

## General Discussion of County Home Rule

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Article VIII, section 1(a) of the Florida Constitution provides that the State shall be divided by law into political subdivisions called "counties" and further authorizes the creation, abolition or change of counties by law.

However, Article VIII, sections 1(c)-(g) *invite consideration of alternatives* to the structure, powers and duties established by law for non-charter counties through the creation of charter counties. The below is a short summary comparing the powers of non-charter versus charter counties. It is not intended to be comprehensive.

### 1. Creation and Powers of Non-charter Counties

Article VIII, 1(f) – Non-charter counties have "such powers of self-government as is provided by general or special law." The Constitution further limits the extent of any such powers, to exclude the power to enforce county ordinances within municipal boundaries where there is a conflicting, authorized municipal ordinance.

- a. Unless the Legislature adopts a law giving authority to a county, the county has no authority. Although the Constitution provides for a Board of County Commissioners and five constitutional officers in each county, neither the Board nor the constitutional officers have any duties or powers unless the Legislature adopts a law conferring powers and creating duties. (Exception: the clerk of circuit court has certain responsibilities to the court system, created under Article V.)
  - Without such authority from the Legislature, non-charter counties are powerless.

- Nothing in the Constitution requires the Legislature to adopt the current statute conferring power on noncharter counties, and nothing prevents the Legislature from limiting or repealing it at any time.

## 2. Creation of charter counties

Article VIII, 1(c) - Charter counties established pursuant to "general or special law" and the Charter shall be adopted, amended or repealed only upon vote of the county electors.

### a. General law.

- Chapter 125.64, FS, authorizing the appointment of a charter (study) commission to propose a charter for consideration of electorate.
- Chapter 125.70, FS, authorizing proposal by the BCC of an optional form of county charter for consideration of electorate.

### b. Special law. Charters may be proposed for the consideration of the electorate by local law or "special act" of the Legislature. Pinellas and Volusia County's charters originated via special acts of the Legislature.

## 3. Powers of charter counties

Article VIII, 1(g) - Counties operating under a charter have "all powers of local self-government not inconsistent with general law, or with special law approved by the voters." Home rule power of a charter county is not dependent on legislative authorization and flows directly from the Constitution, with four limitations:

- a. Conflict with the Constitution. Charters may not supersede provisions of the Florida Constitution.
- b. Conflict with general law. The Legislature addresses subjects important to the State

through general laws. County ordinances are superseded by general laws to the extent of a conflict. There is no specific statutory definition of what a "conflict" is. General examples:

- Subjects expressly prohibited or pre-empted by the Constitution or general law, or
  - Subjects pre-empted to a charter county.
- c. Conflict with special laws. Most special laws or acts that apply only to a single county are only effective in a charter county if approved/confirmed by the electors of the charter county.
- d. Charter provisions for conflict with municipal ordinances. The charter must provide which ordinances prevail in the event of a conflict between a county ordinance and a city ordinance on most standards or policies. Also, a "dual referenda" may be required if a power or function relating to a program or the delivery of a particular service (e.g. fire, police, etc.) is transferred, although two governments may contract with each other for temporary transfers of services without invoking dual vote requirement.

4. Structure of noncharter county government.

- a. Legislative body. A noncharter government is governed by a board of county commissioners of five or seven members, serving staggered terms of four years, with one commissioner residing in each district as provided by law.
- b. County officers. Constitution specifies the election in each county, for a four-year term, five enumerated county officers, although county commissioners and school board members are also included within the definition of "county offices" for some purposes. The Constitution does not specify any duties for the county officers but the Legislature has provided by general law for their powers and duties. Partial exception in Constitution: The clerk of the circuit court is the ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.
- c. Executive. The Constitution does not specify the head of the executive branch of a

noncharter county government. General law distributes executive/administrative authority among the BCC and the county “constitutional” officers. However, 125.70, FS, authorize noncharter counties to adopt an ordinance providing for the employment of a professional county administrator to administer those departments of the county government over which the BCC has control.

5. Structure of charter county government.

The Constitution allows (but does not require) a charter county to provide for a different governmental structure so long as the duties otherwise devolving upon county governments under the general laws of the state are all assigned to a responsible office in the charter county. Thus the structure of the charter county government may be different from what is contemplated by the Legislature in general law but the powers of the resulting government may not conflict with general law(s), whatever those laws may be from time to time.

- a. Legislative body. Charter counties may provide for a form of the legislative body different from the traditional BCC. Some examples:
  - Term lengths
  - Term limits
  - Number of Commissioners
  - At-large, single-member or mixed districting schemes
  - Non-partisan elections
  - Sharing legislative power directly with the electorate through a process for ordinance proposal/adoption process by petition.
- b. County officers. Five county officers may be chosen in another manner (e.g. non-partisan election, subject recall, etc.) as specified in a charter. County constitutional

office may not be abolished by a charter unless the charter specifies another office to which the duties of the abolished office are to be transferred. [See endnote below.]

- c. Executive. Charters may reallocate some or all of the executive powers of the BCC to an executive, whether an employed professional executive/manager or an elected "strong mayor" executive.
  - d. Intergovernmental issues. Ordinances of a noncharter county can be effective within a municipality only if there is no conflict. However, the ordinances of a charter county may set uniform standards countywide, if the charter so provides. Most charters which specify pre-emptive legislative authority to the BCC have limited those powers to specific subject matter.
6. Additional powers. Statutes and case law have provided for a limited number of other special powers for charter counties. Examples:
- a. The BCC is subject to recall as provided in state law
  - b. BCC and local Legislative Delegation may place charter amendments on ballot
  - c. County enjoys increased insulation from unwanted special acts
  - d. BCC has power to levy utility tax in unincorporated area, unless prohibited by the charter
  - e. New municipal CRAs must receive BCC approval

ENDNOTE: Florida's voters approved Amendment 10 to the Florida Constitution on November 6, 2018. Among other things, Amendment 10 eliminated the ability of county electors to approve changes to the duties of the County Officers or alter the way in which they are elected via a county charter. As of August 1, 2019, a challenge to Amendment 10 remained in court. The challenge concerns whether the Amendment is effective prospectively or also operates retroactively, thus negating all provisions of those county charters that concern county officers.