

PROPOSED

RESOLUTION NO. 2020-

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PROVIDING FOR A REFERENDUM ELECTION TO BE HELD ON NOVEMBER 3, 2020, TO DETERMINE WHETHER TO APPROVE A SPECIAL LAW PERMITTING COUNTY TO TRANSFER THE DUTY OF THE RECORDER TO BROWARD COUNTY CLERK OF COURTS, TRANSFERRING DUTIES OF THE AUDITOR AND CUSTODIAN OF COUNTY FUNDS FROM THE FINANCE AND ADMINISTRATIVE SERVICES DEPARTMENT TO THE COUNTY ADMINISTRATOR, AND PROVIDING THAT THE COUNTY ADMINISTRATOR WILL REMAIN EX OFFICIO CLERK OF THE BOARD OF COUNTY COMMISSIONERS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on November 5, 1974, a majority of the electors of Broward County (the "County") approved the Broward County Charter, which became effective on January 1, 1975;

WHEREAS, the Broward County Charter, pursuant to Article VIII, section 1(d) of the Florida Constitution, transferred the Clerk of the Circuit Court's constitutional duty as ex officio clerk of the Board of County Commissioners to the County Administrator, and also transferred the Broward County Clerk of Court's duties as custodian and auditor of County funds and duties as the recorder of public documents to what is now the County's Finance and Administrative Services Department;

WHEREAS, the County Administrator and the Finance and Administrative Services Department still perform the duties assigned to them by the County Charter, and the County Charter further provides for an independent County Auditor;

WHEREAS, the County is a diligent custodian of the public's money;

1 WHEREAS, in 2018, the Florida Constitution Revision Commission, a body
2 created under Article XI, section 2, of the Florida Constitution, submitted Amendment 10
3 to the Florida electorate;

4 WHEREAS, Amendment 10 eliminated local voters' authority to transfer the duties
5 of certain constitutional officers to another office, but left intact the Florida Legislature's
6 authority to transfer certain duties of the Clerk of the Circuit Court through enactment of
7 a special law, provided that such is approved by the local electorate;

8 WHEREAS, Florida voters approved Amendment 10 on November 6, 2018, and
9 Amendment 10 will become effective in Broward County and Miami-Dade County on
10 January 7, 2025;

11 WHEREAS, in both 2019 and 2020, the Board of County Commissioners included
12 in its State Legislative Program a proposal for the Florida Legislature to enact a special
13 law that would ensure the County is able to control its own finances by continuing to
14 perform the duties of custodian and the auditor of all County funds, as has been the case
15 since voters approved the adoption of the County Charter in 1974, which became
16 effective in 1975;

17 WHEREAS, the Florida Legislature approved Committee Substitute for
18 House Bill 989 (the "Special Law") during the 2020 legislative session, which, if approved
19 by a majority of the electorate of Broward County, would maintain the current role of the
20 County Administrator as ex officio clerk of the Board of County Commissioners, and would
21 ensure the County is able to control its own finances by permitting the County
22 Administrator to perform the duties of custodian and the auditor of County funds;

1 WHEREAS, if the Special Law is not approved by the voters of Broward County,
2 the Broward County Clerk of Courts will assume the duties of custodian and the auditor
3 of County funds and ex officio clerk of the Board of County Commissioners on
4 January 7, 2025;

5 WHEREAS, the Broward County Clerk of Court's assumption of such duties would
6 be a departure from provisions of the County Charter, which assigned such duties to the
7 County.

8 WHEREAS, if the Special Law is approved, it would not affect the powers of the
9 County Auditor set forth in Article IV of the Broward County Charter; and

10 WHEREAS, the Special Law further authorizes the Board of County
11 Commissioners to transfer the duties of the County recorder from the County's Finance
12 and Administrative Services Department to the Broward County Clerk of Courts prior to
13 January 7, 2025, upon agreement by the County and the Broward County Clerk of Courts,
14 NOW, THEREFORE,

15 BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF
16 BROWARD COUNTY, FLORIDA:

17
18 Section 1. A referendum election is called for the General Election on
19 November 3, 2020, and at such other times as permitted for voting under Chapter 101,
20 Florida Statutes, to determine whether to approve the Special Law, which is attached as
21 Exhibit A and made a part hereof.

22
23 Section 2. In accordance with Section 100.342, Florida Statutes, at least thirty
24 (30) days' notice of the referendum election shall be published by the County

1 Administrator in a newspaper of general circulation in Broward County. The publication
2 shall be made at least twice, including once in the fifth week and once in the third week
3 prior to the week in which the referendum is to be held. The notice is hereby attached as
4 Exhibit B and made a part hereof.

5
6 Section 3. Said referendum election shall be held between the hours of
7 7:00 a.m. and 7:00 p.m. on Tuesday, November 3, 2020, and at such other days and
8 times as provided under applicable law, including early voting as provided by
9 Section 101.657, Florida Statutes, at polling places established in Broward County. All
10 registered and qualified electors in Broward County shall be eligible to vote in the
11 referendum election. Vote-by-mail ballots and early voting access for the referendum
12 shall be made available as provided by law.

13
14 Section 4. The election boards consisting of the clerks and inspectors
15 appointed to serve for the General Election on November 3, 2020, are hereby appointed
16 to serve in the referendum election in the manner provided by law.

17
18 Section 5. The Broward County Canvassing Board shall canvass the returns in
19 said election and shall certify the results of the referendum election as provided by law.

20
21 Section 6. The County Administrator shall furnish a certified copy of this
22 adopted Resolution to the Supervisor of Elections for Broward County on or before
23 July 1, 2020.

1 Section 7. The title and summary of the referendum question to appear on the
2 General Election on November 3, 2020, as embodied in this enabling Resolution, shall
3 be as follows:

4 **APPROVAL OF A SPECIAL LAW RELATING TO GOVERNMENTAL DUTIES**
5 **OF BROWARD COUNTY**

6 “Approves House Bill 989, a special law providing that the County Administrator
7 shall continue to serve as ex officio clerk of the County Commission and County shall
8 continue to perform the duties of the custodian and auditor of County funds, which
9 otherwise would be performed by the Broward County Clerk of Courts as of
10 January 7, 2025; and permits the County to transfer its duty as the recorder to the
11 Broward County Clerk of Courts.”

12 YES _____

13 NO _____

14
15 Section 8. Severability.

16 If any portion of this Resolution is determined by any court to be invalid, the invalid
17 portion will be stricken, and such striking will not affect the validity of the remainder of this
18 Resolution. If any court determines that this Resolution, in whole or in part, cannot be
19 legally applied to any individual, group, entity, property, or circumstance, such
20 determination will not affect the applicability of this Resolution to any other individual,
21 group, entity, property, or circumstance. If the County determines any part of the ballot
22 statement is contrary to state law, the County Attorney is authorized to request that the
23 Supervisor of Elections remove the applicable language from the proposed ballot
24 proposal and the Supervisor of Elections is authorized to remove such language.

Section 9. Effective Date.

This Resolution shall be in force and take effect immediately upon its adoption by the Broward County Board of County Commissioners.

ADOPTED this day of , 2020.

Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

PROPOSED

By /s/ Joseph K. Jarone 06/04/2020
Joseph K. Jarone (date)
Assistant County Attorney

By /s/ René D. Harrod 06/04/2020
René D. Harrod (date)
Deputy County Attorney

JKJ/ck
Clerk Duties Charter Amendment
06/04/2020
#511599v5

ENROLLED

CS/HB 989

2020 Legislature

1
2 An act relating to Broward County; providing
3 legislative findings; providing for the transfer of
4 certain county-related functions and duties, including
5 ex officio clerk of the board of county commissioners,
6 county recorder, auditor, and custodian of county
7 funds to the county government; providing that the
8 County Auditor maintain power and authority as
9 prescribed in the Broward County Charter; providing an
10 exception to general law; providing for an interlocal
11 agreement for the transfer of recorder functions and
12 duties; providing for a referendum; providing an
13 effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. (1) Broward County became a charter county on
18 January 1, 1975, pursuant to a vote of the electors on November
19 5, 1974. When approved by the county's electors, s. 7.06 of the
20 Broward County Charter, relating to the County Comptroller Act,
21 chapter 72-407, Laws of Florida, provided for the transfer of
22 the county comptroller's functions, responsibilities, duties,
23 and obligations to the county government, including ex officio
24 clerk of the board of county commissioners, county recorder,
25 auditor, and custodian of county funds. More specifically,

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26 Subsection C. of s. 2.03 of the county charter transferred to
27 the County Administrator of Broward County all functioning
28 duties prescribed by the State Constitution and general law for
29 the clerk of the circuit court or county comptroller relating to
30 their duties as ex officio clerk of the board of county
31 commissioners. In addition, Subsection C. of s. 4.03 of the
32 county charter transferred to the Department of Finance, now the
33 Department of Finance and Administrative Services, all fiscal
34 functions and duties prescribed by the State Constitution and
35 general law for the clerk of the circuit court or county
36 comptroller relating to their duties as the custodian of all
37 county funds, auditor, and recorder of public documents.

38 (2) The aforementioned county-related functions and duties
39 continue to be performed by the Broward County government,
40 including the auditor functions through the county's Department
41 of Finance and Administrative Services, and an independent
42 County Auditor, as provided in Article IV of the county charter,
43 created by majority vote of the county's electors on November 5,
44 2002.

45 (3) On November 6, 2018, Florida voters statewide approved
46 Amendment 10, relating to state and local government structure
47 and operation, which, in part, amended Article VIII, s. 1(d), of
48 the State Constitution to eliminate the power by county charter
49 to provide a different method of selecting certain county
50 offices, the abolishment of such offices, and the transfer of

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51 such county offices' functions and duties to another office.
52 Consequently, effective January 7, 2025, Broward County may be
53 required by Amendment 10 to return the functions of ex officio
54 clerk of the board of county commissioners, auditor, recorder,
55 and custodian of all county funds to the clerk of the circuit
56 court, unless otherwise provided by special law approved by the
57 electors of Broward County.

58 Section 2. (1) Notwithstanding any law to the contrary,
59 and subject to the approval of a majority of the electors of
60 Broward County voting in a referendum called pursuant to section
61 3, the functions and duties now prescribed by the State
62 Constitution and general law for the office of the clerk of the
63 circuit court relating to the duties of ex officio clerk of the
64 board of county commissioners, auditor, and custodian of all
65 county funds shall be the responsibility of the County
66 Administrator of Broward County, who shall exercise any such
67 powers, functions, duties, and authorities in accordance with
68 general law, this act, the Broward County Charter, county
69 ordinances, and applicable administrative resolutions,
70 regulations, and procedures, or as otherwise required by law.
71 This act shall not be construed to affect adversely the power
72 and authority of the County Auditor, as prescribed in Article IV
73 of the Broward County Charter, or such duties as may be assigned
74 to such office by the county commission.

75 (2) The aforementioned county-related functions and duties

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76 now prescribed by the State Constitution and general law for the
77 office of the clerk of the circuit court relating to the duties
78 of recorder shall be transferred by Broward County to the clerk
79 of the circuit court effective January 7, 2025, or an earlier
80 date agreed to by Broward County and the clerk of the circuit
81 court. To ensure an orderly transition of the recorder functions
82 and duties, Broward County and the clerk of the circuit court
83 may enter into an interlocal agreement providing for the
84 transfer of all hardcopy documents and files; all electronic
85 documents; all other files and related information; existing and
86 necessary furnishings, equipment, and personnel; all funding
87 appropriated by the Broward County Board of County Commissioners
88 relating to the recorder functions and duties in fiscal year
89 2024-2025 or an earlier date to which Broward County and the
90 clerk of the circuit court agree; and such other issues as may
91 be agreed to by Broward County and the clerk of the circuit
92 court to effectuate the orderly transfer of the recorder
93 functions and duties.

94 Section 3. (1) The Board of County Commissioners of
95 Broward County shall submit to a referendum election, on the
96 same date as the 2020 November general election, the question
97 concerning the approval of this special act. The ballot measure
98 shall comply with provisions of s. 101.161, Florida Statutes.

99 (2) Should the referendum question submitted to Broward
100 County electors pursuant to subsection (1) fail to receive

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101 majority approval, the board of county commissioners may submit
102 the question at other referendum elections as determined by the
103 board of county commissioners, unless this act is repealed by
104 the Legislature.

105 Section 4. This act shall take effect upon becoming a law.

Exhibit B

NOTICE OF REFERENDUM ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, AND AT SUCH OTHER TIMES AS PROVIDED FOR EARLY VOTING BY SECTION 101.657, FLORIDA STATUTES, TO DETERMINE WHETHER TO APPROVE A SPECIAL LAW PERMITTING COUNTY TO TRANSFER THE DUTY OF THE RECORDER TO BROWARD COUNTY CLERK OF COURTS, TRANSFERRING DUTIES OF THE AUDITOR AND CUSTODIAN OF COUNTY FUNDS FROM THE FINANCE AND ADMINISTRATIVE SERVICES DEPARTMENT TO THE COUNTY ADMINISTRATOR, AND PROVIDING THAT THE COUNTY ADMINISTRATOR WILL REMAIN EX OFFICIO CLERK OF THE BOARD OF COUNTY COMMISSIONERS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

A countywide referendum election will be held on Tuesday, November 3, 2020, and at such other times as provided for by Chapter 101, Florida Statutes, for the purpose of determining whether to approve House Bill 989.

As set forth in enabling Resolution No. 2020-____, adopted on ____, by the Board of County Commissioners of Broward County, Florida, the title and summary to appear on the referendum ballot shall be as follows:

APPROVAL OF A SPECIAL LAW RELATING TO GOVERNMENTAL DUTIES OF BROWARD COUNTY

Approves House Bill 989, a special law providing that the County Administrator shall continue to serve as ex officio clerk of the County Commission and County shall continue to perform the duties of the custodian and auditor of County funds, which otherwise would be performed by the Broward County Clerk of Courts as of January 7, 2025; and permits the County to transfer its duty as the recorder to the Broward County Clerk of Courts.

YES _____

NO _____

A complete copy of House Bill 989 is available at

<https://www.flsenate.gov/Session/Bill/2020/989/BillText/er/PDF>.

The referendum shall be held on November 3, 2020, between the hours of 7:00 a.m. and 7:00 p.m., and at such other days and times as provided under applicable law, including for early voting as provided by Section 101.657, Florida Statutes, at the polling places established in Broward County. All registered and qualified electors of Broward County shall be eligible to vote in said referendum election. Vote-by-mail ballots for the referendum election shall be prepared and made available as provided by law.

The Broward County Canvassing Board shall canvass the returns and certify the results of the referendum election to the Board of County Commissioners of Broward County, Florida, the Broward County Administrator, and the Florida Department of State, to be recorded and filed in appropriate public records.

Instructions:

A. Publish two (2) times:

Once on: September 29, 2020
Once on: October 13, 2020

B. Furnish two (2) proofs of publication and invoice to:

Mary Ann Darby, Deputy Clerk
Records, Taxes and Treasury Division
Broward County Governmental Center
115 S. Andrews Avenue, Room 336-U
Fort Lauderdale, Florida 33301

C. Furnish one (1) proof of publication and invoice to:

Board of County Commissioners
Accounting Division, Room 201
Governmental Center
115 S. Andrews Avenue
Fort Lauderdale, Florida, 33301