

Meeting Date
02/03/2022



AGENDA	
Section	
Item No.	<b>Proposal #1</b>

2021-2022

Charter Review Commission Agenda Report

SUBJECT: AMEND THE HOME RULE CHARTER OF BREVARD COUNTY TO MAKE IT EVEN MORE CLEAR THAT A SUPERMAJORITY VOTE OF THE BOARD OF COUNTY COMMISSIONERS WHICH IMPOSES AN AD VALOREM TAX INCREASE WHICH EXCEEDS THE CHARTER CAP AMOUNT DOES NOT BECOME THE BASELINE AMOUNT OF TAXATION IN THE FOLLOWING YEARS.

Petitioner:

**Blaise Trettis**

Requested Action:

Blaise Trettis, member of the 2021-22 Charter Review Commission, proposes that the following underlined words be added to section 2.9.3.1 (c) and section 2.9.3.1 (d) of the Brevard County Charter.

Summary Explanation & Background:

Add to Section 2.9.3.1 (c) and 2.9.3.1 (d) Limitations on growth in ad valorem tax revenues.

(c) Notwithstanding paragraphs (a) and (b) of this subsection, the Board of County Commissioners may impose an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), if a supermajority of the Board concurs in a finding that such an excess is necessary because of emergency or critical need. The finding shall set forth the ultimate facts upon which it is based, and shall be valid for a single budget year. If a supermajority of the Board of County Commissioners imposes an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), then the next year's calculation of the allowable increase in ad valorem tax revenue permissible under paragraph (a) and (b) shall use the revenues received in the prior year when there was no exceedance of the limitation on growth in ad valorem tax revenue in paragraphs (a) and (b).

In calculating the allowable increase in ad valorem revenues over the ad valorem revenues budgeted for the previous year under paragraphs (a) and (b) of this subsection, the Board of County Commissioners shall exclude from the anticipated revenues ad valorem tax revenues for the previous year which exceeded the limitation on the rate of growth in ad valorem tax revenue of paragraphs (a) and (b) and all revenue changes from the following kinds of property not appearing on the previous year's roll: (1) new construction; (2) additions to or demolitions in whole or in part of existing construction; (3) changes in the value of improvements that have undergone renovation to an extent of not less than 100% increase in assessed value (as measured from the last year of assessment prior to commencement of renovation); and (4) in the case of municipal service taxing units or districts, any properties added since the previous year's roll by reason of boundary changes.

Exhibits Attached: **See Attached Proposal**

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**Department: Charter Review Commission**

PROPOSAL TO AMEND BREVARD COUNTY CHARTER TO MAKE IT EVEN MORE CLEAR THAT A SUPERMAJORITY VOTE OF THE BOARD OF COUNTY COMMISSIONERS WHICH IMPOSES AN AD VALOREM TAX INCREASE WHICH EXCEEDS THE CHARTER CAP AMOUNT DOES NOT BECOME THE BASELINE AMOUNT OF TAXATION IN FOLLOWING YEARS.

Blaise Trettis, member of the 2021-22 Brevard County Charter Review Commission, proposes that the following underlined words be added to section 2.9.3.1.(c) and section 2.9.3.1.(d) of the Brevard County Charter:

- (c) Notwithstanding paragraphs (a) and (b) of this subsection, the Board of County Commissioners may impose an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), if a supermajority of the Board concurs in a finding that such an excess is necessary because of emergency or critical need. The finding shall set forth the ultimate facts upon which it is based, and shall be valid for a single budget year. If a supermajority of the Board of County Commissioners imposes an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), then the next year's calculation of the allowable increase in ad valorem tax revenue permissible under paragraph (a) and (b) shall use the revenues received in the prior year when there was no exceedance of the limitation on growth in ad valorem tax revenue in paragraphs (a) and (b).
  
- (d) In calculating the allowable increase in ad valorem revenues over the ad valorem revenues budgeted for the previous year under paragraphs (a) and (b) of this subsection, the Board of County Commissioners shall exclude from the anticipated revenues ad valorem tax revenues for the previous year which exceeded the limitation on the rate of growth in ad valorem tax revenue of paragraphs (a) and (b) and all revenue changes from the following kinds of property not appearing on the previous year's roll: (1) new construction; (2) additions to or demolitions in whole or in part of existing construction; (3) changes in the value of improvements that have undergone renovation to an extent of not less than 100% increase in assessed value (as measured from the last year of assessment prior to commencement of renovation); and (4) in the case of municipal service taxing units or districts, any properties added since the previous year's roll by reason of boundary changes.

1. ACTION OF BOARD OF COUNTY COMMISSIONERS NECESSITATING PROPOSAL

On July 23, 2019, a supermajority of the Board of County Commissioners (Board) approved the imposition of ad valorem tax increase in the next fiscal year 2019-20 for law enforcement municipal services taxing units which exceeded the rate increase limitation of section 2.9.3.1. (b) of the Brevard County Charter, commonly known as the Charter cap.

In the county's following fiscal year 2020-21, the Board of County Commissioners took the position that the excess ad valorem revenue of 2019-20 established the baseline for purposes of calculating the following year's budget, thereby causing the supermajority critical need/emergency finding of 2019-20 and its excess taxation in excess of the Charter cap to remain in place in perpetuity.

In December 2019, then Clerk of Court Scott Ellis sued the Board of County Commissioners seeking a court order which would prohibit the Board from using the 2019-20 critical need ad valorem tax revenue as the baseline revenue for fiscal year 2020-21. *See* Brevard County Circuit Court case number 05-2019-CA-058736-XXXX-XX.

The Circuit Court did not decide the merits of the case. The Circuit Court dismissed the lawsuit, ruling that Clerk of Court Scott Ellis did not have legal standing to sue the Board. Because of the dismissal on procedural grounds, the merits of the lawsuit was not decided.

2. ORIGIN OF THE LANGUAGE OF PROPOSAL

Though the lawsuit by former Clerk of Court Ellis was eventually dismissed, the Board of County Commissioners, through the County Attorney, argued the merits of the lawsuit in the Circuit Court. The Board argued that the Brevard County Charter does not prohibit the Board from using ad valorem tax revenue which exceeds the Charter cap as the baseline ad valorem revenue for the next fiscal year. The Board argued that for former Clerk of Court Ellis to prevail in the lawsuit, the wording of the Brevard County Charter would need to be amended by Charter amendment to add language to sections 2.9.3.1.(c) and 2.9.3.1.(d). In the lawsuit, the Board advised the Court of the language which the Board argued would be needed to be added to sections 2.9.3.1.(c) and 2.9.3.1.(d) to make it perfectly clear that the ad valorem tax revenue which exceeds the Charter cap amount cannot be used as the baseline ad valorem tax revenue amount for the following year. The Board argued as follows that this language would need to be added to the Charter:

“Lastly, as will be discussed *infra*, the Plaintiff has failed to plead any imminent and probable conduct warranting an injunction, as the Plaintiff has an alternative adequate remedy at law, namely a charter amendment . . . Thus, the Brevard County Charter is clear and precise as to what items shall be excluded from the anticipated revenue changes. Moreover, Section 2.9.3.1(d) of the Brevard County Charter contains no language stating that ad valorem tax revenues for the previous year must be reduced by any increase in revenues received over the Charter Cap as proposed by the

Plaintiff. More importantly, the Brevard County Charter does not state in the event the Charter Cap is exceeded under 2.9.3.1(c), the next year's calculation of the allowable increase shall use the revenues received in the prior year when there was no exceedance of the Charter Cap.”

See Board's Motion to Dismiss Plaintiff's Complaint filed February 19, 2020 at pgs. 5, 11.

The proposed amendment by Blaise Trettis to the Brevard County Charter seeks amendment of the Brevard County Charter as suggested by the Board using the language suggested by the Board of County Commissioners.

### 3. REASON FOR PROPOSAL

On November 4, 2008, the Brevard County Charter was amended by a vote of the people to impose limitation on the annual growth in ad valorem tax revenue. As amended, the Charter caps annual ad valorem tax increase at the lesser of three percent or the percentage change in the Consumer Price Index unless a supermajority of the Board of County Commissioners makes a finding – valid for a single budget year – that an emergency or critical need necessitates exceeding this limitation. In making this 2008 amendment to the Charter, the people of Brevard County intended that the critical need/emergency tax revenue which exceeds the Charter cap is to last for only one budget year and not become the baseline ad valorem tax revenue for following years. The language of the 2008 amended Charter reflects this intent in the following italicized language in section 2.9.3.1(c):

- (c) Notwithstanding paragraphs (a) and (b) of this subsection, the Board of County Commissioners may impose an ad valorem tax for county, municipal or district purposes at a rate which exceeds the limitations in paragraphs (a) and (b), if a supermajority of the Board concurs in a finding that such an excess is necessary because of emergency or critical need. *The finding shall set forth the ultimate facts upon which it is based, and shall be valid for a single budget year.*

The excess tax revenue imposed by a supermajority of the Board is dependent on the finding of facts of the Board of critical need or emergency which necessitates the excess taxation. By the language of section (c), when the finding of facts of the Board expires at the end of a single budget year, the Board's authority under section (c) to exceed the Charter cap ad valorem revenue expires in the absence of another finding of fact by the Board of critical need or emergency.

On July 23, 2019, a supermajority of the Board of County Commissioners approved the imposition of ad valorem tax increase in the next fiscal year 2019-20 for law enforcement municipal services taxing units which exceeded the rate increase limitation of section 2.9.3.1. (b) of the Brevard County Charter.

Despite the intent of the 2008 Charter cap amendment to limit the excess critical need/emergency taxation to one budget year, in fiscal years 2020-21 and 2021-22, the Board disregarded the intent of the 2008 amendment to the Charter by making the 2019-20 excess critical need/emergency tax revenue the baseline ad valorem tax revenue.

The Board of County Commissioners, in its litigation against former Clerk of Court Scott Ellis, has argued that the Charter must be amended to make it clear that critical need/emergency excess ad valorem tax revenue lasts for only one budget year in the absence of another supermajority vote of the Board to impose ad valorem taxes which exceed the Charter cap. The Board, in the litigation, has stated what language should be added to the Charter to make the Charter perfectly clear that the excess critical need/emergency taxation can only last one budget year. The above proposal by Blaise Trettis to amend sections 2.9.3.1.(c) and 2.9.3.1.(d) accepts the Board's suggestion to amend the Charter and uses the language suggested by the Board to do so.

#### SERVICE OF PROPOSAL

This proposal was sent by e-mail on January 3, 2022, to the members of the Brevard County Charter Review Commission and to: Melissa Brandt at [Melissa.Brandt@brevardfl.gov](mailto:Melissa.Brandt@brevardfl.gov); Jim Liesenfelt at [jim.liesenfelt@brevardfl.gov](mailto:jim.liesenfelt@brevardfl.gov); and to Paul R. Gougelman, attorney for the Brevard County Charter Review Commission.