



# Broward County

## Legislation Text

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File #: 21-1699, Version: 1

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### Broward County Commission Regular Meeting

**Director's Name:** Andrew J. Meyers

**Department:** County Attorney

### Information

#### Requested Action

A. MOTION TO WAIVE Section 18.5(e)(1) of the Broward County Administrative Code, which requires that the Board first direct the Office of the County Attorney to draft a proposed Ordinance.

***ACTION: (T-11:32 AM) Approved. (Refer to minutes for full discussion.)***

***VOTE: 8-0. Commissioner Sharief was not present.***

***ACTION: (T-12:11 PM) Commissioner Sharief requested being shown voting in the affirmative.***

***VOTE: 9-0.***

B. MOTION TO ENACT Ordinance, the title of which is as follows:

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE CODE OF ETHICS FOR ELECTED OFFICIALS AND ALLOWING FOR ELECTED OFFICIALS TO SERVE AS VOTING MEMBERS OF AUDITOR SELECTION COMMITTEES; AMENDING SECTION 1-19(c)(6) OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"); AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

***ACTION: (T-11:33 AM) Filed proof of publication and enacted the Ordinance to become effective as provided by law. (Refer to minutes for full discussion.)***

***VOTE: 8-0. Commissioner Sharief was not present.***

***ACTION: (T-12:11 PM) Commissioner Sharief requested being shown voting in the affirmative.***

***VOTE: 9-0.***

#### Why Action is Necessary

The proposed Ordinance was prepared by the Office of the County Attorney to conform provisions of Section 1-19(c)(6) of the Broward County Code of Ordinances with changes to State law.

### **What Action Accomplishes**

Enables the Board to consider enacting an Ordinance to conform provisions of Section 1-19(c)(6) of the Broward County Code of Ordinances with changes to State law.

### **Is this Action Goal Related**

No

### **Previous Action Taken**

### **Summary Explanation/Background**

Section 218.39, Florida Statutes, requires governmental entities, including cities and counties, to have an annual financial audit performed by an independent certified public accountant ("External Auditor") unless the governmental entity is notified in a particular year that it is subject to an audit by the Florida Auditor General. Before 2019, Section 218.391, Florida Statutes, required charter counties and municipalities to establish audit committees, whose duties included involvement in the selection of an External Auditor, but did not require any specific officials or individuals to serve on the committees.

In 2019, Section 218.391 was amended to add minimum requirements for membership of the committees to select the External Auditor. A county's auditor selection committee must now include, at a minimum, each of the county's officers elected pursuant to the county charter or article VIII, section 1(d) of the Florida Constitution, or their respective designees, and a member of the board of county commissioners or its designee. Municipal auditor selection committees must include a member of the municipal governing board, who must also serve as chair of the committee.

Section 1-19(c)(6), of the Broward County Code of Ordinances ("Ethics Code") prohibits any County Commissioner, municipal mayor, or member of a municipal governing board ("Elected Official") from serving as a voting member of a selection/evaluation committee in connection with any prospective procurement by the Elected Official's respective governmental entity.

Due to the conflict between Section 218.391 and the prohibition in the Ethics Code, the County Attorney's Office ("CAO") consulted with the Office of the Inspector General ("OIG"), which confirmed the CAO's opinion that state law would preempt the Ethics Code and an Elected Official can serve on an auditor selection committee. The CAO again contacted the OIG after the September 9, 2021, County Commission Meeting, where the Board indicated its desire to have seven (7) of its members serve on the County's auditor selection committee. The OIG General Counsel expressed concern, under the current language of the Ethics Code, with more than one (1) member of the Board serving on the auditor selection committee.

As the CAO's legal opinion does not align with that of the OIG's General Counsel, we believe the most prudent approach is to address the issue now through a code amendment. The CAO originally had planned to address this conflict in connection with the Board's later consideration of some other potential amendments to the Ethics Code.

The proposed amendment to the Ethics Code would create an exception to the prohibition against Elected Officials serving on selection and evaluation committees to allow Elected Officials to serve on auditor selection committees established pursuant to Section 218.391, Florida Statutes. The CAO has coordinated with the County Administrator to ensure that notice of this proposed Ordinance was published ten (10) days prior to this public hearing so that the Board can consider immediate enactment of the proposed Ordinance.

**Source of Additional Information**

Annika E. Ashton, Deputy County Attorney, 954-357-7600

**Fiscal Impact**

**Fiscal Impact/Cost Summary**

Per the Office of Management and Budget, the estimated impact on the budget does not exceed the threshold required for a Fiscal Impact Statement.