the five-day period in which the member may have resigned.<sup>30</sup> If the recall election results in a single vacancy, the vacancy is filled by the governing body using the ordinary method provided by law for filling vacancies.<sup>31</sup> If multiple members of the governing body are subject to recall, any potential vacancy may be filled by a special election held at the same time as the recall (for positions elected at-large) or at a special election held less than 30 days and no more than 60 days after the recall election (for positions elected from districts).<sup>32</sup>

A member may be recalled only after serving at least one-fourth of the term of office. A member against whom a recall petition is filed is not eligible for appointment to the governing body for two years following recall or resignation after a petition has been filed.<sup>33</sup>

In addition to the above-described provision of law, most charter counties provide for recall in their charters.<sup>34</sup> While not expressly identified in article VIII, section 1(d) of the State Constitution, there is no constitutional prohibition limiting the ability of a county charter to impose additional removal procedures on county officers or commissioners. The broad home rule powers of charter counties allow them to act so long as the action taken is not "inconsistent with general law, or with special law approved by vote of the electors."<sup>35</sup>

Apart from the power of charter counties to provide for recall, the constitution provides for four-year terms of county officers.

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<sup>25</sup> S. 100.361(3), F.S.

<sup>26</sup> S. 100.361(3)(b), F.S.

<sup>27</sup> S. 100.361(3)(c), F.S.

<sup>28</sup> S. 100.361(3)(e), F.S.

<sup>29</sup> S. 100.361(3)(d)-(f), F.S.

<sup>30</sup> S. 100.361(4), F.S. If a general or special election is set within the time period, the recall election must be set on the same day.

<sup>31</sup> S. 100.361(6)(d), F.S.

<sup>32</sup> S. 100.361(6)(a)-(b), F.S.

<sup>33</sup> S. 100.361(8), F.S.

<sup>34</sup> Of the state's 20 charter counties, 18 provide for the recall of county commissioners. Additionally, the charters of Brevard, Clay, Duval, Miami-Dade, and Sarasota provide for the recall of the Five Constitutional Officers. See Fla. Association of Counties, *Charter County Information*, available at <https://www.fl-counties.com/sites/default/files/2021-03/Charter%20County%20Provision%20Comparisons.2020.pdf> (last visited Jan. 28, 2023).

<sup>35</sup> Art. VIII, s. 1(g), Fla. Const.

## Effects of Proposed Changes

The joint resolution proposes an amendment to the Florida Constitution authorizing the Legislature to provide by general law for the recall of county officers and commissioners.

The joint resolution must pass each chamber with a three-fifths vote before it may be placed on the ballot. Thereafter, it must be approved by at least 60 percent of the electors voting on the measure.

### B. SECTION DIRECTORY:

Not applicable.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

Article XI, section 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The Division of Elections must advertise the full text of the amendment twice in a newspaper of general circulation in each county where the amendment will appear on the ballot. The Division must also provide each supervisor of elections with either booklets or posters displaying the full text of each proposed amendment.<sup>36</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The mandates provision applies only to general laws, not to a joint resolution proposing to amend the state Constitution.

#### 2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**