

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 209 Recall of County Commissioners

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

**TIED BILLS:** HJR 131 **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	16 Y, 0 N	Roy	Miller
2) Ethics, Elections & Open Government Subcommittee	17 Y, 1 N	Poreda	Toliver
3) State Affairs Committee	15 Y, 0 N	Roy	Williamson

**SUMMARY ANALYSIS**

Article 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.

County commissioners and county constitutional officers may be removed from office 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.

A member of a governing body of a municipality or charter county may be subject to recall if a petition alleging the grounds for recall is signed by a sufficient number of voters in the municipality, county, or district in which the member was elected. If enough voters sign the petition, the allegations, as well as the member's response to those allegations, are presented to the public as a document entitled "Recall Petition and Defense." If a sufficient number of voters sign the "Recall Petition and Defense," a recall election is held.

HJR 131 (2023) proposes an amendment to the Florida Constitution to allow the Legislature to provide by general law for the recall of any county officer or commissioner. This bill implements the HJR 131 if it is placed on the ballot and approved by the electors at the next general election.

The bill revises existing procedures for the recall of members of the governing body of a charter county or municipality to include the governing body of a noncharter county.

The bill may have a fiscal impact on non-charter counties related to any recall elections that might be held if the bill becomes law.

The bill is effective upon voter approval of HJR 131.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### 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 create municipalities.<sup>2</sup>

Pursuant either to general<sup>3</sup> 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 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 Florida Constitution creates five specific county officers: sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court (collectively, the five county constitutional 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 and have duties prescribed in general law.<sup>12</sup> The continuation, duties, or term in office of each of the five county constitutional officers may not be altered. Other provision for the county government duties of the clerk of the court may be made as

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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. 2020-2022 The Local Government Formation Manual, p. 104-108, at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf>, (last visited Jan. 27, 2023).

<sup>11</sup> Art. VIII, s. 1(e), 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).

provided under art. V, s. 16 of the Florida Constitution or by special act approved by the voters of the county.<sup>13</sup>

The Florida 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>

### Gubernatorial Suspension

The Governor may suspend any county officer from office for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.<sup>18</sup> During the suspension period, the Governor may appoint a replacement officer and may reinstate the suspended officer at any time before removal by the Senate.<sup>19</sup>

### Recall of Officials

General law currently 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>20</sup> The petition must include the name of the member sought to be recalled and a statement of grounds for the recall.<sup>21</sup> The statement of grounds may not exceed 200 words and must describe malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or conviction of a felony involving moral turpitude.<sup>22</sup> A separate petition is required for each member sought to be recalled.<sup>23</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 10 percent of the registered voters of the municipality, county, or district.<sup>24</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

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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. 10, 2022).

<sup>18</sup> Art. IV, s. 7(a), Fla. Const.

<sup>19</sup> Art. IV, s. 7(a) and (b), Fla. Const.

<sup>20</sup> S. 100.361(1), F.S.

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

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

<sup>23</sup> S. 100.361(2)(a), F.S.

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

the recall committee.<sup>25</sup> After receipt of the petition, the clerk is responsible for submitting the petition to the supervisor of elections (supervisor) for the purpose of verifying signatures.<sup>26</sup>

If the requisite number of signatures has been obtained, and the supervisor determines a sufficient number of signatures are valid, the clerk of the county or municipality must serve a certified copy of the petition to the member for which a recall is sought.<sup>27</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 recall committee and obtain a receipt from the chair. The clerk's prepared copies are referred to as the "Recall Petition and Defense."<sup>28</sup>

The "Recall Petition and Defense" must be signed by at least 15 percent of the electors.<sup>29</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, who verifies signatures, purges all names stricken, and certifies within 30 days if the petition contains the requisite number of signatures.<sup>30</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 supervisor, and terminate the proceedings.<sup>31</sup> The petitions cannot be used again. If, however, 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 the petition.

If the member does not resign within five days from receiving the final notice, the chief judge of the judicial circuit sets a 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.<sup>32</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>33</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>34</sup>

A member can only be recalled if he or she has served at least one-fourth of the term of office. A member is not eligible for appointment to the governing body for two years following recall or resignation after a recall petition has been filed against him or her.<sup>35</sup>

Additionally, most charter counties provide for recall in their charters.<sup>36</sup> While not expressly identified in art. VIII, s. 1(d) of the Florida Constitution, there is no constitutional prohibition limiting the ability of charter counties to impose additional removal procedures on county commissioners. The broad home

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<sup>25</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>26</sup> S. 100.361(2)(g), F.S.

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

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

<sup>29</sup> S. 100.361(3)(c), F.S.

<sup>30</sup> S. 100.361(3)(e), F.S.

<sup>31</sup> S. 100.361(3)(f), F.S.

<sup>32</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>33</sup> S. 100.361(6)(d), F.S.

<sup>34</sup> S. 100.361(6)(a)-(b), F.S.

<sup>35</sup> S. 100.361(8), F.S.

<sup>36</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).

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>37</sup> Thus, a charter county currently may modify its recall procedures through charter amendment or special law approved by the voters.<sup>38</sup>

Apart from the power of charter counties to provide for recall, the Florida Constitution provides for four-year terms of county officers.<sup>39</sup>

### HJR 131 (2023)

HJR 131 proposes an amendment to the Florida Constitution to allow the Legislature to provide by general law for the recall of any county officer or commissioner. The joint resolution must pass each house of the legislature with a three-fifths vote before it may be placed on the ballot. The joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 5, 2024, where it must be approved by at least 60 percent of the electors voting on the measure. If approved, the proposed constitutional amendment will take effect January 7, 2025.

### **Effects of Proposed Changes**

The bill implements HJR 131 to authorize the Legislature to provide for the recall of any county officer or commissioner by general law. The bill revises existing procedures for the recall of members of the governing body of a charter county or municipality to include the governing body of a noncharter county

#### **B. SECTION DIRECTORY:**

Section 1: Amends s. 100.361, F.S., to provide for the recall of any member of the governing body of a non-charter county.

Section 2: Provides an effective date that is contingent upon voter approval of HJR 663 or a joint resolution having substantially the same specific intent and purpose.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

The bill may have a negative fiscal impact on county governments in non-charter counties to the extent additional recall elections are held.

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<sup>37</sup> Art. VIII, s. 1(g), FLA. CONST.

<sup>38</sup> See *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).

<sup>39</sup> Art. VIII, s. 1(e), FLA. CONST.

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. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for, nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.