

**Constitution Revision Commission
Ethics and Elections Committee
Proposal Analysis**

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

Proposal #: P 13

Relating to: LOCAL GOVERNMENT, Counties; Schedule to Article VIII

Introducer(s): Commissioner Timmann and others

Article/Section affected:

Date: November 21, 2017

	REFERENCE	ACTION
1.	<u>LO</u>	<u>Favorable</u>
2.	<u>EE</u>	<u>Pre-meeting</u>

I. SUMMARY:

The proposal revises sections 1 and 6 of Article VIII of the Florida Constitution to mandate that all constitutionally prescribed county officers (Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, and Clerk of Circuit Court) be elected by the electors of that county. Additionally, the proposal will not allow the county to abolish, transfer the duties of, or establish any alternate method of selection for county constitutional officers. The proposal would take effect January 5, 2021, but would govern the elections for county constitutional officers for the 2020 election cycle.

The 1885 Florida Constitution initially provided that county constitutional officers are to be elected and that their duties be established in Florida statute. However, through amendments, in particular the enshrinement of home rule authority in the 1968 Florida Constitution, with the authorization of county charters, the method of selection and duties of some county constitutional officers in some counties changed. The proposal revises sections 1 and 6 of Article VIII to return to having all constitutionally prescribed county officers elected by voters of that county.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Constitution calls for the state to be divided into political subdivisions called counties. Specifically, Article VIII of the Florida Constitution provides for two types of counties: charter counties and non-charter counties.

Non-Charter Counties

If a county does not operate under a charter, the county has only such power of self-government as is provided by general or special law. If the Legislature has authorized a non-charter county to govern a particular area, the board of county commissioners may enact county ordinances not inconsistent with general or special law. Currently, there are 47 non-charter counties in Florida.

Charter Counties

Pursuant to either general or special law, a county charter may be adopted, amended, or repealed by approval of the electors of the county in a special election. If a county operates under a charter, the county has all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. Therefore, even if the Legislature has not specifically authorized a charter county to govern a particular area, the Florida Constitution grants the board of county commissioners broad authority to enact county ordinances not inconsistent with general law. Currently, there are 20 charter counties in Florida.

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). 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 prescribed duties provided for in general law.

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.

The five constitutional offices may only be altered pursuant to authority prescribed by the terms of a county charter. Specifically, Article VIII, Section 1(d) authorizes a county charter to abolish one or all of the constitutional county offices; transfer the powers to another department of the county government; or provide for a different manner of selecting a county officer. Further, Article VIII, Section 1(d) authorizes a county charter to transfer the Clerk of the Circuit Court's duties as ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds to another department of county government.

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 their duties to another county office. The eight counties that have altered the duties of a constitutional officer, or have abolished the office and reassigned

duties through their charter are: Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia.

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. The county reiterated the ability to transfer or add to the powers of each of the county officers. The county has transferred the powers of the Clerk of Circuit Court as auditor, and custodian of county funds to the county manager. Each officer remains elected for a four year term.

Miami-Dade County

Miami-Dade County abolished the constitutional offices of the Sheriff, Tax Collector, Supervisor of Elections, and Property Appraiser, transferred these powers to the mayor, and granted the mayor the discretion to sub-delegate the powers. The duties of the Sheriff were transferred to the police department, the director of which is appointed by the mayor. The duties of the tax collector were transferred to the department of finance, the director of which is jointly appointed by the mayor and the clerk of court. The county Property Appraiser, although not retained as a constitutional office, remains an elected position. The duties of the Supervisor of Elections were transferred to the elections department, the director of which is appointed by the mayor. The Clerk of the Circuit Court remains a constitutional, elected officer with some changes in duties. 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.

Volusia County

Volusia County established its charter by special law in 1970, and the voters of Volusia County subsequently approved it in a special countywide election the same year. 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. The duties of the Tax Collector were transferred to the department of finance. The duties of the Property Appraiser were transferred to the department of property appraisal. The duties of the Supervisor of Elections were transferred to the department of elections. The Sheriff, Property Appraiser, and Supervisor of Elections are elected directors of their respective offices. The Tax Collector is appointed by the county manager and confirmed by the county council. 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.

Broward County

Broward County has not altered the constitutionally elected offices and duties of the Sheriff, Property Appraiser, and Supervisor of Elections. 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. 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.

Clay County

Clay County has not altered the constitutionally elected offices and duties of the Sheriff, Tax Collector, Property Appraiser, and Supervisor of Elections. 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.

Duval County

Duval County has not altered the constitutionally elected offices and duties of the Sheriff, Tax Collector, Property Appraiser, and Supervisor of Elections. 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.

Orange County

In 2016, Orange County abolished the constitutionally elected offices of the Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, Clerk of the Circuit Court as well as the county Comptroller and reinstated the offices as elected officials. The 2016 charter amendments provide, however, that each new charter office shall have all rights and privileges of the corresponding constitutional offices. Two separate lawsuits are pending as to whether the county can make constitutional officers term limited and subject to non-partisan elections through their county charter provisions.

Osceola County

Osceola County has not altered the constitutionally elected offices and duties of the Sheriff, Tax Collector, Property Appraiser, and Supervisor of Elections. 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.

B. EFFECT OF PROPOSED CHANGES:

The proposal revises sections 1 and 6 of Article VIII of the Florida Constitution to mandate that all constitutionally prescribed county officers (Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, and Clerk of Circuit Court) be elected by the electors of that county, as was originally prescribed prior to the authorization of county charters, and will not allow the county to abolish, transfer the duties of, or establish any alternate method of selection for county constitutional officers.

If adopted by the Constitution Revision Commission, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election (November 6, 2018). If approved by the voters, the amendment takes effect on January 5, 2021. As a result, affected charter counties will have around 18 months to revise their charters and ordinances to conform to this amendment for the 2020 general elections.

If adopted, the proposal would have no impact on non-charter counties and those charter counties that retained the constitutional offices without any changes to its selection or authority.

From the 2020 general election cycle forward, all county, whether charter or non-charter, constitutional officers must be elected with fixed four year terms, and their offices cannot be abolished, or their duties transferred to another office or officer.

If approved during the 2018 general election, the following counties will be required to revise their charter to conform to the change before the 2020 general election; Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia.

C. FISCAL IMPACT:

The fiscal impact is indeterminate. The impact will be confined to the charter counties who have altered their constitutional officers. The proposal would require the affected counties to expend funds to (a) provide for election of appointed constitutional officers, and (b) reorganize their governments to accommodate the officer's office and responsibilities. The effect will be heavily dependent on the reorganization efforts at the county level and could vary greatly by county.

III. Additional Information:**A. Statement of Changes:**

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

Line 44 “Notwithstanding subsection 6(e)...” The word “notwithstanding” may create ambiguity; therefore, “notwithstanding” is construed to communicate that this amendment supersedes subsection 6(e).

D. Related Issues:

None.