

CHARTER REVIEW COMMISSION
JANUARY 9, 2006

CHARTER COMMISSION: District 1 - Richard Harris
 Tom Boyko
 Jane Hammontree
 District 2 - John Horan
 Sidney Miller
 District 3 - Grant Maloy
 Chairman Ben Tucker
 District 4 - Larry Furlong
 Earl McMullen
 Jimmy Ross
 District 5 - Ashley Johnson
 Jeff Triplett (6:06 p.m.)
 Vice Chairman Egerton van
 den Berg

ABSENT: District 2 Linda Dietz
 District 3 Pam Ohab

ATTENDEES: Acting County Manager Don Fisher
 BCC Chairman Carlton Henley
 Chief Deputy Clerk Bob Lewis
 CRC Attorney Alison Yurko
 Mike Ertel, Supervisor of Elections
 Sandy McCann, Deputy Clerk

The following is a non-verbatim transcript of the **CHARTER REVIEW COMMISSION MEETING**, held at 6:03 p.m. on Monday, January 9, 2006, in Room 3024 of the Seminole County Services Building at Sanford, Florida.

Chairman Tucker announced that Ms. Dietz and Ms. Ohab are absent.

Tom Boyko gave the Invocation and led the Pledge of Allegiance.

APPROVAL OF MINUTES

Chairman Tucker asked for any additions or corrections to the December 5, 2005 Minutes; and hearing none, the Minutes were **approved as submitted.**

EMINENT DOMAIN FOR ECONOMIC DEVELOPMENT

CRC Attorney Alison Yurko discussed the information packet (copy received & filed) she put together on eminent

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domain, including an article from the Georgetown University Law Center entitled, "The Myth That Kelo has Expanded the Scope of Eminent Domain." She referred to the paper entitled, "A Primer on Community Redevelopment Agencies in Florida," which was written by Samuel S. Goren and David N. Tolces and reviewed the list of factors for blighted areas as outlined on page 2. She also referred to a paper written by Toby Prince Brigham entitled, "Florida Takings Jurisprudence After Kelo v. New London: Where Do We Go From Here?". She said a common thread she found in a lot of the information was that there are a couple of problems with the way the Eminent Domain Act is playing out in the context of economic redevelopment in Florida. These are problems that she thinks the Legislature is addressing because a Task Force has been set up to look at this. She said some of the problems with the present law are: (1) It provides little entry point for an affected party to contest the finding of necessity; (2) It does not require that the redevelopment activities be consistent with the comprehensive plan; (3) It permits acquisition before a redevelopment plan is adopted; (4) It purports to require affordable housing provisions prior to acquisition when "open" land is sought, yet there is no definition of "open"; and (5) The definition of "blight" is extraordinarily vague.

Attorney Yurko presented the proposed amendment language (copy received & filed) with regard to eminent domain.

Mr. Ross stated this was his idea and what he wrote was simple (that the County Commission be prohibited from exercising its powers of eminent domain for the purpose of private economic development) and he believes the proposed language by Attorney Yurko is far from what he proposed.

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Attorney Yurko stated the Commission made it clear that they wanted this to apply county-wide and the direction was that they wanted something drafted that did not "gut" the CRA Statute and something to make sure that this could only be used if there was serious blight.

Mr. van den Berg stated he tends to agree with Mr. Ross and he proposed shortening the proposed language as follows: "The public purpose for initiation of eminent domain proceedings by Seminole County, or any municipality or community redevelopment agency delegated redevelopment power by Seminole County, shall not include any purpose which provides for the transfer of the property taken to a private entity." He said he does not have any interest in improving on Florida Statute 163 under the guise of amending the County Charter. Therefore, he said he would prefer to say that this would not be misconstrued in any way to conflict with proceedings conducted under F.S. 163.

Attorney Yurko stated she is concerned that the Cities are not going to be happy being impacted by this and they will be looking at ways to challenge this.

Mr. van den Berg stated he wants to make it perfectly clear that they are not gutting or amending F.S. 163.

Mr. Horan stated his concern is with the last sentence of the proposed language. He said he agrees with Mr. van den Berg's proposal to shorten the language to the first four lines. However, he believes they should come up with some language that deals with minimum protections. Discussion ensued.

Mr. Furlong stated he is not convinced that there is a need to do this.

Mr. Maloy said he believes it should cover F.S. 163.

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Mr. Horan stated he is not sure the CRC is the proper body to do this. He added that he thinks there will be movement in the Florida Legislature to limit the definitions under Chapter 163 and he does not know if the CRC can do this in such a way that makes it not susceptible to some kind of challenge.

Attorney Yurko stated she can clean up the language in the first part and then say, "Provided, however, that this restriction shall not apply to properties included in any redevelopment plan which is validly adopted pursuant to Chapter 163."

Mr. van den Berg stated he would rather say that they are not contradicting and not interfering with the application of 163. If there is a conflict, Chapter 163 takes precedence. More discussion ensued.

Upon inquiry by Chairman Tucker, Acting County Manager Don Fisher addressed the Board to advise the 17-92 CRA does have eminent domain authority. He also advised that the Altamonte Springs CRA was done when the law did not require authorization from the County; therefore, he suggested some language be added to include municipalities.

Mr. Furlong suggested when the language is completed, that it be reviewed by County Attorney Robert McMillan.

Mr. Maloy stated he would support Mr. van den Berg's original proposed language as modified. He also requested a copy of Chapter 163 to review.

Mr. Ross reiterated that he believes they have run afoul of this entirely. He said the eminent domain proceedings that are to be prohibited are for the purpose of and not what might happen.

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Attorney Yurko stated that everything she has read suggests that no one is really sure if counties have the home rule authority to address this.

Mr. Furlong said it also needs to be restated the sense of the CRC is that they don't want to create the slum lord protection act either.

Chairman Tucker stated the CRC direction, as he sees it, is for Attorney Yurko to phrase the issue very similar to what is in the first four lines of the proposed language and address Chapter 163 in a way that it will not impact the existing statute.

Attorney Yurko stated she will add the phrase that it will not prevent the conveyance of surplus property.

Mr. Furlong reiterated that he would like Mr. McMillan to review this language.

Motion by Mr. van den berg, seconded by Mr. Ross that the sense of the CRC is that the Eminent Domain language be as follows: "The public purpose for initiation of eminent domain proceedings by Seminole County or any municipality, community redevelopment agency, or other entity delegated redevelopment powers by Seminole County shall not include any purpose which provides for the transfer of the property, taken by sale or lease, in whole or in part, to a private entity. In the event of any conflict between this provision and the provisions of Chapter 163, F.S., the provisions of Chapter 163 shall be controlling."

Under discussion and upon inquiry by Mr. Furlong, Mr. van den Berg stated that the cities will be given this draft and asked to come before the CRC to make comments.

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Chairman Tucker clarified that there will be an official vote on this language after the public hearings.

Upon inquiry by Ms. Johnson, Mr. van den Berg stated he will **include in the motion** the language regarding to surplus property.

A **roll call vote** on the motion was taken at this time and all member in attendance voted AYE.

The Chairman recessed the meeting at 7:15 p.m., and reconvened it at 7:20 p.m. this same date.

SALARY ISSUES

Attorney Yurko presented an information packet (copy received & filed) on Commissioners' salaries, including the proposed amendment language and excerpts from other county charters addressing this issue. She said this is basically a policy discussion and advised that the only perimeters are that it can't conflict with State statutes. She said there is a statute that says in charter counties, they are supposed to decide commissioners' salaries by ordinance. She reviewed the proposed language and advised, per Mr. Ross, "County Commissioners" should not be capitalized, and because all county ordinances are required by statute to be adopted at a public hearing, she would delete the language "approved at a public hearing" as it is redundant. She read the following modified language, "Salaries and other compensation of the county commissioners shall be set by County ordinance and shall not be lowered during the term of office. Any increases in said salaries shall not exceed the percentage change in the U.S. consumer price index for the previous year. Any salary increase

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shall not be effective until the first day in January in the year following the adoption of the increase."

Mr. Ross stated that the statute Attorney Yurko cited does not apply to the county commissioners. He said the officers mentioned for this are the appointed officers who come into being as a result of the charter, and one of them is the county administrator and any other officer that the charter provides for. He explained that the county officers are not county commissioners. He referred to an Attorney General's Opinion (not received & filed).

Attorney Yurko stated she believes this is an issue that the CRC has discussed before.

Mr. van den Berg agreed with Attorney Yurko and said he believes the CRC also took a vote on it and believes the discussion is out of order.

Attorney Yurko said she believes the amendment she drafted was pretty much what Mr. Ross drafted.

Chairman Tucker stated this has been addressed and the CRC took a vote on it. Whereupon, Mr. Ross said they did not read the Florida Constitution.

Motion by Mr. Furlong, seconded by Mr. van den Berg that the following language be adopted with regard to salaries: "Salaries and other compensation of the county commissioners shall be set by County ordinance. Any salary increase shall not be effective until the first day of January of the year following the adoption of the increase.

Under discussion, Ms. Hammontree stated she believes the intent of the CRC in doing this was to include the consumer price index (CPI) and have some sort of guideline.

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Mr. Furlong said the reason why he left the CPI out is that back in the 1980's, because of inflation, the CPI was running at 8% to 10% a year. He further said he doesn't think he wants to tie this to anything - commissioners are public officials and they stand for election.

Mr. van den Berg stated he is inclined to have commissioners vote on their salaries by ordinance at a public hearing. He explained that he would rather leave the words "public hearing" in the amendment because the voters may not be aware that an ordinance requires a public hearing.

Mr. Horan said he believes one of the things the CRC considered when asking for a standard was to stop the geometric increases in salaries of the commissioners that took affect because of what the Legislature set.

Chairman Tucker advised the current commission salaries are based on a State formula based on the population of the county. Discussion ensued.

Mr. Maloy said he believes it was the consensus of the CRC to include the CPI limitation, therefore, he would support the language as written by Attorney Yurko.

Mr. Ross advised Mr. McMillan agrees with him with regard to officers of the county.

Attorney Yurko said she believes they are past this discussion and should just agree to disagree.

Mr. Ross reiterated his position with regard to the term "officers."

Mr. Harris stated it seems to him that they have gotten off track. Instead of looking at the entire requirement for all county officers, they are only looking at county commissioners; and what they are saying is that instead of having the State

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formula drive the salaries, they are going to make the commissioners pull it out and pass an ordinance on their own salaries at a public hearing. He added that if it works for the School Board, why can't it work for the County Commission.

Chairman Tucker said he is not in favor of the motion, because he is in favor of the way the salaries are currently set.

Mr. van den Berg **called the question** on the motion.

The Chairman advised the question has been called and that is a non-debatable issue, therefore, he called for the vote.

A roll call vote was taken on calling the question, with Mr. Horan, Mr. McMullen, Mr. Miller, Ms. Johnson, Mr. Harris, Mr. van den Berg, Mr. Tucker, Mr. Boyko, Mr. Maloy, Ms. Hammontree, Mr. Furlong and Mr. Triplett voting **AYE**; and Mr. Ross voting **NAY**.

The Chairman advised the question has been called and a vote will be taken on the motion.

Mr. Furlong restated his motion that the following language be adopted with regard to salaries: "Salaries and other compensation of the county commissioners shall be set by County ordinance, approved at a public hearing. Any salary increase shall not be effective until the first day of January of the year following the adoption of the increase."

A roll call vote was taken with Mr. Harris, Mr. van den Berg, and Mr. Furlong voting **AYE**; and Mr. Horan, Mr. McMullen, Mr. Miller, Ms. Johnson, Mr. Ross, Mr. Tucker, Mr. Boyko, Mr. Maloy, Ms. Hammontree and Mr. Triplett voting **NAY**. Thereby, the **motion failed for the lack of a majority vote**.

Motion by Mr. Maloy, seconded by Mr. Miller to approve the following language: "Salaries and other compensation of the

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county commissioners shall be set by County ordinance, approved at a public hearing. Any increases in said salaries shall not exceed the percentage change in the U.S. consumer price index for the previous year. Any salary increase shall not be effective until the first day in January in the year following the adoption of the increase."

Under discussion, Mr. Ross reiterated his concerns with regard to the Attorney General's opinion regarding "officers."

Mr. van den Berg stated he read the Attorney General's opinion provided by Mr. Ross and first of all it is dated 1977 and, secondly, it doesn't say what Mr. Ross says it says.

A roll call vote was taken with Mr. Horan, Mr. McMullen, Mr. Miller, Ms. Johnson, Mr. Harris, Mr. van den Berg, Mr. Boyko, Mr. Maloy, Ms. Hammontree and Mr. Triplett voting **AYE**; and Mr. Ross, Mr. Tucker and Mr. Furlong voting **NAY**.

NEW PROPOSALS

Mr. Maloy referred to the information (copy received & filed) he forwarded to the CRC regarding new proposals. He said the first is the issue of term limits. He stated that as he looks at other county charters, term limits are pretty prevalent. Also, many cities have them. He said he views term limits as a way to encourage competition. He believes when there are open seats, there are many more people who run for them; and when running against an incumbent, it is nearly impossible to win. He added campaign contributions come in much more easier if a person is already in office. He stated that he believes it is good to have "fresh blood." He further stated that his proposal would be for "eight is enough" for county commission seats; and said he likes the State model, which is a ballot access provision.

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Upon inquiry by Mr. van den Berg, Mr. Maloy said this would not be retroactive.

Mr. Furlong stated, for the Record, he has never been in favor of term limits because he does not see the benefit. He said the following seven reasons are why he thinks term limits are not necessary in Seminole County: Maloy vs. Warren; Furlong vs. Glenn; Adams vs. Furlong; Goff vs. Warren; Goff vs. Schafner; Carey vs. McLain; and Henley vs. Adams. He said he does not dispute anything Mr. Maloy has said relative to the cost of running campaigns, but he does not believe term limits will solve any of those problems. He added that if they are serious about leveling the playing field, they should address how much money and from whom you can take it. He further said he believes there are some advantages in having people with experience in public office.

Motion by Mr. Maloy, seconded by Mr. Ross to adopt the "Eight is Enough" term limits for county commissioners with language modeled from the State of Florida model.

Under discussion, Mr. Maloy reiterated his comments regarding his support for term limits.

Mr. Horan stated he agrees with Mr. Furlong. He added that one of the effects of term limits is that it empowers the leadership, especially in Tallahassee, and the bureaucracy because you lose institutional memory of the government.

Mr. Miller said he would echo what Mr. Horan said about the State Legislature and the bureaucracy. He questioned how long it takes to be effective in the job of county commissioner. Discussion ensued.

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Mr. Boyko stated he is against term limits because it detracts from the voter and denies them the privilege of voting for the person they want.

Mr. Harris agreed with the comments made against term limits, stating they would reduce the level of experience that is applied to managing the county, to setting policy, to running the budget, and to controlling taxes. He added it also deprives him from the right to vote for the person who is the best qualified to do the job.

Mr. Ross stated he supports term limits because he believes they need new and fresh ideas and that people get stale in office.

Ms. Hammontree said that when someone gets to eight years, that does not necessarily mean they can't do the job well anymore. She further said the maturation time is very important and in looking from the business end of it, she would hate to say that because she has been doing a job for so long, that she needs to go. She added that fresh ideas also come from years of experience.

A roll call vote was taken with Mr. McMullen, Mr. Ross and Mr. Maloy voting **AYE**; and Mr. Horan, Mr. Miller, Ms. Johnson, Mr. Harris, Mr. van den Berg, Mr. Tucker, Mr. Boyko, Ms. Hammontree, Mr. Furlong and Mr. Triplett voting **NAY**. Whereupon, **the motion failed for the lack of a majority vote.**

Mr. Maloy stated he has two other proposals - Taxpayers Bill of Rights and County Ethics Policy that he will be bring up at a later date.

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Hearing no objections, Chairman Tucker adjourned the meeting at 8:25 p.m., this same date.

**Final Language Eminent Domain
submitted by Alison Yurko**

**Supplemental Information
submitted by John Horan**



"Alison M. Yurko"
<ayurko@callanlaw.com>
01/23/2006 02:13 PM

To <SPeters@seminolecountyfl.gov>
cc <dfisher@seminolecountyfl.gov>, <rmcmillan@seminolecountyfl.gov>, <ben@bentucker.com>
bcc
Subject

Sharon – Per our telephone conversation today I would appreciate you forwarding this to the Charter Review members as I did not have the complete E-mail list. Thanks.

Charter Review Members –

Attached please find revisions to the proposed charter review amendment on eminent domain per the direction at last month's meeting which I am sending for preliminary comment. Feel free to e-mail me by week's end with any comments.

Thank you.

Alison Yurko



Ayurko@callanlaw.com Charter Amendment re Eminent Domain 1-23-06.doc



"Alison M. Yurko"
<ayurko@callanlaw.com>

01/23/2006 02:13 PM

To <SPeters@seminolecountyfl.gov>

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Ayurko@callanlaw.com Charter Amendment re Eminent Domain 1-23-06.doc

Proposed Revision to Article V of Seminole County Charter

Section 1.2 Eminent Domain

The public purpose for initiation of eminent domain proceedings by Seminole County, or any municipality therein, shall not include any purpose which provides for the transfer (in whole or in part, by sale or by lease), of the property taken to a private person or entity. In the event of any conflict between this provision and Chapter 163, Florida Statutes, as it may be amended and replaced from time to time, Florida Statutes Chapter 163 shall prevail. Provided, however, that this restriction is not intended to prevent the conveyance of surplus property to private persons or entities in accordance with applicable state statutes. Further, this provision shall not apply to properties included in any redevelopment plan which is validly adopted pursuant to Chapter 163, Florida Statutes, as of the effective date of this amendment, and shall not be construed to impair any existing contracts or be inconsistent with any state or federal constitutional provision.



"Horan, John"
<JHoran@foley.com>
01/24/2006 01:15 PM

To <SPeters@seminolecountyfl.gov>
cc
bcc
Subject RE: Charter Review Info - Eminent Domain

Sharon,

I am attaching the contents of an agenda item that was considered last night by the Winter Springs City Commission. The commission passed the proposed resolution to propose the noted amendments to the Seminole County Charter Review Commission. I believe a representative of Winter Springs plans to be at the next meeting to explain the proposed amendments.

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-----Original Message-----

From: SPeters@seminolecountyfl.gov [mailto:SPeters@seminolecountyfl.gov]

Sent: Tuesday, January 24, 2006 8:17 AM
To: tomboyko@earthlink.net; rharris1995@cfl.rr.com;
jfhammon@bellsouth.net; Horan, John; smiller@4fbi.com;
lindadietz@bellsouth.net; Cbentucker@aol.com; ohabco@earthlink.net;
grantmaloy@earthlink.net; Dottieross7@aol.com; lfurlong@landam.com;
Uniforms4sports@yahoo.com; Ashley.johnson@hcahealthcare.com;
JTriplett@uhb-fl.com; bmobil8@yahoo.com; RMcMillan@seminolecountyfl.gov
Subject: Charter Review Info - Eminent Domain

Sharon Peters
Sr. Coordinator
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e-mail: speters@seminolecountyfl.gov

----- Forwarded by Sharon Peters/Seminole on 01/24/2006 08:10 AM -----

"Alison M. Yurko"

<ayurko@callanlaw
.com>
To <SPeters@seminolecountyfl.gov>
01/23/2006 02:13
cc <dfisher@seminolecountyfl.gov>,
PM <rmcmillan@seminolecountyfl.gov>,
<ben@bentucker.com>
Subject

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Thank you.

Alison Yurko
Ayurko@callanlaw.com(See attached file: Charter Amendment re Eminent Domain 1-23 -06.doc)

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Charter Amendments Proposed By City of Winter Springs.pdf

CONSIDERATIONS:

1. Pursuant to Seminole County Home Rule Charter Section 4.2 (B), the County Commission is required to appoint a Charter Review Commission every six (6) years to evaluate whether it is advisable to propose any amendments to the Seminole County Home Rule Charter.
2. The Charter Review Commission is currently holding public hearings regarding whether it is advisable to recommend changes to the Seminole County Home Rule Charter at the November 2006 general election.
3. The Charter Review Commission is required to deliver any proposed changes to the Charter to the County Commission no later than 90 days prior to the general election.
4. This is the appropriate time for the City Commission to propose amendments to the Seminole County Home Rule Charter given that the Charter Review Commission is currently in session and considering proposals to change the Seminole County Home Rule Charter.
5. The preservation of Municipal Home Rule in Seminole County and providing adequate time to publicly debate future charter amendments proposed by the Seminole County Board of County Commissioners before said amendments are formally voted on by the voters are two issues worthy of public discussion and appropriate for the citizens of Seminole County to consider placing in the Seminole County Charter.

STAFF RECOMMENDATION:

The City Manager recommends that the City Commission consider proposing the two Seminole County Home Rule Charter Amendments set forth in Resolution 2006-05 to the Seminole County Charter Commission.

ATTACHMENT:

1. Resolution 2006-05
2. Excerpt of Seminole County Home Rule Charter, Section 4.2 (B)

COMMISSION ACTION:

The City Commission has previously discussed with the City Manager and City Attorney the possibility of proposing changes to the Seminole County Home Rule Charter that preserve Municipal Home Rule in Seminole County.

RESOLUTION NO. 2006-05

A RESOLUTION OF THE CITY COMMISSION OF WINTER SPRINGS, FLORIDA, PROMOTING GOOD LOCAL GOVERNMENT BY PROPOSING AMENDMENTS TO THE SEMINOLE COUNTY HOME RULE CHARTER WHICH WOULD REQUIRE THE BOARD OF COUNTY COMMISSIONERS TO PROPOSE FUTURE SEMINOLE COUNTY CHARTER AMENDMENTS AT LEAST 90 DAYS PRIOR TO A GENERAL ELECTION AND PRESERVING MUNICIPAL HOME RULE AUTHORITY; PROVIDING THAT THE PROPOSED CHANGES BE DELIVERED TO THE SEMINOLE COUNTY CHARTER REVIEW COMMISSION AND RESPECTFULLY REQUESTING THAT THE COMMISSION PLACE THE PROPOSED AMENDMENTS ON THE BALLOT FOR CONSIDERATION BY THE VOTERS OF SEMINOLE COUNTY; PROVIDING THAT THE PROPOSED CHANGES BE DELIVERED TO EACH MUNICIPALITY WITHIN SEMINOLE COUNTY AND RESPECTFULLY REQUESTING THAT THE MUNICIPALITIES OFFICIALLY DECLARE THEIR RESPECTIVE SUPPORT FOR THE PROPOSED AMENDMENTS; PROVIDING FOR REPEAL OF PRIOR INCONSISTENT RESOLUTIONS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the general purpose of this Resolution is to propose amendments to the Seminole County Home Rule Charter that promote good local government by preserving municipal home rule and providing adequate time to publicly debate future charter amendments proposed by the Seminole County Board of County Commissioners before said amendments are formally voted on by the voters; and

WHEREAS, the City Commission finds that the preservation of municipal home rule gives effect to the fundamental American democratic principle that the closer those who make and execute laws are to the citizens they represent, the better are those citizens represented and governed in accordance with democratic ideals; and

WHEREAS, Vision 2020, Seminole County Comprehensive Plan, states that the County

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Resolution 2006- 5

wishes to foster better coordinated land use planning with the Cities in Seminole County and that Seminole County is striving to enter into Joint Planning Agreements with the cities; and

WHEREAS, Vision 2020 also provides that one of Seminole County's tasks is to strive to implement collaborative planning and to jointly plan growth in Seminole County in order to achieve livable or sustainable communities for generations to come; and

WHEREAS, the City of Winter Springs has adopted an Intergovernmental Coordination Element in its Comprehensive Plans that provides that Winter Springs will strive to enhance interlocal government coordination on various issues that may affect them; and

WHEREAS, the City of Winter Springs desires to enhance intergovernmental cooperation and coordination between the City and Seminole County and other municipalities; and

WHEREAS, the City Commission strongly desires that Seminole County and its municipalities continuously strive to cooperate and find common ground in establishing laws and policies that may have countywide effect and that such laws and policies should not be unilaterally imposed on municipalities by the county without the consent of the governing board of the municipality or a separate vote of the voters in the municipality; and

WHEREAS, the City Commission also strongly desires that future Seminole County charter amendments proposed by the Board of County Commissioners should be adopted at least ninety (90) days in advance of a general election in the same manner as charter amendments proposed by citizen initiative and the Seminole County Charter Review Commission in order to afford the public and municipalities ample time to publicly participate in the charter amendment process before matters are formally placed on the ballot for approval; and

WHEREAS, the City Commission of Winter Springs desires that all the municipalities in Seminole County support the charter amendments that are being proposed herein and that the Seminole County Charter Review Commission place the proposed charter amendments on the November 2006 ballot for approval by the voters of Seminole County.

WHEREAS, the City Commission of Winter Springs also finds that this Resolution is in the best interests of the public health, safety, and welfare of the citizens of Seminole County.

NOW THEREFORE, THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS HEREBY RESOLVES, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings and the intent and purpose of the City Commission of the City of Winter Springs.

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Resolution 2006- 5

Section 2. Proposed Amendments to the Seminole County Home Rule Charter.

The City Commission of Winter Springs hereby proposes the following amendments to Article I, Section 1.4 and Article IV, Section 4.2 of the Seminole County Home Rule Charter (underlined text is an addition to the existing text of the Seminole County Charter; ~~strikeout~~ text is a deletion from the existing text of the Seminole County Charter, while asterisks (***) indicate a deletion from this Resolution of text existing in the Seminole County Charter. It is intended that the text in the Seminole County Charter denoted by the asterisks and set forth in this Resolution shall remain unchanged):

(A) ARTICLE I. CREATION, POWERS AND ORDINANCES OF HOME RULE CHARTER GOVERNMENT.

Section 1.4. Relation to Municipal Ordinances.

A. Except as otherwise provided by this Charter, municipal ordinances shall prevail over County ordinances to the extent of any conflict.

B. No existing or future county charter provision, shall be effective within or applicable to any municipality of the county, unless the charter provision is approved by a majority vote of the electors within the county in accordance with Section 4.2 of this Charter and is also approved by the municipality's governing board or by a majority vote of the electors within the municipality in a binding referendum called by the municipality.

C. No existing or future county ordinance or land development regulation shall be effective within or applicable to any municipality of the county, unless the ordinance or land development regulation is approved by a majority vote of the Board of County Commissioners or citizen initiative in accordance with section 2.2 (H) of this charter and is also approved by the municipality's governing board or by a majority vote of the electors within the municipality in a binding referendum called by the municipality.

D. Notwithstanding the foregoing, county charter provisions and ordinances specifically related to the operation, maintenance, and financing of any county owned public facilities and improvements located within a municipality and administrative, or judicial functions of County government, including but not limited to, County budget, debt obligations, and the levy and collection of taxes, as well as specific enumerated subjects exclusively reserved to the County's jurisdiction by state or federal law, shall not require the approval of the municipality's governing board or a majority vote of the electors within the municipality in a binding referendum called by the municipality in order to be effective within or applicable to a municipality.

City of Winter Springs

Resolution 2006- 5

NOTE: The bold italicize language "Except as otherwise provided by this Charter" is inserted for reference purposes because it was adopted by the voters on November 2, 2004, but declared invalid by Judge Alley on December 6, 2004 (Case No. 04-CA-2193-16-G), and is subject to an on-going appeal (Case No. 5D05-81).

**(B) ARTICLE IV. HOME RULE CHARTER TRANSITION,
AMENDMENTS, REVIEW, SEVERANCE, EFFECTIVE DATE.**

* * *

Section 4.2. Home Rule Charter Amendments.

* * *

C. Amendments Proposed by the Board of County Commissioners.

(1) ~~No later than 90 days prior to any general election.~~ Amendments to this Home Rule Charter may be proposed by ordinance enacted by the Board of County Commissioners by an affirmative vote of a majority of the membership of the Board of County Commissioners. Each proposed amendment shall embrace but one subject and matter directly connected therewith. Each proposed amendment shall only become effective upon approval by a majority of the electors of Seminole County voting in a referendum at the next general election. The Board of County Commissioners shall give public notice of such referendum election as required by general law.

(2) If approved by a majority of those electors voting on the amendment at the general election, the amendment shall become effective on the date specified in the amendment, or, if not so specified, on January 1 of the succeeding year.

Section 3. Repeal of Prior Inconsistent Resolutions. All prior inconsistent resolutions adopted by the City Commission, or parts of prior resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Resolution.

Section 5. Delivery of Resolution. The City Manager is hereby instructed to deliver a copy of this Resolution to the Seminole County Charter Review Commission, Seminole County, and each municipality of Seminole County.

Section 6. Effective Date. This Resolution shall become effective immediately upon adoption by the City Commission of the City of Winter Springs.

ADOPTED by the City Commission of the City of Winter Springs, Florida, this _____ day of January, 2006.

John F. Bush, Mayor

ATTEST:

Andrea Lorenzo-Luaces, City Clerk

**Approved as to legal form and sufficiency for
the City of Winter Springs only:**

ANTHONY A. GARGANESE, City Attorney

Seminole County Home Rule Charter, Section 4.2 (B) Amendments and Revisions by Charter Review Commission.

(1) A Charter Review Commission consisting of 15 electors of the County shall be appointed by the Board of County Commissioners at least 12 months before the general election occurring in 1994 and at least 12 months before the general election every six years thereafter. Of the 15 members, at least one shall reside in each of the municipalities in the County and at least one shall reside in each County Commission district in the unincorporated area. The Charter Commission shall review the Home Rule Charter and propose any amendments or revisions which may be advisable for placement on the general election ballot. No member of the State Legislature, elected County or municipal officer, County Manager, County Department head, County Attorney or Manager, Attorney or Department head of any municipality shall be a member of the Charter Review Commission. Vacancies shall be filled within 30 days in the same manner as the original appointments.

(2) The Charter Review Commission shall meet for the purpose of organization within 30 days after the appointments have been made. The Charter Review Commission shall elect a chairman and vice chairman from among its membership. Further meetings of the Commission shall be held upon the call of the chairman or a majority of the members of the Commission. All meetings shall be open to the public. A majority of the members of the Charter Review Commission shall constitute a quorum. The Commission may adopt such other rules for its operations and proceedings as it deems desirable. Members of the Commission shall receive no compensation but shall be reimbursed for necessary expenses pursuant to law.

(3) Expenses of the Charter Review Commission shall be verified by a majority vote of the Commission and forwarded to the Board of County Commissioners for payment from the general fund of the County. The Charter Review Commission may employ a staff, consult and retain experts, and purchase, lease, or otherwise provide for such supplies, materials, equipment and facilities as it deems necessary and desirable.

(4) The Charter Review Commission shall hold at least three public hearings at intervals of not less than 10 days nor more than 20 days on any proposed Charter amendment or revision, and no Charter amendment or revision shall be submitted to the electorate for adoption unless favorably voted upon by a majority of the entire membership of the Charter Review Commission.

(5) No later than 90 days prior to the general election, the Charter Review Commission shall deliver to the Board of County Commissioners the proposed amendments or revisions, if any, to the Home Rule Charter, and the Board of County Commissioners shall by resolution place such amendments or revisions on the general election ballot. If a majority of the electors voting on the amendments or revisions favor adoption, such amendments or revisions shall become effective on January 1 of the succeeding year or such other time as the amendment or revision shall provide.

(6) If it does not submit any proposed Charter amendments or revisions to the Board of County Commissioners at least 90 days prior to the general election, the Charter Review Commission shall be automatically dissolved. Otherwise, upon acceptance or rejection of the proposed amendments or revisions by the electors, the Charter Review Commission shall be automatically dissolved. Upon dissolution of the Charter Review Commission, all property of the Charter Review Commission shall thereupon become the property of the County.

New Proposal

Require various actions performed by Ordinance

submitted by Jimmy Ross

PROPOSED CHARTER AMENDMENT

Proposal: That the following language, appropriately numbered, be inserted in the Seminole County Charter

ACTION REQUIRING AN ORDINANCE

In addition to other acts required by law or by specific provision of this charter to be done by ordinance, those acts of the County Commission shall be by ordinance which:

- (1) Adopt or amend an administrative code or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (3) Adopts the annual operating and capital budgets and any long-term capital or financial program.
- (4) Obligates payment of money beyond the end of a fiscal year, e.g. a contract;
- (5) Grant, renew or extend a franchise;
- (6) Regulate the rate charged for its services by a public utility;
- (7) Authorize the borrowing of money;
- (8) Convey or lease or authorize the conveyance or lease of any lands of the county;
- (9) Lease or purchase of real property;
- (10) Imposes a fee for services rendered by the county;
- (11) Affect zoning matters related thereto as stated in F.S. 125.66
- (12) Amend or repeal any ordinance previously adopted. Unless stated elsewhere in this charter or by general law, acts other than those referred to in the preceding sentences may be done either by ordinance or resolution

ORDINANCES AND RESOLUTIONS

All proposed ordinances and resolutions shall conform to form, procedure of adoption and ratification as provided by State Law.

EMERGENCY ORDINANCES

To meet a public emergency affecting life, health, property or the public peace, the County Commission may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew, or extend a franchise, affect zoning as stated in F.S. 125.66, or set service or user charges for any county service. F.S. 125.66 prohibits emergency ordinances that affect zoning.

a. Form. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated in a ~~preamble~~ preamble as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms; and the emergency ordinance shall state that the immediate enactment of said ordinance is necessary.

b. Procedure. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced. An affirmative vote of at least four commissioners shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances.

c. Effective date. Emergency ordinances shall become effective as stated in F.S. 125.66.

d. Repeal. Every emergency ordinance shall automatically stand repealed as of the sixty-first day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance under regular procedures, or if the emergency still exists, in the manner specified. An emergency ordinance may also be repealed by adoption of emergency ordinances.

- Information:
- (1) In America, it is accepted that all power belongs to the people, and the only power that government has is that which the people delegate.
 - (2) Quite a few years ago a noted individual stated (Churchill as I recall) that war was so important that its conduct must not be left to the generals. Analogous to this is that government is so important that it must not be left to those whom we elect. Therefore, it follows that the best government is the government that listens to the people and considers the comments and recommendations offered during the public hearing process.
 - (3) All ordinances require public hearings. Resolutions do not. It is for these reasons alone that the subjects listed above should be done by ordinance. With respect to administrative codes:

a. The public has an interest in knowing the organizational structure of its government, and if changes, additions, or deletions to the structure are to be made, the public should have the right to appear at a public hearing and give those whom we elect the benefit of our knowledge, expertise, our disapproval, or acquiescence.

(1) It is simply not sufficient, in my judgment, to trust those whom we elect will always do what is right.

(4) The other reasons listed for requiring an ordinance are, in the main, associated with money matters in some form or fashion. It just makes plain sense that the public should know when its money is being obligated for expenditure. Especially, the people have a right, in my opinion to speak if public money is being obligated beyond the end of a fiscal year. Otherwise, this money will have never gone through the public hearing requirement!

a. On many occasions, the vast majority of people would probably agree with a recommended course of action. However, there are other occasions when there might be great disagreement. In ~~the~~ ~~event~~ any event, those whom we elect have a duty to listen to the public before making expenditures. An ordinance guarantees that the public may speak. A resolution does not.

(5) With respect to emergency ordinances, I submit that people have an absolute right to decide under what conditions emergency ordinances may be passed. The people's representatives in the State Legislature state in F.S. 125.66(3):

"(3) The emergency enactment procedure shall be as follows: The board of county commissioners at any regular or special meeting may enact or amend requirements of subsection (2)...."

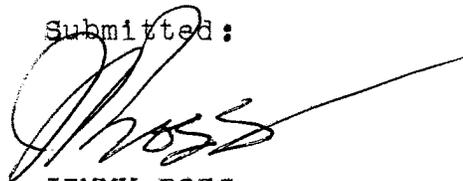
a. The reasons recommended, i.e., "affecting life, health, property or the public peace" seem to be sufficient.

(1) This matter is not preempted by the State or prohibited by the Legislature ~~or~~ the Constitution.

b. F.S. 126.66 states the 4-vote requirement.

Effective date: On passage.

Submitted:



JIMMY ROSS

3 12-5-05

Kissimmee bows to outcry, kills lakefront plan

By SUSAN JACOBSON
SENTINEL STAFF WRITER

10-19-05

KISSIMMEE — Condominiums aren't coming to the city's lakefront after all.

Responding to an outcry from about 200 people who packed City Commission chambers Tuesday night — including some 30 who picketed outside before the meeting — commissioners put the kibosh on a plan to redevelop Kissimmee's lakefront.

Downtown Business Association president Tom Lanier said he is ecstatic that the commission, in a 4-1 vote, booted a development team that included Church Street Station developer Bob Snow. The vote rejected his "Kissimmee Landing" team, which has been working on a vision for lakefront development for nearly a year.

"It was driven by money and the developers," said Lanier, who owns an antiques shop on Broadway. "We want it driven by the citizens."

PLEASE SEE **KISSIMMEE, B7**

The city Community Redevelopment Agency solicited proposals, and the CRA and a selection committee this summer chose one, FaulknerUSA of Texas, without hearing from the public. Snow and FaulknerUSA joined forces in early September.

Residents and commission-

New Proposal

Non-Interference Clause

submitted by Jimmy Ross

PROPOSED CHARTER AMENDMENT

- Proposal:** That the Seminole County Charter provide for a penalty for any commissioner who violates the provisions of the non-interference clause that is contained in the charter.
- Background:** It was brought to my attention that a recent case of possible interference took place when, one learns, directions were given to stop work that was then taking place.
- a. It should be noted that if a county commissioner believes that certain work in progress should be stopped, he or she should consult with the county manager.
 - b. Two county commissioners informed me that interference may have taken place in the past.
- Information:**
- a. In the city charter of the City of Longwood there are provisions that prohibit interference. This does not mean that inquiries may not be made.
 - b. If a city commissioner violates the interference mandate of the Longwood charter, the penalty is forfeiture of office.
 - (1) It is known that at least on one occasion a city commissioner in Longwood forfeited her office by reason of interference.
 - c. Two county commissioners with whom I spoke have no problem with their being a penalty for violating the interference clause of the present charter.
- Proposed wording:** A member charged by a majority of the Board of County Commissioners, excluding the member(s) being charged, Longwood Charter: with conduct constituting grounds for forfeiture of his or her office shall be notified in writing of said charges and given seven (7) working days in which to request a public hearing on said charges. Should the member charged fail to request a public hearing within seven (7) working days of being charged he or she ~~shall~~ shall automatically forfeit his or her office.
- Upon request of a public hearing, a notice of such public hearing shall be published in one or more public newspapers of general circulation at least

seven (7) days in advance of the hearing. Decisions made by the Board of County Commissioners under this section after a public hearing shall be subject to review by the Circuit Court of Seminole County, Florida.

Failure to request a public hearing within seven (7) days after being charged shall constitute a waiver of all rights to public hearing and/or review by any court.

Effective date: On passage.

Submitted by:



JIMMY ROSS

New Proposal
Taypayer Bill of Rights
submitted by Grant Maloy

TABOR – Taxpayer Bill of Rights

Some reasons for them:

- Encourages better fiscal responsibility of government
- Positions the county better for economic downturns
- Has economic benefits where used
- Limits the growth of government

Some fact sheets were included about the TABOR for your review.

Even with the enormous growth of tax revenues in Seminole County, due largely to increased property values and growth, the commission still voted to raise the gas tax and is looking at other tax revenues. (The gas tax increase was not implemented to the lack

of supermajority). If government is using all of the growth in taxes and still wants more, what will happen when the economy slows down?

The TABOR is a system used in Colorado that forces the politicians to control spending. In booming years revenue is saved in a budget stabilization fund to be used when there is an economic slowdown. Tax revenues above that level are returned back to the taxpayers.

The components of the TABOR in Colorado:

It caps the growth of government to the annual rate of inflation plus population growth.

To increase taxes at a rate above the limit would require a special vote of the elected officials or a vote by the citizens. It allows for special exceptions and emergencies.

Tax revenue above the limit can be placed in a budget stabilization fund or a taxpayer relief fund.

The TABOR levels may be changed with a vote of the people.

Number 47 • November, 2005

Empowering Florida's Taxpayers

The National Perspective

Dr. Barry Poulson

*Distinguished Scholar, Americans for Prosperity Foundation
Associate Scholar, The James Madison Institute*

The Florida Perspective

Dr. Randall Holcombe

*DeVoe Moore Professor of Economics, Florida State University
Senior Fellow, The James Madison Institute*

Executive Summary

A tax revolt ignited the American Revolution. Yet the Founders wisely saw that the problem wasn't taxes; it was tyranny—government's abuse of power. They devised a system based on the principle that governments derive their power "from the consent of the governed." Implicit in this principle is the right of "the governed" to withhold their consent whenever that becomes necessary to rein in government's excesses.

The tax limitation movement is an excellent example of an effort by "the governed" to rein in government's excesses. It is a grassroots reaction to a growing tax burden. Measured as a share of the gross national product, the combination of federal, state, and local taxes reached historically high levels during World War II—and has stayed there ever since.

While such a high tax burden was understandable during a period of shared sacrifice when the nation's very survival was at stake, the overall tax burden declined

very little after the war. At the federal level, spending for the Cold War, Great Society programs, and Pork Barrel projects took its toll. Meanwhile, at the state and local level, taxpayers felt the consequences of the rise of public employee unions, with their demands for higher wages, generous pensions, job security, and costly benefits.

Efforts to tame federal spending have been unavailing, despite the solemn vows of many political candidates of both parties. Indeed, since World War II, voters have changed the party in control of the White House seven times, the U.S. Senate nine times, and the U.S. House of Representatives five times. Nonetheless, despite the relatively modest tax cuts backed by Presidents John F. Kennedy, Ronald W. Reagan, and George W. Bush, the federal tax burden – including the payroll taxes that fund Social Security and Medicare – has continued to grow.

Thwarted at the federal level, the tax limitation movement increasingly has focused its attention on state

THE JAMES MADISON INSTITUTE

PHILOSOPHY AND MISSION

The James Madison Institute is a Florida-based research and educational organization engaged in the battle of ideas. Our ideas are rooted in the U.S. Constitution and in such timeless principles as economic freedom, limited government, federalism, the rule of law, and individual liberty coupled with individual responsibility.

The mission of The James Madison Institute is to keep Floridians informed about their government and to shape our state's future through the advancement of practical, free-market ideas on public policy issues.

OPERATIONS

The Institute's offices are located in Tallahassee, Florida. Its views are distributed through policy studies, magazine articles, newsletters, books, radio and television appearances, articles in the mass media, seminars, conferences, and speeches to civic, professional, and other organizations.

Founded in 1987, The James Madison Institute is independent, nonprofit, and nonpartisan. It makes no attempt to aid or hinder passage of legislation, accepts no government funds, and does not respond to special pleadings from any sector.

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and local governments. In 1973, Gov. Ronald Reagan introduced Proposition 1, the nation's first tax and expenditure limitation (TEL). Designed to restrain state government's growth, Proposition 1 lost at the polls in November 1973. Afterward, Governor Reagan presciently wrote in the National Review: "We have lost a battle, but this struggle will go on. The people will find a way to bring big government under control, to put a reasonable limit on how much of their income government may take in taxes. This idea will become a reality."¹

He was right. Tax and expenditure limits inspired by Prop.1 have become a reality. California voters subsequently approved Proposition 13, inspiring a nationwide tax revolt that has resulted in the passage of 28 tax and expenditure limitations.

The most successful of these is Colorado's Taxpayer's Bill of Rights (TABOR) amendment. Passed in 1992 and dubbed by Milton Friedman "a Proposition 1 look alike,"² Colorado's TABOR amendment limited the growth of state spending to no more than the rate of population change plus inflation. Thanks to TABOR, Colorado taxpayers received more than \$3 billion in surplus revenue since 1992.

In 1994, Florida voters approved a constitutional amendment imposing a limit on the growth of state revenue. Unfortunately, the

limit was linked to personal income growth – a far more generous limit than Colorado's TABOR. This constitutional limit has proven to be an ineffective constraint on the growth of state revenues and expenditures in Florida.

This study explores why Florida's existing limit has failed to constrain the growth of state government. The study also examines how Florida would benefit from a more effective tax and expenditure limit – specifically, a measure similar to (but not identical to) Colorado's TABOR amendment.

In Florida, such an amendment would (1) limit the growth in state spending to no more than the growth of population plus inflation; (2) ensure that surplus revenue above this amount is invested in emergency and budget stabilization funds or returned to taxpayers; and (3) require voter approval – "consent of the governed"—for any tax increases or any weakening of the amendment's limits.

The study also includes a simulation showing how a TABOR amendment would have affected Florida had it been implemented a decade ago. The simulation shows that a TABOR in the form now being proposed would have constrained the growth of revenue and spending while also stabilizing the state budget over the business cycle.

"We have lost a battle, but this struggle will go on. The people will find a way to bring big government under control, to put a reasonable limit on how much of their income government may take in taxes. This idea will become a reality."

Tax and Spending Limits: A National Perspective³

Dr. Barry Poulson

Tax and spending limits are designed to address two problems: (1) the increase in government revenues and spending relative to income in the long run; and (2) the volatility of government revenues and spending over the business cycle.⁴

Since World War II, the growth of government revenue and spending has outpaced the growth of income in most states.⁵ One cause of this trend is the tendency of government to expand rapidly during periods of economic growth. In other words, a “ratchet up” of taxes and revenues often accompanies periods of economic growth.

In periods of prosperity, because tax revenues are rising, governments tend to increase their spending to match the increase in revenues. However, when a recession hits and revenues fall, governments are reluctant to cut spending. As a result, there is pressure to increase taxes to offset the budget “shortfall.” Over time, this “ratchet up” effect results in increased government revenues and spending relative to private sector income.

Thus far, 28 states have implemented a variety of different tax and expenditure limits (TEs) in response to this concern.⁶ Recent studies show that the most effective of these TEs constrain the growth of government revenue and spending to the sum of inflation and population growth. This type of tax and expenditure limit has been introduced in four states: California, Colorado, Missouri, and Washington. In all four states, the tax and spending limit has at various points both constrained the growth of government and stabilized the budget over the business cycle – forcing the states to prepare for economic downturns by restraining the growth of government spending during periods of rapid economic growth.

In recent years, California, Missouri, and Washington have suspended their tax and spending limits.⁷ In November 2005, Colorado voters – “the governed” – gave their consent to what was presented to them as a temporary, five-year suspension of that state’s pioneering TABOR amendment, until then the nation’s

most effective limit on state taxes and spending.⁸ Colorado’s decision is discussed in greater detail elsewhere in this study.

Colorado’s Taxpayer’s Bill of Rights (TABOR) Amendment

To place recent events in perspective, it is necessary to detail some of the history. In 1992, Colorado voters approved the Taxpayer’s Bill of Rights (TABOR) amendment by a 54 percent majority.⁹ Colorado’s TABOR is a constitutional amendment that includes the following provisions:

- Voter approval for all tax increases.
- Limits the amount that state and local governments may spend to the rate of population growth plus inflation.
- Surplus revenues above this amount must be returned to taxpayers.
- Existing limits may not be weakened without voter approval.

Since TABOR was passed in 1992, the Colorado Legislature has not enacted a single state tax increase. TABOR constrains the growth of state government to the sum of inflation and population growth, and imposes similar constraints on the growth of local government. Surplus revenue above the TABOR limit must be returned to taxpayers. More than \$3 billion in surplus revenue has been returned to taxpayers through tax rebates and tax cuts.

The Taxpayer’s Bill of Rights amendment set the stage for fundamental tax reform. Colorado has reduced state income taxes, the state sales taxes, and a wide range of other taxes, such as the business personal property tax.

A recent survey found that more than 60 percent of Coloradoans support the Taxpayer’s Bill of Rights amendment – more than when it was passed a decade ago. This suggests that TABOR has become more popular over time.¹⁰ Another recent survey commissioned by the Independence Institute and the Colorado

“In periods of prosperity, because tax revenues are rising, governments tend to increase their spending to match the increase in revenues.”

Club for Growth found that the majority of Coloradoans still support the Taxpayer's Bill of Rights amendment.

Despite this popularity, the TABOR amendment has come under fire recently in Colorado because of the so-called "ratchet down" effect.¹¹ As noted above, TABOR limits the growth of state revenue to the sum of inflation and population growth. The base line is the previous year's limit or actual revenue, whichever is less. When revenue falls during a recession, this sets a lower base line against which the limit is applied. When revenue increases above that limit, TABOR requires that the surplus revenue be rebated to taxpayers.

As Colorado recovered from a recent national recession whose effects were exacerbated by a drought in the West, the state's revenue was projected to increase above the TABOR limit, requiring taxpayer rebates. Critics complained that TABOR required that these taxpayer rebates be paid, even though the state's revenue stream had not yet recovered to the pre-recession level, and even though government spending on some programs had been cut in recent years because of revenue shortfalls.

This problem could have been solved by modifying the TABOR amendment slightly, to hold the spending limit constant when there is a decline in state revenue, then trigger the limit once the revenue has recovered to pre-recession levels. Such an approach could also create a budget stabilization fund linked to the TABOR Amendment. In periods of economic growth, some of the surplus revenue could be set aside in a budget stabilization fund and then used to offset revenue shortfalls in periods of recession.

This modified TABOR Amendment is the basis for a model tax and spending limit recently adopted by the American Legislative Exchange Council.¹² It is also the basis for the proposed Taxpayer's Bill of Rights amendment for Florida—the focus of this report.

Giving Citizens a Voice in Fiscal Policy

TABOR changes the debate over fiscal policy decisions. Usually the debate over fiscal policy is dominated by those most directly affected, i.e.

the special interests who benefit from increased government expenditures. When elected officials respond to these special interests, the question is usually how to increase taxes and debt to finance higher levels of government spending.

TABOR gives citizens a new voice in fiscal policy. Citizens exercise this voice at several stages of fiscal decision making. Citizens first set a limit to the growth in government spending, imposing a hard budget constraint on elected officials. Those officials must then set priorities for spending consistent with that limit. If they want to spend in excess of the limit, they must seek voter approval. Citizens, rather than elected officials, then determine whether the benefits of government programs justify the additional expenditures. If the elected officials violate the limit, citizens have recourse through the legal system to recover the excess spending. Citizens must approve any increase in taxes or debt.

In Colorado, where TABOR has been in place for more than a decade, fiscal policies reflect this new voice for citizens. The state has rebated more than \$3 billion in surplus revenue. Taxpayers have received rebate checks for hundreds of dollars from both state and local governments.

Critics argue that citizens should not be given this new voice in fiscal decisions. They argue that fiscal decisions should be left to the discretion of elected officials. In their view, elected officials are better informed and better able to pursue the public interest without the constraints imposed by tax and spending limits. But citizens know that too often those decisions reflect special interests rather than the public interest.

In effect, TABOR replaces a loose understanding between citizens and elected officials with an explicit contract. Citizens must be informed regarding any proposed increase in taxes or debt, what the money will be spent for, and what it will cost them. Most important, it is citizens, rather than elected officials and special interests, who determine whether taxes and debt will be increased. When citizens have been given this voice, they overwhelmingly support the constraints that TABOR imposes on fiscal policy decisions.

Colorado citizens have been exercising their voice in fiscal policy decisions now for

"In periods of economic growth, some of the surplus revenue could be set aside in a budget stabilization fund and then used to offset revenue shortfalls in periods of recession."

“All Colorado citizens, including those who pay little or no taxes, have an incentive to become informed regarding these ballot issues, to vote, and to monitor how their tax dollars are spent.”

more than a decade under TABOR. This has proven to be an important experiment in direct democracy. The election results, when Colorado citizens vote on tax and debt increases, are very revealing. When these elections are held in small jurisdictions, such as special districts, the approval rate is very high, in excess of 90 percent in most years. One explanation is that the turnout for these elections is usually light. However, another explanation is that at this level citizens are better able to hold the government accountable. The jurisdiction must identify a specific project and the cost of that project to individual citizens.

The experience with direct democracy in fiscal policy in Colorado under the TABOR Amendment is in some ways not surprising. The Colorado Tax Commission conducted a survey of citizens' attitudes toward the tax system and government spending.¹³ Citizens responded that they thought government wastes a significant amount of tax dollars at all levels of government; but they viewed government waste the greatest at the federal level, less at the state level, and least at the local level. From their perspective, they are better able to monitor the expenditures of tax dollars and hold government officials accountable at the local level.

TABOR has reestablished the nexus between those who vote for tax increases and those who must pay the cost of the higher taxes. Almost every citizen, even those who pay little or no taxes, is confronted with the decision to allow the state to spend surplus revenue and forgo their rebate checks, or to keep the rebates. TABOR creates both the opportunity and incentive for citizens to become involved in fiscal decisions. All Colorado citizens, including those who pay little or no taxes, have an incentive to become informed regarding these ballot issues, to vote, and to monitor how their tax dollars are spent.

In Colorado the citizens who vote on new taxes or debt and on the expenditure of surplus revenue, are also likely to be the citizens who will have to bear the burden of these fiscal decisions. The experience under TABOR in Colorado is that giving citizens a voice in fiscal

policy results in more prudent fiscal decisions and constrains the growth of government. TABOR has also achieved an egalitarian outcome, not by transferring income and wealth from a minority to the majority, but rather by vesting each citizen with a stake in the outcome of fiscal decisions.

Avoiding Colorado's Mistakes

On November 1, 2005, Colorado voters approved Referendum C, which allowed the state to retain and spend \$3.7 billion in surplus revenue above the TABOR limit instead of rebating that money to taxpayers. In the same election, voters defeated Referendum D, which proposed to authorize new debt.

Other states can learn a great deal from this outcome. The TABOR Amendment's most important provision is the one requiring voter approval—i.e. consent of the governed—for any increase in taxes or debt, or expenditure of surplus revenue. Colorado citizens have been voting on these issues at both the local and state level for more than a decade. Giving citizens a voice in these fiscal decisions has acted as a constraint on the growth of government, enabling them to get the government that they want and are willing to pay for. In other states citizens do not have this voice; fiscal policy decisions are left to the discretion of the government—elected officials, bureaucrats, and special interests.

Unfortunately, Referendum C was not as it was portrayed – a measure concerning the expenditure of surplus revenue produced by an economy recovering from a recession and a drought. Instead, it was really about replacing the nation's most effective tax and spending limit with an ineffective limit. Referendum C has essentially gutted the TABOR Amendment by permanently altering the base line on which the state calculates the allowable growth in spending. The original TABOR limit applied inflation and population growth to either actual revenue or the TABOR limit in any year, whichever is lower. In contrast, Referendum C will apply inflation and population growth to the previous limit, not actual revenue. This makes a big difference over time.

Moreover, after the five-year period in which Referendum C allows the state to retain all the revenue it collects instead of refunding excess revenue to taxpayers, annual growth in state revenue will be capped at the highest level of revenue received in any one year during this five-year period, adjusted for changes in population and inflation. The new limit will continue to rise with increases in population and inflation, whether or not actual revenue reaches the limit. This is a hidden tax increase that will significantly increase the tax burden on Colorado citizens.

Opinion polls among Colorado residents have consistently shown widespread and growing support for the state's TABOR. Therefore, it is fair to say that many Colorado voters who supported Referendum C—misled by an unprecedented barrage of propaganda from the media, public employee unions, Gov. Bill Owens, and others with a vested interest in the growth of government—were not aware that Referendum C guts the TABOR Amendment.

Referendum C's proponents went out of their way to misinform Colorado voters. A candid approach would have been to present this as an amendment to the Colorado Constitution to weaken the TABOR limit. However, Referendum C's proponents did not present the proposal as a constitutional amendment. If they had, they could not have obtained the required two-thirds majority vote in the Legislature. Moreover, Colorado voters would have been extremely unlikely never to approve Referendum C if they had fully understood how it weakened the TABOR limit.

Usually, modifying a provision of a state constitution requires a constitutional amendment. Supporters of Referendum C, knowing they could not achieve their goal by that route, blithely ignored the requirement. Therefore, the most likely outcome of this election result stemming from the misrepresentation of Referendum C will be a legal challenge charging that it is in violation of the Colorado Constitution.

The Colorado contretemps is not likely to recur in states that adopt a TABOR with a provision that addresses the so-called "ratchet effect" caused by the volatile ups and downs in the

business cycle. I am the primary author of model legislation recently approved by the American Legislative Exchange Council (ALEC). This model bill has now been incorporated in Taxpayer's Bill of Rights legislation proposed in more than a dozen states.

This legislation would impose the same limit on the growth of government as Colorado's TABOR Amendment, i.e. inflation and population growth. However, unlike the Colorado Amendment, the limit would be linked to an emergency fund and a rainy day fund. In periods of prosperity, a portion of surplus revenue above the limit would be allocated to the emergency fund and rainy day fund, and a portion returned to taxpayers. In periods of recession, the rainy day fund would be used to offset a portion of the revenue shortfall. The limit would be held constant until revenue recovers to the pre-recession level. With modest caps on the emergency fund and rainy day fund, this legislation would both constrain the growth of government, and stabilize the budget over the business cycle. The model legislation that I designed for ALEC incorporates the same taxpayer protections as Colorado's TABOR amendment, and voter approval – consent of the governed—is required for any increase in taxes or debt.

Colorado's budget problems have less to do with the TABOR amendment's limits than with another voter-approved mandate. Amendment 23 mandates increased spending per pupil at the rate of inflation plus one percent, regardless of the state of the economy. Income tax revenue is earmarked for an education trust fund, exempt from the TABOR limit. Citizens were told that this education trust fund would finance the mandated increases in spending for education, without any increase in taxes or debt, and without any harm to other state programs. When the recession hit, the education trust fund was quickly exhausted, and increased spending for education required sharp reductions in spending for other programs, such as higher education, transportation, and prisons. Amendment 23 has proven not to be a viable way to fund education in the long run; and it exacerbated Colorado's budgetary problems in the recent recession.

“The new limit will continue to rise with increases in population and inflation, whether or not actual revenue reaches the limit. This is a hidden tax increase that will significantly increase the tax burden on Colorado citizens”.

“After a decade of more or less average performance, Florida has emerged from the recent recession as something of an overachiever in economic growth.”

There are several lessons for other states in Colorado’s experience with the TABOR Amendment. The Taxpayer’s Bill of Rights legislation that Americans for Prosperity has helped introduce in other states will avoid many of the problems that Colorado has encountered. The most important refinement in this legislation is to link an effective tax and spending limit to a rainy day fund and emergency fund. This will both constrain the growth of government and stabilize the budget over the business cycle. This will end the ratchet-up effect of higher taxes and debt from one business cycle to the next. It will also take away the argument for suspending or repealing tax and spending limits when there is a revenue shortfall or emergency. In short other states can avoid the fiscal problems that led Colorado to gut its TABOR Amendment.

Within the budget constraint imposed by TABOR, legislatures ought to have the discretion to set goals and establish priorities for government programs. Most states have avoided the mandated increases in spending required by a constitutional provision such as Colorado’s Amendment 23. No special interest groups should have such a privileged position in the state budget; all interest groups should have to defend their programs as part of the annual budget process.

A number of states have followed the example of Washington state in replacing outmoded budget procedures with a modern Citizen’s Budget. With an effective TABOR in place, these states could plan for a stable growth of government consistent with the growth of the state economy. There is less likelihood of volatility in spending such as Colorado experienced. Such stop-and-go fiscal policies are very inefficient and disruptive of government programs and services. With an effective TABOR in place, legislatures can plan government programs in the long run.

An effective TABOR also enables citizens to get the government they want and are willing to pay for. Unfortunately, Colorado has replaced the most effective tax and spending limit in the country with an ineffective one. It’s an example that other states would do well to avoid.

Why Florida Needs a Taxpayer’s Bill of Rights

Florida is an Overachiever in Economic Growth

To understand the rationale for a Taxpayer’s Bill of Rights amendment in Florida, one must explore Florida’s overachievement in economic growth. After a decade of more or less average performance, Florida has emerged from the recent recession as something of an overachiever in economic growth.

Income per capita in Florida has been consistently below the national average. In 2003 the state had a per capita income of \$30,098, which was about equal to 96 percent of the national average.¹⁴ In per capita income, Florida ranked 25th in the nation. A decade earlier the state ranked 21st with per capita income of \$21,050. Per capita income is projected to grow 4.3 percent this year, and 3.5 percent next year.

Florida fares much better in comparison with other states in the southeast. Florida has the second highest level of income per capita in the region; nearby states are ranked lower, including Georgia at third in the region, North Carolina fifth, and South Carolina eighth.

Florida has done very well in job creation in recent years. Over the four-year period from 2001 to 2005, non-farm jobs are estimated to have grown almost two percent a year.¹⁵ During the same period in the nation as a whole, non-farm jobs were estimated to have grown only half a percent a year. Particularly impressive is the steady job growth in Florida during the recent national recession, when job growth for the nation was negative. Florida has also kept its unemployment rates well below the national average over these years. Florida’s immigration rates and population growth rates were well above the national averages in these years.

Florida’s job growth was particularly impressive compared to nearby states. Over the period 1998-2003, employment growth in Florida was 7.8 percent, compared to 7.5 percent in Georgia,

3.3 percent in North Carolina, and -1.1 percent in South Carolina.

A Relatively Low Tax Burden

While many factors have contributed to this resurgence of economic growth in Florida, a major factor is the low tax burden. The Tax Foundation ranks Florida's business tax climate as the second best in the country.¹⁶ This index measures the impact on business of five major elements of the tax system. Neighboring states are ranked much lower, e.g. Georgia 20th, and Alabama 16th.

For the last three decades Florida's state and local tax burden has ranked among the lowest in the nation. State and local taxes account for 9.2 percent of personal income, appreciably lower than the national average of 10.1 percent. Currently the state and local tax burden in Florida is ranked as the sixth lowest in the nation.

Florida's corporate income tax rate is 5.5 percent on all corporate income. This ranks Florida eighth lowest among states that levy a corporate income tax.

Florida is one of only six states that levies no personal income tax. Because most small businesses in Florida are either S Corporations (partnerships) or sole proprietorships, they pay the business tax at the rate for individuals. This makes the environment for small business in Florida very competitive.

In contrast, nearby states impose a much heavier tax burden on small business. In South Carolina, for example, individual businesses pay the personal income tax rate of 7 percent, while corporations pay the corporate income tax rate of 5 percent. South Carolina's small businesses pay one of the highest tax rates in the country. It is not surprising that Florida has attracted business investment, particularly from small businesses. From 1998-2003 Florida, with no income tax, attracted 48,000 small businesses; while South Carolina lost 3,600 small businesses.

Florida's state government relies on sales taxes as its primary source of revenue. Florida levies a 6 percent general sales or use tax, compared to a national median of 5 percent.

Florida's state sales tax is ranked sixth highest in the nation, but it should be noted that a state-to-state comparison of the basic sales tax rate cannot take into account the complex and varied pattern of exemptions. In Florida, for instance, most groceries are exempt from the sales tax. Meanwhile, Florida's excise tax rates on purchases such as gasoline and cigarettes are below the national average.

Florida property taxes are about average when compared to the rest of the nation. The state of Florida collects an intangible property tax, while local governments collect taxes on the assessed value of real estate. In a recent comparison, per capita property taxes in Florida ranked twenty-second in the nation, while local property taxes ranked twenty-first. However, with real estate values—especially in Florida's coastal regions—rising more rapidly than in many other states, and with local governments mostly holding the tax rates steady instead of lowering them, it is likely that Florida's per capita property taxes will soon rank higher in nationwide comparisons.

Tax 'Reform': A Critical Appraisal

Florida clearly has been a taxpayer friendly state. The relatively low tax burden has attracted business investment and created jobs for millions of Florida citizens. In part, this relatively low tax burden reflects tax cuts that Governor Bush and the Legislature have enacted over the past few years. While other states were raising taxes during the recent recession, Florida was lowering them. In his most recent budget message, Governor Bush called for a sales tax holiday and the final repeal phase of the intangibles tax.¹⁷

Governor Bush's proposed tax cuts have been challenged by critics both in and outside of government. These critics argue that Florida's tax system is antiquated, and needs to be replaced by a modern tax system.

Critics argue that Florida's state sales tax is out of date because it is inelastic with respect to personal income. They maintain that as personal income increases, state sales tax revenues increase by less than the increase in

“While other states were raising taxes during the recent recession, Florida was lowering them.”

“... contrary to accepted wisdom, total tax revenues and sales tax revenues have more than kept pace with the growth of personal income in Florida.”

personal income. It is argued that this is due to the fact that sales taxes apply to only a portion of the final sales of goods and services. Critics through the years have argued that the sales tax should be extended to a broader base of services, including professional services, in order to generate more sales tax revenues.

In a careful examination of this issue Randall Holcombe points out that professional services are intermediate goods.¹⁸ Since the value of intermediate goods and services is included in the value of final goods and services, taxation of professional services amounts to double taxation. This would result in substantial dislocation and inefficiency in the private economy. Further, Holcombe finds that extending the sales tax to all retail services would generate very little increase in revenue for Florida.

Holcombe finds that, contrary to accepted wisdom, total tax revenues and sales tax revenues have more than kept pace with the growth of personal income in Florida. More importantly, sales tax revenues have proven to be a very stable source of revenue over the business cycle. In the recent recession, sales tax revenues continued to grow at about the same pace they had over the previous decade. This is because households tend to maintain their consumption expenditures even when personal income is not growing or even when it is falling. From this perspective, Florida has a very modern tax system. Sales tax revenues have more than kept pace with the growth of personal income, and have proven to be a very stable source of revenue.

What critics of Florida's tax system are really arguing is that tax revenues should increase much faster than personal income. That has certainly been the case in certain other states. Ohio is an interesting case study because in the 1970's, Ohio had no income tax and a relatively low income tax burden, similar to Florida today. However, Ohio introduced an income tax that generated income tax revenues that far outstripped the growth in personal income. In periods of rapid economic growth, income tax revenues increased much more rapidly than the growth in income. Conversely, in periods of recession, income tax revenues fell more

sharply than the fall in income. The result was that income tax revenues were very volatile over the business cycle. In periods of recession, when there were revenue shortfalls, Ohio found it very difficult to balance the budgets. There was great pressure to increase tax rates and debt to offset the shortfalls. In this way, revenue and spending ratcheted up from one business cycle to the next. In the long run, government revenue and spending increased significantly as a share of personal income.

The problems created by this ratcheting up of state revenue and spending were amply demonstrated during the recent recession, when Ohio and other states experienced fiscal crises. Today, Ohio has one of the highest tax burdens in the country. Governor Bob Taft is responsible for significant increases in the tax burden in recent years. Ohio demonstrates that electing a Republican leadership in the legislature, or a Republican Governor, even one from a family with strong conservative credentials, is no assurance the state will pursue prudent fiscal policies.

Florida has been fortunate to avoid such fiscal crises. However, even in Florida, state revenue and spending has outpaced the growth of personal income in the long run. This suggests that there is room for tax cuts and reform of Florida's tax system along the lines of Governor Bush's recommendations. Florida is fortunate to have had a Governor willing to support tax cuts, but the state cannot count on always having leadership willing to follow prudent fiscal policies.

What taxpayers have learned since Governor Reagan launched the tax revolt three decades ago is that fiscal policy is too important to be left to the discretion of elected officials. The strongest bulwark against profligate fiscal policies is a fiscal constitution that imposes constraints on the power of politicians to increase the tax burden.

A Taxpayer's Bill of Rights would give Florida citizens a new voice in fiscal policy, and that is the best defense against fiscal profligacy. In the following section of the study we explore the impact a Taxpayer's Bill of Rights would have on Florida's fiscal policies.

Creating an Effective TABOR for Florida

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Components of a Taxpayer's Bill of Rights

The philosophy underlying a Taxpayer's Bill of Rights (TABOR) was nicely summarized by Colorado Treasurer Mark Hillman, who said, "We need to stop and ask ourselves: Do the taxpayers exist for government, or does the government exist for taxpayers?"¹

A TABOR is neither anti-government nor pro-government. Instead, it recognizes that the money government taxes away from people belongs to the taxpayers, not to the government, and that it should not be taxed away from taxpayers without their consent. Government exists to serve its citizens; citizens do not exist to serve their government.

In practice, TABORs have been designed using two different mechanisms. The first mechanism is a provision to implement a tax or expenditure cap above which taxes or expenditures cannot rise. Such a cap may rise with income growth, population growth, inflation, or some other measure(s). The idea behind this is to keep government's growth in check. Professor Poulson's discussion of TABORs around the nation has focused on this type of limitation, and Florida already has one, although it is ineffective, as he notes. A second mechanism is a constitutional amendment requiring voter approval for new taxes or for increases in existing tax rates.

Colorado's TABOR utilizes both types of limitations – a cap on taxes and spending, plus a requirement that voters approve any exceptions. One type of limit could be enacted without the other – indeed, Florida already has the first type of limit – but both mechanisms together would be more effective. Certainly requiring voter approval of any new taxes or increases in existing tax rates is consistent with the American ideal

of "no taxation without representation." The discussion that follows looks at both of these ideas within the context of Florida's taxes and expenditures.

Florida's Current Constitutional Budget Limit

When considering how Florida could create an effective limit on its state budget, a good place to start is with the budget limit that currently is in Florida's Constitution. In 1994, faced with the threat of a citizen's initiative constitutional amendment to limit taxing and spending, the Florida Legislature placed a constitutional amendment on the ballot to limit state revenues. Voters approved it in November of 1994. The limit is on revenues, not on expenditures, and does not cover all revenues. The difference between total revenues and revenues that are covered by the limitation, here referred to as capped revenues, is important to understanding the ineffectiveness of Florida's current limitation. Florida's revenue limitation specifies that the revenue cap increases each year by the average annual growth rate in Florida personal income over the previous five years.

The amendment also specifies which revenues are included and which are exempt from the cap. The cap applies only to "own source" revenues, and not to revenues received from the federal government. The cap also exempts revenues necessary to meet the requirements of state bonds, revenues used to provide matching funds for Medicaid, revenues used to pay lottery prizes, receipts of the Hurricane Catastrophe Fund, balances carried forward from prior years, local government taxes, fees, and charges, and revenues required to be imposed by constitutional amendments after 1994.²

Any revenues collected in excess of the cap

"When considering how Florida could create an effective limit on its state budget, a good place to start is with the budget limit that currently is in Florida's Constitution"

are to be transferred to the Budget Stabilization fund until that fund reaches 10 percent of the previous year's revenues, after which excess revenues are to be refunded to taxpayers. The Legislature can increase revenues beyond the cap by a two-thirds vote of both houses. Such an increase must be offered in a separate bill that contains no other subject, and that specifies the dollar amount of the increase.

Table 1 shows some facts about the current cap. Following the first column, which shows the fiscal year, the next column shows the net receipts that are covered under the cap. This is substantially less than total state spending (which is shown in Table 2), largely because the revenues the state receives from the federal government are not included under the cap,

and are not included in the figures in Table 1. The second column shows the revenues that are covered by the cap. This figure is derived by starting with total revenues, then subtracting out those components that are exempt, as described in the previous paragraph.

Table 1's next column shows revenues that are covered as a percentage of total net revenues. This reveals that when the cap was initiated, about 82 percent of net revenues were covered under the cap. More recently, however, less than 76 percent of net revenues were covered. Even though the cap is substantially less than total expenditures, the percentage of those net revenues covered by the cap shows a downward trend over the years.

The column labeled Constitutional Limit

Table 1
Florida's Current Constitutional Revenue Limit
(Dollar Figures in Millions of Dollars)

Year	Net Receipts	Receipts Covered by Revenue Cap	Constitutional Limit	Limit Exceeds Actual By
		Dollars	Per	
1995-96	23,856.7	19,506.7	81.8	20,120.0 3.1%
1996-97	25,363.8	20,967.7	82.7	21,299.1 1.6%
1997-98	26,781.0	22,149.9	82.7	22,577.0 1.9%
1998-99	28,023.4	23,079.5	82.4	24,033.2 4.1%
1999-00	29,365.6	23,943.9	81.5	25,415.1 6.1%
2000-01	30,249.4	24,131.1	79.8	26,945.1 11.7%
2001-02	31,268.1	24,960.0	79.8	28,516.0 14.2%
2002-03	32,952.1	25,269.0	76.7	30,232.7 19.6%
2003-04	36,141.5	27,378.5	75.8	31,919.7 16.6%

Source: Florida Office of Economic and Demographic Research, www.state.fl.us/edr/reports/specialreports/revenuecap0304.pdf, dated 15-Feb-05, and author's calculations.

shows the revenue cap each year, calculated by increasing the previous year's cap by the average annual growth rate in Florida's personal income over the previous five years. The column on the far right of the table shows the percentage by which the cap exceeded actual revenues in each year. The first few years we were close to the cap – within two percent in 1996-97 and 1997-98 – but then the gap began growing between the cap and revenues subject to the cap. In 2002-03 the cap was nearly 20 percent larger than the revenue sources capped, and in 2003-04 the cap exceeded capped revenues by more than 16 percent. Table 1 shows that although we do have a constitutional cap on state revenues, it has never been effective. Moreover, it is becoming increasingly irrelevant over the years as the cap grows substantially larger than the revenue sources it caps.³

One more subtle feature of Table 1 shows the irrelevance of the cap. The figures in the table are the official calculations of the Office of Economic and Demographic Research that tell the Legislature how much revenue it is allowed to raise under the constitutional limit. These figures, calculated in February of 2005, are the latest official figures available as this report is being written. Notice that the most recent state budget for which the cap is calculated is two fiscal years ago, in 2003-04. Fiscal year 2004-05 has already passed, and the state is now operating under the 2005-06 budget, but the revenue limit for the previous year has not even been calculated yet. There is little point in doing so because the revenue limit is so high that it will not be binding anyway. Nevertheless, it is instructive to note that 10 years after the Legislature wrote and the voters passed a constitutional revenue limit, lawmakers completely ignore it and don't even know what the limit is.

Why Is Florida's Revenue Limitation Amendment Ineffective?

Because the voters approved the constitutional revenue limitation, one can assume that they intended to limit the state's spending.

Unfortunately, the limit they approved has not done so. While the revenue limitation has several desirable features, it is ineffective for three main reasons.

First, the cap uses as its base the previous year's cap, even if current revenues are well below the cap. To be effective, the limit should be the previous year's cap or the previous year's revenues, whichever is less.

Second, the cap excludes certain items. Although the definition of revenue falls well short of total state expenditures in the current limitation, it still exempts many other revenues so that, as Table 1 shows, the cap covers only slightly more than three-quarters of net revenues, and the share of revenues covered by the cap has been falling over the years. An effective cap would not allow exceptions.

Third, the cap grows along with state personal income, which provides for greater growth than caps in some other states, such as Colorado, in which the caps are based on the combination of inflation and population growth. If these features were changed, Florida would have a more effective limit on the growth of its state government.

Granted, Florida's revenue limitation also has some features that make it – procedurally, at least—more effective than the limitations in certain other states. First, it is a constitutional limit rather than a statutory limit. Placing it in the state Constitution makes it more difficult for the Legislature to ignore or override in the unlikely event the lawmakers' spending agenda ever bumps up against the current amendment's overly generous spending limit. If the limit had been enacted as a mere statute, lawmakers could undo it whenever they could muster a simple majority to do so.

Second, Florida's constitutional provision requires a supermajority to override the spending limit. If there is a pressing need, the Legislature may override the cap for one year by a two-thirds vote of both houses. The supermajority requirement is important. In the state of Washington, which also has a constitutional limit on state spending, the Legislature recently exceeded the spending cap by a simple majority vote. When this can happen, the budgetary

“Nevertheless, it is instructive to note that 10 years after the Legislature wrote and the voters passed a constitutional revenue limit, lawmakers completely ignore it and don't even know what the limit is.”

“The cap should limit revenue or expenditure growth to the sum of population growth and inflation, rather than income growth.”

limitation places no effective limits on the actions of the Legislature.

Third, Florida’s budgetary limitation requires that any legislation to exceed the revenue cap must be in a bill that contains no other subject, and that specifies the dollar amount by which the cap will be exceeded. This makes it more difficult for the Legislature to include pork barrel projects in a bill just to make it more attractive for certain legislators.⁴ The single subject requirement keeps the Legislature from using that type of logrolling tactic to buy another legislator’s vote, and the requirement that the bill specify a dollar amount by which the cap is exceeded would help limit the amount by which the cap were exceeded. Moreover, requiring a separate bill means that Florida voters on Election Day can judge their own individual legislator based on how he or she voted on the bill relaxing the spending cap.

Unfortunately, these three procedural safeguards to protect the cap from being circumvented are moot points, given that the current cap – linked to personal income growth—is so high as to be meaningless.

Having reviewed some good and bad features of Florida’s current constitutional budget limitation, it is possible to list features that any budget limitation should include to make it truly effective. Some of those features are in Florida’s current limitation; some are not.

1. The limit should be constitutionally mandated (a feature of Florida’s existing cap).
2. The limit should require a supermajority approval of both houses of the Legislature to be overridden (a feature of Florida’s existing cap). The limit would be even more effective if, after a legislative vote, there was also a requirement that citizens vote on whether to exceed the cap before the cap can be overridden (not a feature of Florida’s existing cap).
3. Overriding the cap in one year should not affect the level of the cap in future years (a feature of Florida’s existing cap).
4. Any legislation to override the cap should be required to be in a bill in which that is

the only subject, and should be required to specify the dollar amount by which the cap can be exceeded in that fiscal year (already a feature of Florida’s existing cap).

5. The cap should apply to all revenues or all expenditures, rather than capping only a subset of total revenues or expenditures (not a feature of Florida’s existing cap).
6. The cap for each year should be calculated using the lower of two factors: the previous year’s cap or the previous year’s actual revenues or expenditures, rather than just the previous year’s cap (not a feature of Florida’s existing cap).
7. The cap should limit revenue or expenditure growth to the sum of population growth and inflation, rather than income growth (Florida’s existing cap uses income growth.).
8. The cap should apply to local government revenues or expenditures in addition to state revenues or expenditures, to prevent the cap from being evaded by shifting expenditures from the state level to the local level (This is not a feature of Florida’s existing cap, although a separate constitutional provision purports to prohibit the Legislature from enacting “unfunded mandates” that require spending by local governments.)

If Florida passed a budget limitation amendment with these eight features, it would provide more of a constraint on the growth of state taxes and expenditures than the present “limit,” which is largely ineffective for the reasons discussed above.

How Would Different Provisions Affect Florida’s State Expenditures?

This section looks at the effects of incorporating provisions 5, 6, and 7 from the above list into a constitutional budgetary limitation for Florida. Provision 5 is the requirement that the limit should apply to total expenditures or revenues, rather than just a subset. Table 1 shows that the current revenue cap initially covered about 82 percent of net receipts, but that by 2003-04, only

about 76 percent of net receipts were capped. This erosion, which seems to be accelerating, allows total net receipts to grow even faster than the already-loose limit: the five-year average growth of personal income. The constraint would be more binding if it covered all revenues or all expenditures. A good object for the cap is total appropriations, which is the total amount that the state government spends.

The second column (following the Year column) in Table 2 shows the actual revenue limit from Table 1, and the third column shows total appropriations. Capping total appropriations would impose a cap on total state government expenditures, and would be almost exactly equal to a cap on total direct state

government revenues. An advantage of capping appropriations is that this is the bottom line on the state budget every year, making it an easy and visible target for a cap.⁵

While Table 1 shows how the cap exempted a substantial and growing portion of the state's total receipts, Table 2 deals with appropriations—outgo as opposed to income. In Table 2, the column following Appropriations shows the percentage of total appropriations that have been capped under the current constitutional budget limit. That percentage has steadily fallen from around 60 percent of appropriations after the cap was initially applied to around 50 percent by the early years in this decade. This is because not all revenues or expenditures are

Table 2
Florida's Constitutional Budget Limit Applied to Appropriations
(Dollar Figures in Millions of Dollars)

Year	Currently Subject to Cap ¹	Appropriations ²	Pct. of Appropriations Limited	Cap if Applied to Total	Cap Would Exceed Appropriations
1995-96	19,507	33,902	57.5%	35,736	5.4%
1996-97	20,968	34,508	60.8%	37,830	9.6%
1997-98	22,150	37,520	59.0%	40,100	6.9%
1998-99	23,080	39,301	58.7%	42,686	8.6%
1999-00	23,944	42,213	56.7%	45,141	6.9%
2000-01	24,131	44,985	53.6%	47,859	6.3%
2001-02	24,960	48,222	51.8%	50,649	5.0%
2002-03	25,269	50,320	50.2%	53,699	6.7%
2003-04	27,379	53,500	51.2%	56,695	6.0%
2004-05		57,300		60,097	4.9%
2005-06		63,076		63,703	1.0%

1. From Table 1. As noted above, the cap after 2003-04 has not yet been calculated.

2. Appropriations prior to 2001-02 are adjusted for double appropriations. See footnote 3 in the text for a more detailed explanation of the adjustment.

3. Calculations for 2004-05 and 2005-06 assume an average annual personal income growth rate of 6 percent, which is consistent with increases for earlier years.

covered by the cap, and the uncovered portion is growing relative to the covered portion.

The next column in the table shows what the cap would be now if the existing formula, limiting growth to the five-year average growth rate of personal income, had been applied to total appropriations rather than to a subset of revenues, as it now is. For example, the cap would have been \$35.4 billion in 1995-96, and would have risen to \$63.7 billion by 2005-06. The appropriations never would have exceeded the cap during this period, but they would have been much closer to the cap.

The final column in the table shows the

percentage by which such a cap would have exceeded appropriations if the cap had been applied to appropriations. At its peak, the cap never would have been more than 10 percent above appropriations. Moreover, because of the substantial increase in appropriations from 2004-05 to 2005-06, the cap now would be only one percent above actual appropriations. Therefore, it would be quite close to being an effective cap, in contrast to the current cap, which will never be effective.⁶

This shows that one reason the current revenue limitation is ineffective is that it excludes a great deal of state revenue. If

Table 3
Florida's Constitutional Budget Limit Applied to
Appropriations and Limiting the Base
(Dollar Figures in Millions of Dollars)

Year	Appropriations	Stricter Cap ¹	Percent Reduction From Cap	Strictest Cap ²	Percent Reduction From Cap
1995-96	33,902	35,736	0.0%	35,226	0.0%
1996-97	34,508	35,889	0.0%	35,505	0.0%
1997-98	37,520	36,578	2.6%	36,220	3.6%
1998-99	39,301	38,937	0.9%	37,599	4.5%
1999-00	42,213	41,176	2.5%	39,068	8.1%
2000-01	44,985	43,655	3.0%	41,185	9.2%
2001-02	48,222	46,200	4.4%	43,547	10.7%
2002-03	50,320	48,982	2.7%	45,225	11.3%
2003-04	53,500	51,715	3.5%	47,263	13.2%
2004-05	57,300	54,818	4.5%	49,328	16.2%
2005-06	63,076	58,107	8.6%	52,034	21.2%

1. Cap applied to all appropriations and allowing an increase of the past five years' personal income growth, using the lower of the previous year's cap or the previous year's appropriations as the base.
2. Cap applied to all appropriations and allowing an increase of the sum of inflation and population growth, using the lower of the previous year's cap or the previous year's appropriations as the base.

total revenues or – as suggested here – total appropriations were capped, the cap would be closer to the actual state budget. It still would not have had any constraining effect, because even when calculated this way, appropriations remained below the recalculated cap.

The second provision that could make Florida's cap more effective is to use as a base last year's budget or last year's cap, whichever is lower. Table 3 shows the results if the existing cap had been passed using appropriations as its base, and if the base were also adjusted this way. The column after the Year column shows actual appropriations, and the next column, titled Stricter Cap, shows what the cap would have been if it had been applied to all appropriations, if the base to calculate the cap had been the previous year's actual appropriations or the previous year's cap, whichever was lower, and if (as with the current formula) the cap increased by the five-year average of the state's personal income growth.

As the table shows, just by making these two changes (redesignating the base, and making the cap apply to all appropriations), the redesigned cap would have reduced allowable appropriations by several percent. The next column shows how much lower this cap would have been than actual appropriations in any year. In the first two years, the cap would have had no effect, but in 1997-98 it would have required appropriations to be 2.6 percent lower than that budget year's actual appropriations. Every year after that, the cap would have reduced appropriations from their actual level, and in the 2005-06 fiscal year, appropriations would have been 8.6 percent lower than actual appropriations, capped at \$58.1 billion.

The next column in Table 3, titled Strictest Cap, shows the effect of making all three of the changes listed at the beginning of this section. The cap applies to all appropriations; its base is last year's cap or last year's appropriations, whichever was lower; and the cap increases by the sum of inflation and state population growth. This cap would have limited appropriations much more than the one just analyzed. As in the previous example, the cap would have had no effect in its first two years, because appropriations

grew by less than the sum of inflation and population growth. Actual appropriations increased considerably in fiscal year 1997-98. If this stricter cap had been in place, it would have limited appropriations to \$36.2 billion, which was 3.6 percent lower than actual appropriations in that year. Looking ahead in the table, the cap would have continued restricting appropriations more severely every year (when compared to actual appropriations) so that by fiscal year 2005-06 – the budget just passed by the legislature – capped appropriations would have been \$52 billion rather than the \$63 billion actually appropriated, or 21.2 percent less than actual appropriations.

These examples show that what may appear at first to be minor details in the design of a tax and expenditure limitation can have a substantial impact on the effectiveness of the limitation. Florida's current revenue limitation is designed to be ineffective because (1) it does not cap all revenues; (2) it sets the base for calculating the cap at last year's cap even if actual revenues were below that cap; and (3) it allows growth to match the state's income growth rather than the combination of inflation and population growth, as caps in some other states have done. Table 2 shows that if the cap were to apply to all appropriations rather than just a portion of revenues, it still would not have limited expenditures, but the cap would be very close to current appropriations. Table 3 shows that if in addition to covering all appropriations the base for calculating the cap were changed to be last year's cap or last year's appropriations, whichever was less, the cap would have had an effect, and the current cap for fiscal year 2005-06 would be 8.6 percent below current appropriations. If in addition to those changes the cap allowed expenditure growth to rise only by the combination of inflation and population growth rather than by the growth in personal income, the current cap would be 21.2 percent below actual appropriations. These examples show changes that could be made to Florida's current revenue limitation that would make it effective in slowing the growth of state expenditures.

“Florida’s current revenue limitation is designed to be ineffective because (1) it does not cap all revenues; (2) it sets the base for calculating the cap at last year’s cap even if actual revenues were below that cap; and (3) it allows growth to match the state’s income growth rather than the combination of inflation and population growth...”

“Without a cap on local expenditures, any cap on state expenditures would be less effective.”

Local Government Expenditures

Local government taxes and expenditures are rising faster than state government taxes and expenditures partly because of local tax increases, but also because of the increase in assessed value of property that is covered under the property tax. Owner-occupied homes are spared some of this increase because of a constitutional limit on the increase in assessments, but rental property, commercial property, second homes, and any other property has no such restriction on it. The expenditure cap example shown in the previous section used state government expenditures to show the effect of a cap, but the same type of limitation could be imposed on local governments at the same time—and should be if the cap is to be effective. Otherwise, limits on state expenditures could be avoided by shifting the spending to the local level. Accordingly, an effective expenditure limitation would also limit local government expenditures to grow no more rapidly than the combination of population growth and inflation.⁷

Along with this limit, an effective provision would have to be enacted to keep the state government from imposing unfunded mandates on local governments. This could be done by incorporating language that reduces the state’s cap by the amount of any mandates that shift responsibility from the state government to local governments, and increasing the caps on local governments by that same amount. Without a cap on local expenditures, any cap on state expenditures would be less effective.

With regard to local government expenditures, the largest own-source of most local government revenue is property taxes, and it would be easy to design a system that would provide a proportional refund of property taxes to taxpayers for any revenues that exceeded the local expenditure cap. Refunding excess revenues to taxpayers would be easier at the local level, where taxpayers are easy to identify, than at the state level, where the largest source of tax revenue is the sales tax, because it is

difficult after the fact to identify how much each taxpayer paid in sales taxes.

What Would Happen to State Revenues In Excess of the Cap?

If appropriations were capped, as in the examples illustrated in Tables 2 and 3, then legislators drafting the state’s budget would know the maximum amount they could spend. As with the current revenue limitation, revenues in excess of the cap could be placed in the Budget Stabilization Fund and used when economic downturns lowered state revenues. Once the Budget Stabilization Fund reached its limit,⁸ the current limitation requires that excess funds “be refunded to taxpayers as provided by general law.” This creates some ambiguity because the way that taxpayers are refunded the money is not specified in the constitution. However, it may be acceptable to leave the Legislature with some flexibility with regard to returning excess funds to the taxpayers. If the Legislature sees that revenues are coming in such that the cap will be substantially exceeded, the state sales tax rate could be reduced, the Legislature could provide sales tax holidays (as they have in the past) of sufficient length to keep the limit from being exceeded, or they could reduce taxes in other ways. It may be desirable to specify in more detail how taxes would be reduced if revenues exceeded the cap. At the same time, the cap still could function if it allowed the Legislature the discretion of deciding at a later date what would be done with excess revenues.

If expenditures were capped as shown in Table 3, a substantial amount of revenue would be available for the budget stabilization fund and for tax reductions. Table 4 shows the cumulative revenue totals that would have been freed up under the stricter cap and the strictest cap illustrated in Table 3.⁹ In 1995-96 and 1996-97, appropriations would have been below the cap in either scenario, leaving no money left over to contribute to the budget stabilization fund or for tax cuts. In 1997-98, both of the caps in Table 3 were exceeded, so under the stricter cap \$932 million would have been available for the

budget stabilization fund or for tax cuts. Under the strictest cap \$1.3 billion would have been available. Those figures are shown in Table 3. In 1998-99 the stricter cap would have provided an additional \$364 million (not shown in the table), which when added to the previous year's excess revenues, would have provided \$1.31 billion in cumulative revenues available for the budget stabilization fund (the number shown in the table). Similarly, the strictest cap would have produced \$3 billion in cumulative revenues for tax cuts or the budget stabilization fund by 1998-99.

Going to the bottom of the table, by 2005-06, if the stricter cap had been in place a cumulative total of \$16.3 billion would have been available for tax cuts or the budget stabilization fund. This would represent 28 percent of the capped

appropriations of \$58.1 billion (from Table 3) in that year. In other words, if all of the excess revenues above the cap had been placed in the budget stabilization fund under the stricter cap, the budget stabilization fund would have been over \$16 billion by 2005-06. Similarly, under the strictest cap, a cumulative \$44.9 billion would have been available for the budget stabilization fund or for tax cuts over the years.

Under the current cap, the budget stabilization fund cannot exceed 10 percent of the budget, so if this 10 percent figure were applied to appropriations under the strictest cap, the budget stabilization fund could have been filled to its maximum level at \$5.2 billion, leaving \$39.8 billion for cumulative tax cuts over the years from 1997-98 to 2005-06.

Table 4
Revenue Available for the Budget Stabilization Fund and
Tax Cuts Under Two Expenditure Caps
(Dollar Figures in Millions of Dollars)

Year	Available Under Stricter Cap	Percent of Capped Appropriations	Available Under Strictest Cap	Percent of Capped Appropriations
1995-96	0	0.0%	0	0.0%
1996-97	0	0.0%	0	0.0%
1997-98	942	2.6%	1,300	3.6%
1998-99	1,306	3.4%	3,002	8.0%
1999-00	2,343	5.7%	6,147	15.7%
2000-01	3,673	8.4%	9,947	24.2%
2001-02	5,695	12.3%	14,622	33.6%
2002-03	7,033	14.4%	19,717	43.6%
2003-04	8,818	17.1%	25,954	54.9%
2004-05	11,300	20.6%	33,926	68.8%
2005-06	16,269	28.0%	44,968	86.4%

“It may be a challenge for elected officials to design the right combination of taxes and spending that would meet with the approval of the voters, but this is a part of what elected officials are elected to do.”

The point of the figures in Table 4 is to show that if either of these caps had been passed in 1994 rather than the one that actually passed, Florida could have topped off its budget stabilization fund and cut taxes by billions of dollars.

No New Taxes Without Voter Approval

Another component of an effective TABOR is a provision for no new taxes or increases in existing tax rates without voter approval. A provision for no new taxes without voter approval is conceptually separate from the limitations on taxes and expenditures just discussed. Both could be implemented together, or either one could be implemented without the other. A provision for no new taxes without voter approval would not place a cap on the taxing or spending authority of any government. It would simply require that voters approve of any tax increases they are asked to pay.¹⁰ It is a straightforward application of the principle of not allowing taxation without representation.

A “no new taxes without voter approval” amendment can—and should—be applied to local as well as state taxes, to prevent local tax hikes from substituting for state taxes. While it would not prevent tax increases as long as voters approved of them, a requirement that voters approve of any increases in taxes before they take effect would change the nature of the process and the nature of the debate on tax increases. Rather than having legislators, city and county commission members, or school board members decide whether they want to impose a tax increase to get more revenue, those elected officials would have to consider whether we, the voters, would be willing to approve a tax increase. This would make elected officials more accountable to citizens and voters, and would mean that they would have to package any tax increases so that the combination of new taxes and what was purchased with the tax increases would be attractive to voters.¹¹ This would mean more thought would have to be given to making sure voters got their money’s worth from tax

hikes, and it would mean that tax increases would have to be designed with the voter’s well-being in mind.

Some might argue that a cap on taxes or spending could impede the government from carrying out programs its citizens would desire, but a “no new taxes without voter approval” provision would not be subject to this criticism, because if citizens desired a particular expenditure, they would vote for the taxes to finance it. It may be a challenge for elected officials to design the right combination of taxes and spending that would meet with the approval of the voters, but this is a part of what elected officials are elected to do. If they proposed a tax that was voted down by citizens, that would be an indication that most people did not view the proposed tax, along with the spending it would finance, as beneficial.

Floridians have a history of voting for taxes when their governments propose them, so a “no new taxes without voter approval” provision in the state’s constitution would not deprive government of revenues to fund expenditures taxpayers view as worthwhile. Local option sales taxes require the approval of voters in Florida, and 58 of Florida’s 67 counties have voted to tax themselves at higher rates. Also, prior to 1968, property taxes for school district operating expenditures required voter approval in Florida, and most school board requests were approved.¹² Florida has a history of requiring voter approval of taxes in certain areas, and that experience shows that it works, and that Floridians will vote for taxes when they believe they would benefit from the resulting expenditures.

This type of limitation would apply to all new taxes or increases in existing tax rates at both the state and local level. One way it could be designed is for the legislature (or school board, county commission, etc.) to propose taxes that could be placed on a November ballot.¹³ The taxes could not take effect until they had been approved by the voters. This would require some planning ahead, but no more than is required of citizens budgeting their incomes to meet uncertain future expenses like car repairs, doctor bills, and unexpected weddings for out-of-town

relatives. For those who support the principle of “no taxation without representation,” a requirement for voter approval of new taxes seems like the most straightforward provision that could be incorporated into a Taxpayer Bill of Rights.¹⁴

Conclusion

Florida’s voters passed a constitutional revenue limitation in 1994, showing that they wanted stronger constraints on the Legislature’s power to tax and spend. With a decade of hindsight, it is apparent that the revenue limitation passed in 1994 will never offer such a constraint. While it has some desirable features, it is ineffective because the cap rises every year regardless of the level of revenues being capped, because the cap does not apply to the whole budget, and because the cap grows at the relatively rapid rate of personal income growth in the state rather than at the slower rate that would occur if growth were limited to the combination of inflation and population growth. This Backgrounder analyzed what the effects of implementing those changes to Florida’s current limitation would have been, and showed that all three of them would have contributed to the effectiveness of the cap. A new limitation could be designed to be effective by changing those features of the current limitation.

In addition, any Taxpayer’s Bill of Rights should give taxpayers the right to approve of the taxes they are asked to pay. This suggests a straightforward amendment to Florida’s Constitution that would require voter approval for any new taxes or increases in existing tax rates to take effect. What better way to provide rights to taxpayers than to give them the final say on whether they should be taxed?

For those who want to limit the taxing and spending powers of government, an effective constitutional cap on revenues or expenditures can be designed to replace the ineffective cap that voters approved in 1994. For those who believe that a democratic government should not tax people unless there is a general consensus in favor of the tax, a

provision for no new taxes without voter approval is a clear way to protect the rights of taxpayers. A Taxpayer’s Bill of Rights reflects the principle that government exists to serve its taxpayers; taxpayers do not exist to serve their government.

Footnotes

- ¹ Ronald Reagan, “Reflections on the Failure of Proposition #1,” *National Review*, December 7, 1973.
- ² Milton Friedman, “Freedom’s Friend,” *The Wall Street Journal*, June 11, 2004.
- ³ Much of this discussion is from Barry W. Poulson, “Tax and Spending Limits: Theory, Analysis, and Policy,” *Issur Paper 2-2004*, Independence Institute, Golden, Colorado, January, 2004.
- ⁴ The definition of the business cycle is based on the National Bureau of Economic Research measures of peaks and troughs in the growth of aggregate economic activity as measured by Gross National Product or Gross Domestic Product. For example, a recession is defined to occur after several continuous decreases in quarterly Gross National Product.
- ⁵ David Hoffman, Ed., *Facts and Figures on Government Finance*, The Tax Foundation, Washington, D.C. Nov. 2004, pp.191-271.
- ⁶ *Op. Cit.* Poulson, “Tax and Spending Limits: Theory Analysis and Policy”.
- ⁷ For a discussion of the experience with tax and spending limits in these states, see *Ibid.* pp.10-16.
- ⁸ *Ibid.*, pp.10-16.
- ⁹ Barry W. Poulson, “Colorado’s TABOR Amendment: Past Trends and Future Prospects,” *Americans for Prosperity Foundation*, Washington, D.C., July 2004.
- ¹⁰ *Even in Budget Crises Coloradoans Support TABOR Amendment Limits on Taxes and Government Spending*, Poll Analysis, Ciruli Associates, Denver, Colorado, April 15, 2003.
- ¹¹ *Op. Cit.* Poulson, “Colorado’s TABOR amendment”
- ¹² *Ibid.*, *passim*.
- ¹³ *Even in Budget Crises Coloradoans Support TABOR Amendment Limits on Taxes and Government Spending*, Poll Analysis, Ciruli Associates, Denver, Colorado, April 15, 2003.
- ¹⁴ U.S. Census Bureau, *Statistical Abstract of the United States, 2004-2005*, <http://www.census.gov/statab/ranks/rank29.html>.
- ¹⁵ U.S. Bureau of Labor Statistics.
- ¹⁶ “The Facts on Florida’s Tax Climate,” *The Tax Foundation*, Washington D.C., July 13, 2004
- ¹⁷ Randall G. Holcombe, “Can Florida Afford Tax Cuts?,” *Point of View*, The James Madison Institute, March 17, 2005.
- ¹⁸ Randall G. Holcombe, “Is Florida’s Tax Structure Ready for the 21st Century?,” *Policy Report No. 42*, James Madison Institute, December 2004

Endnotes

- ¹ Quoted by John Andrews, “Put the Spenders on the Defensive,” *The Insider* (Summer 2005), p. 10. Hillman made this statement when he was a state senator.

“What better way to provide rights to taxpayers than to give them the final say on whether they should be taxed?”

- ² See www.state.fl.us/edr/reports/specialreports/revcapweb.htm for a more detailed description.
- ³ Because the cap is larger than the actual revenues it covers, it allows revenues to grow faster than the state's income and still remain below the cap. To see why this is true, consider a simplified numerical example. Assume that actual revenues under the cap are \$100, but the cap is \$120, which is 20 percent above capped revenues, which is similar to the situation in 2002-03. Now assume that personal income growth over the past five years averaged 6 percent, which is close to the average rate of growth of the cap since its inception. Increasing the \$120 cap by 6 percent makes the new cap \$127.2. The cap grows by \$7.20 even though a 6 percent increase in actual expenditures would only be \$6. This shows how, when the cap is above actual expenditures, it allows actual expenditures to grow faster than average personal income growth and still remain below the cap.
- ⁴ It does not make pork barrel spending impossible, though, because there could be an agreement among Legislators to pass a companion bill with pork barrel spending in it in exchange for voting to exceed the cap. However, the single subject requirement along with the two-thirds majority required in both houses makes it more difficult to use pork barrel projects as an inducement to vote to exceed the cap.
- ⁵ Appropriations prior to 2001-02 in Table 2 are adjusted to reflect a change in state accounting procedures designed to eliminate the counting of double appropriations in the state budget. Prior to 2001-02, if revenues from one state account were appropriated to another state account and then spent, the appropriation would be counted twice in the budget: once when it was appropriated from one fund to the other, and the second time when the money was spent. Thus, total appropriations tended to be higher than total state spending, sometimes by as much as 15 or 20 percent, prior to 2001-02. Adjustments for double appropriations prior to 2001-02 were made by the author to maintain consistency in the appropriations figures. Beginning in 2001-02, appropriations figures in the table are from the state's budget.
- ⁶ Recall that appropriations in earlier years in the table were adjusted to correct for double appropriations. If the cap had been on appropriations as calculated back then, it would be higher now (if no adjustment were made for the accounting changes). However, those changes have already been made, so this particular accounting gimmick could not be used to avoid the cap if it were placed on appropriations now.
- ⁷ Colorado restricts school district expenditures to grow no faster than the combination of inflation and the growth in the number of students (rather than total population growth). Restricting school district expenditures to grow by the growth in students rather than total population would make sense.
- ⁸ Currently, the limit is 10 percent of the previous year's general revenue collections. An argument could be made for increasing this limit, because often economic downturns last several years and the fund could be exhausted. However, the appropriate limit is beyond the scope of the current analysis. See Randall G. Holcombe and Russell S. Sobel, *Growth and Variability in State Tax Revenue: An Anatomy of State Fiscal Crises* (Westport, CT: Greenwood, 1997), chapter 9, for an analysis of state rainy day funds showing that most state limits on the funds (including Florida's) are not sufficient to completely mitigate the impact of a typical recession.
- ⁹ This is under the assumption that total state revenues are equal to total appropriations. The two are very close to equal, but are not identical.
- ¹⁰ Colorado also requires voter approval for the state to increase its bonded indebtedness. Such a provision makes sense with a revenue limit because it would prevent the state from increasing its expenditures by borrowing. With an expenditure limit the requirement for voter approval of borrowing would be less important.
- ¹¹ This type of provision would not prevent increases in property taxes when the increases were due to an increase in assessed value at the current rate. A different remedy would be required, such as the expenditure cap already discussed. As another possibility, there is some interest around Florida in extending the "Save Our Homes" provision limiting the increase in property taxes on homesteads to all real estate in Florida, which addresses the problem of increasing assessed value over time. A group called "Families for Lower Property Taxes" collected signatures in 2005 for a ballot initiative to extend the homestead exemption to all real property and to double the homestead exemption, but the group's amendments were ruled unconstitutional by Florida's Supreme Court. The larger point is that this is an issue that is becoming increasingly visible in Florida, and if the legislature does not take action, it will be increasingly likely that citizens will use the initiative process to take action themselves.
- ¹² The system Florida used for school millage referenda was an interesting one, and is explained in Randall G. Holcombe, "The Florida System: A Bowen Equilibrium Referendum System," *National Tax Journal* 30 (March 1977), pp. 77-84.
- ¹³ One would want to consider carefully whether special elections at other times should be used, because turnout in such elections tends to be notoriously low.
- ¹⁴ For an example of possible wording of such an amendment, see the amendment that was voted on by Oregon voters in 2000 at www.sos.state.or.us/elections/nov72000/guide/mea/m93/m93.htm. The measure failed to get a majority and did not pass.

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Point of View

October 27, 2005

TABOR: A Name You'll Be Hearing

By John R. Smith

TABOR (the Taxpayer Bill of Rights) limits government growth, leaving more dollars in the hands of the taxpayers and less in the hands of government. Taxpayers like TABOR, and tax consumers don't.

TABOR is a constitutional or charter provision that limits government growth from year to year to no more than inflation plus population growth. It requires that surplus revenue above that amount be returned to taxpayers in the form of reduced taxes. It's a tax limit with real teeth.

The result where it has been tried is an enormous success. Colorado passed it in 1992, giving that state America's strictest tax-and-spending limits. As a result, Colorado has had the nation's second fastest rate of economic growth.

Meanwhile, Colorado's taxpayers have received some \$3.2 billion in tax refunds as a result of the TABOR amendment. TABOR is supported by 70 percent of Colorado residents, including a solid majority of Democrats and Republicans alike. That's a higher percentage than when it was enacted.

With the stated mission of placing a reasonable restraint on the growth of government, versions of TABOR are currently being introduced and promoted in 30 states. TABOR initiatives cap runaway government spending by imposing fiscal restraint. Its provisions

effectively establish fiscal safeguards that limit politicians' tendency to approve exorbitant increases in government spending. That forces elected officials to think long and hard about setting sensible priorities instead of reflexively approving every nice-sounding spending proposal that comes along.

If government turns out to require more money, TABOR provides a remedy. When government officials want to increase taxes or government spending more than allowed by the TABOR formula, they may ask the voters to approve it. TABOR gives voters more say-so.

Palm Beach County provides an especially pertinent example of why a TABOR is needed in Florida. In the boom times over the last decade, tax revenues flooded our state and county with money. That money was either spent or else squirreled away in obscure, indistinct trust fund accounts.

Palm Beach County's runaway growth in spending over the past decade has resulted in a huge budget. Often, when more taxes were "needed," the county simply created new "Special Taxing Districts." Now there are more than 155 of these taxing districts operating in the county.

Little known fact: This one county has more than 350 different sources of tax revenue. The county government's

spending throughout the 1990's and into this decade has outpaced the growth in population and inflation combined. In other words, government has expanded rapidly and hugely.

The best defense against future out-of-control spending is an automatic political restraint. If the people of Florida are serious about curbing taxes, they need to limit what the elected officials can do with our money. Regular legislation is not the answer. Only a charter amendment and/or a state constitutional amendment can offer strong protection. That's because laws govern the people, but charters and constitutions rule the governments.

We Floridians have it in our power to end the current upward spiral in government spending. We can change government policy by limiting the local government's spending in a given year to the previous year's spending adjusted for inflation growth and population growth. This will place a fiscal straitjacket on government bureaucrats.

By its very nature, government grows. Over the last 30 years, government has grown at nearly double the rate of the growth of wages of most Americans. Some Florida counties are beginning to lose businesses because of the excessive government taxes and spending. One Palm Beach County landowner pays \$20 million a year in ad valorem taxes.

Many elected officials do not trust the people to know what's good for them. That's why they want mandatory this, and government controlled that. Government must exercise spending restraint, just as responsible families and businesses do. We need a "Live-Within-Our-Means" budget.

If we can have government restrained within reasonable expenditures, we can have a safeguard against the ambitious designs of political insiders. We can harvest the bounty of our efforts. The time

has come for a Taxpayer's Bill of Rights. We need our very own TABOR-toothed tiger.

John R. Smith resides in Palm Beach County, where he chairs BIZPAC, a business group that attempts to restrain the rapid growth of government. He is a contributing scholar of The James Madison Institute, a non-partisan policy center based in Tallahassee.

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***CONTACT: Matt Warner (850) 383-4633
matt@jamesmadison.org***

New Proposal

Ethics

submitted by Grant Maloy

Ethics

One only needs to listen to the news to hear of regular ethics problem regarding politicians from the local to the national level. Seminole County has no rules regarding lobbyist. Florida ethics laws that govern elected officials are weak. Seminole County should show leadership on this issue and provide greater protection to the citizens.

I propose that a Charter Amendment should be placed before the voters that would put in place a County Ethics Policy that would apply to all elected officials, boards and department heads.

The ethics policy should include provisions for lobbyist registration and disclosure, prohibiting gifts, prohibiting doing business with ones agency and an independent review board that would review complaints.

Attachment

Supplemental Information Regarding

Salaries of Officers

submitted by Jimmy Ross

~~XXXXXXXXXXXX~~

JIMMY ROSS

1-23-26

To: Mr. Donald S. Fisher

1. I would appreciate it if you would have the attached reproduced and mailed to the members of the Charter Revision Commission.
2. An early mailing date would give the members plenty of time to read the attached prior to the next meeting.
3. Your cooperation and assistance are appreciated.

Thanks,



JIMMY ROSS

*P.S. If you'll mail me two
copies, I'll ensure
that the clerk has a
copy for the record.*

407-834-6729

R

U.S. NAVY MEMORIAL FOUNDATION

1-23-06

To: Seminole County Charter Revision Commission

Subj: County officers – county commissioners

1. At our meeting on January 9, 2006, there was a discussion regarding the salaries of county commissioners. F.S. 125.83(4) was quoted in connection with the discussion. This statute is quoted as follows:

“(4) The county charter shall provide that the salaries of all county officers shall be provided by ordinance and shall not be lowered during an officer’s term in office.”

2. Article VIII, Section 1(d) of the Florida Constitution clearly defines county officers. A copy of this portion of the Florida Constitution was attached to my memorandum of 11-08-05. The Constitution states the following:

“(d) County Officers. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office”

Note: (1) Please note the words, “any county officer may be chosen in another manner”

(2) County officer clearly means those specified in the Constitution.

3. Article VIII, Section 1(e) addresses county commissioners. This portion of the Constitution was also attached to my memorandum of 11-08-05.

4. Also attached to my memorandum of 11-08-05 was a document published by the Attorney General of Florida. He states, inter alia,

“It is, therefore, the nature of the powers and duties of a particular position which determines whether it is an “office” or an “employment.”

“Membership on the governing body of a governmental entity, such as a county or municipality, clearly constitutes an office.”

Note: Holding an office and being an officer are not one and the same. The County Attorney most eloquently addressed this issue.

5. Attached hereto are two opinions issued by the Attorney General of Florida. Clearly, county officers and county commissioners are not one and the same.

6. With reference to an appointed county officer, the board of county commissioners determines the salary. F.S. 125.83((4), quoted in paragraph 1, is germane.

7. Imagine the political turmoil that would ensue if the board of county commissioners determined the salaries of the county officers as set forth in F.S. 125.83(4).

8. F.S. 125.81(1) is quoted for information:

“County charter” means the charter by which county government in this state may exercise all powers of local self-government not inconsistent with general law and as adopted by a vote of the electors of the county.”

9. I attach hereto F.S. 145.031. I submit that this statute alone determines the salary of a county commissioner in every county in Florida with the possible exception of counties that are controlled by special legislation.

a. For any county to have a salary schedule for county commissioners other than as stated in F.S. 145.031 is, in my opinion, “inconsistent with general law.” This includes the action of this body.

b. Please note on page 7 of AGO 81-07 the following language:

“Section 1 (c), Art. VIII, State Const., which is implemented by parts II and IV of ch. 125, F.S., does not address and makes no mention of the subject of compensation of county officers of counties operating under county home rule charters; neither does s. 1(e) with respect to the governing body of a charter county, nor s. 1(d) relating to the constitutional officers specified.”

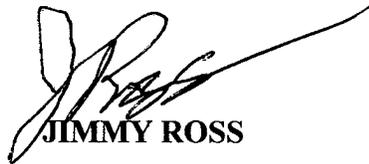
Note: Clearly, again, county officers and county commissioners are not one and the same.

10. The attached AGOs are several years old. They are effective so long as the AG has not issued an AGO on this subject that supersedes the attached. Their dates of issuance are, in my opinion, of no importance. If someone knows of their being cancelled, I'd be privileged to learn this information.

a. It is interesting that on p.10 of AGO 81-07 there is reference to AGO 077-88. Obviously, the date of the AGO is of no consequence.

11. I would appreciate someone telling us exactly where it is stated that the subject of compensation for county commissioners is supposed to be in the charter. There is probably nothing wrong with what the charter presently states. However, what has been proposed and voted on is, in my opinion, "inconsistent with general law."

- a. I submit that the reason the subject of salaries for county commissioners is not required to be in the charter is because the matter has already been addressed by the Legislature in F.S. 145.031.**



JIMMY ROSS

**Copy to:
County Attorney
Chairman, BCC**

Florida Attorney General Advisory Legal Opinion

Number: AGO 81-07

Date: February 11, 1981

Subject: Home rule counties

Mr. J. Bert Grandoff
County Attorney
County of Hillsborough

QUESTIONS:

1. Is the constitutional provision found in s. 6(e), Art. VIII, State Const., which allows Hillsborough County to establish a consolidated chartered form of government, the exclusive method by which Hillsborough County may adopt a chartered form of government, or in the alternative, may Hillsborough County properly act under s. 1(c), Art. VIII, State Const.?

2. If Hillsborough County enacts a charter under s. 1(c), Art. VIII, State Const., may its governing body have the power to supersede or alter special acts relating to Hillsborough County which have not been approved by referendum, especially those special acts which affect the incorporated as well as the unincorporated areas of Hillsborough County?

3. May a chartered form of government be validly established under part IV of ch. 125, F.S., if the constitutional officers of tax collector, property appraiser, supervisor of elections, clerk of circuit court, and sheriff were not included as chartered offices, but retain their status as if a charter had not been adopted?

4. May a county charter validly require that the salaries of county officers be provided by ordinance as mandated by s. 125.83(4), F.S.?

5. Must the executive responsibilities and the legislative responsibilities as set out in ss. 125.85 and 125.86, F.S., be included in the proposed Hillsborough County charter verbatim, or may they be altered or adjusted to accommodate, amplify or facilitate the particular optional form of government chosen?

2. If Hillsborough County adopts a charter form of county government under s. 1(c), Art. VIII, State Const., its governing body will possess no constitutional authority to amend or repeal or supersede or alter by county ordinance any existing and

effective special law relating to the county and/or the incorporated areas therein, except for those local and special laws relating only to the unincorporated area of the county in force and effect on the effective date of Art. VIII, State Const. 1968, which, pursuant to s. 6(d), Art. VIII, may be amended or repealed by county ordinance.

3. A chartered form of county government may be validly established for Hillsborough County under s. 1(c), Art. VIII, State Const., and part IV of ch. 125, F.S., if the constitutional officers denominated in s. 1(d), Art. VIII, are not included as charter officers but retain their present status as constitutional officers. The Constitution does not require such constitutional officers to be intrinsically included in a county home rule charter as charter officers or to be designated as such therein. 

4. Pursuant to the mandate of s. 5(c), Art. II, State Const., s. 125.83(4), F.S., probably cannot constitutionally prescribe or require that a county home rule charter provide that the salaries of all county officers be provided by ordinance, or constitutionally delegate to the governing body of a home rule charter county the power to fix by ordinance the compensation or salaries of all county officers. 

5. The general executive and legislative responsibilities, functions, powers and duties prescribed by ss. 125.85 and 125.86, F.S., must be included in and defined by a county home rule charter adopted under part IV of ch. 125, F.S., and no alteration of or deviation from the same may be made in formulating and adopting such county home rule charter; no provision in the charter for either optional form of county government may be inconsistent with or contravene any provision for or limitations on optional county charters prescribed in part IV of ch. 125, F.S.

SUMMARY.

Unless and until judicially determined otherwise:

1. Section 6(e), Art. VIII, State Const., does not provide the exclusive method by which Hillsborough County may adopt a chartered form of government, and the county may opt to proceed to adopt a county home rule charter or a charter form of county government pursuant to s. 1(c), Art. VIII, State Const. 1968, as implemented by part II or part IV of ch. 125, F.S.

AS TO QUESTION 1:

There are two constitutional provisions under which Hillsborough County may establish a chartered form of government: s. 1(c), Art. VIII (county government established by charter), and s. 6(e) (chartered form of consolidated government), State Const. 1968. I find nothing in the Constitution that would make the provisions of s. 6(e), Art. VIII, State Const. (s. 24, Art. VIII, State Const. 1885, as amended), the exclusive method by which Hillsborough County may adopt a chartered form of government; thus Hillsborough County may properly act to adopt a county home rule charter under s. 1(c), Art. VIII, or it may adopt a chartered form of consolidated government under s. 6(e), Art. VIII, preserving s. 24, Art. VIII, State Const. 1885, as amended. Cf. s. 3, Art. VIII, State Const. 1968, providing for consolidated governments which may be proposed only by special law.

Section 6(e), Art. VIII, State Const. 1968, as amended, provides, *inter alia*, that s. 24, Art. VIII, State Const. 1885, as amended, 'shall remain in full force and effect as to [Hillsborough County], as if this article [Art. VIII of the 1968 Constitution] had not been adopted, until [the] county shall expressly adopt a charter or home rule plan pursuant to this article [Art. VIII of the 1968 Constitution].' (Emphasis supplied.) Section 6(e) does not in terms purport to establish the exclusive method by which the county may adopt a charter establishing county government. Cf. s. 6(g), Art. VIII, State Const. 1968, as amended, which states that the 'legislature shall have power, by joint resolution, to delete from this article any subsection of this Section 6 . . . when all events to which the subsection to be deleted is or could become applicable have occurred.' To adopt a chartered form of *consolidated* government, as distinguished from a consolidation plan proposed by special law (see s. 3, Art. VIII, State Const. 1968), the county must comply with s. 24, Art. VIII, State Const. 1885, as amended, as incorporated in or preserved by s. 6(e), Art. VIII, State Const. 1968, as amended, and the charter commission to effectuate the provisions of s. 24, Art. VIII, State Const. 1885, must be established or continued by the State Legislature.

The provisions of s. 24, Art. VIII, State Const. 1885, as preserved by s. 6(e), Art. VIII, State Const. 1968, are kept alive or remain in force and effect only until such time as the county has expressly adopted a charter establishing a *county government* which, except for the consolidation plan of county and municipal government provided for in s. 3, Art. VIII, State Const. 1968, is the only form of county government or county home rule charter provided for in Art. VIII, State Const. 1968. Upon the adoption of any such home rule charter by Hillsborough County, the provisions of s. 24, Art. VIII, State Const. 1885, expire. See the commentary on s. 1, Art. VIII, at p. 271, volume 26A, F.S.A. Thus, s. 6(e), Art. VIII, State Const. 1968, clearly comprehends or implies an option to proceed under either s. 1

(c), Art. VIII, State Const. 1968, or s. 24, Art. VIII, State Const. 1885, as preserved and continued in effect by s. 6(e), Art. VIII, State Const. 1968.

Therefore, until and unless judicially determined otherwise, I conclude that s. 6(e), Art. VIII, State Const. 1968, does not provide the exclusive method by which Hillsborough County may adopt a chartered form of government, and the county may opt to proceed to adopt a county home rule charter or a charter form of county government pursuant to s. 1(c), Art. VIII, State Const. 1968, as implemented by part II or part IV of ch. 125, F.S.

AS TO QUESTION 2:

While s. 1(c), Art. VIII, State Const. 1968, as amended, authorizes a county government to be established by charter pursuant to general law, neither s. 1(c) nor the implemental legislation, parts II and IV of ch. 125, F.S., empowers a charter form of county government to amend or repeal any statute theretofore enacted by the State Legislature. The expressed condition on the amendment or repeal of a charter once adopted is a limitation on the legislative power of the state. A discriminating analysis of the provisions of s. 1(g), Art. VIII, discloses no explicit grant of power to a charter county's governing body to amend or repeal a statute by ordinance. The reference in s. 1(g) to a 'special law approved by vote of the electors' would seem to concern those special laws adopting or amending or adding powers or limitations to county charters, which organic documents contain and prescribe the powers, or limitations on powers, of charter counties. See Commentary on s. 1, Art. VIII, at p. 271, volume 26A, F.S.A. Cf. s. 11(a)(1), Art. III, State Const. 1968, relating to special laws pertaining to the election, jurisdiction or duties of officers of chartered counties; and *Cross Key Waterways v. Askew*, 351 So.2d 1062, 1065, footnote 7 (1 D.C.A. Fla., 1977), affirmed, 372 So.2d 913 (Fla. 1978). The power to amend or repeal the statutory law is a legislative power belonging to the state which is, by the terms of s. 1, Art. III, State Const., vested in the State Legislature. Cf. AGO 075-260, concluding that the Volusia County charter may be repealed only by action initiated by the Legislature itself (approved by vote of electors) and not by the initiative and referendum process prescribed in the charter for amendments thereto. In the absence of some express constitutional authority therefor, it would seem axiomatic that existing statutes may be amended or repealed only by another statute enacted by the State Legislature. See Ch. 71-29, Laws of Florida, which repealed numerous general laws of local application affecting the several counties and converted the same to ordinances, subject to modification or repeal as are other ordinances. The legislative or quasi-legislative power delegated by s. 1(g), Art. VIII, to enact ordinances not inconsistent with general law (to conduct county government) does not carry with it the concomitant authority to enact ordinances amending or repealing

extant statutes or any part or parts thereof. The power granted to provide by charter for the precedence of county ordinances over municipal ordinances does not include the power to provide by charter for the precedence of county ordinances over laws enacted by the State Legislature, or delegate any part of the legislative power of the state to a county to enable it to enact or amend or repeal the laws of the state; nor does the implemental legislation, parts II and IV of ch. 125, F.S. The only constitutional authority for a county, charter or noncharter, to amend or repeal a law enacted by the State Legislature appears to be that contained in s. 6(d), Art. VIII, State Const., which reads:

Local laws relating only to unincorporated areas of a county on the effective *3693 date of this article may be amended or repealed by county ordinance.

Section 6(d), Art. VIII, State Const., neither defines 'local laws' nor differentiates charter counties from noncharter counties. Section 12(g), Art. X, State Const., defines the term 'special law' to mean a special or local law, and it has been stated that at least one definition of a local law is a 'special law.' *Davis v. Gronemeyer*, 251 So.2d 1, 4 (Fla. 1971). The terms 'county' or 'counties' are used throughout the Constitution without distinction and both apply to or refer to charter and noncharter counties alike and the officers thereof. See, e.g., s. 5, Art. II; s. 1(f), Art. IV; s. 7, Art. IV; ss. 8, 9, 10 and 12, Art. VII; and ss. 1(a), 1(h), 1(i), 1(j), 1(k), 4, 5, Art. VIII, State Const. As observed by the Supreme Court of Florida in *Sarasota County v. Town of Longboat Key*, 355 So.2d 1197, 1201 (Fla. 1978), '[w]here there has been an intent to distinguish the two forms of county government [in the State Constitution], it has been done explicitly.' For example, see, s. 11(a)(1), Art. III; ss. 1(d), 1(e), 1(f), 1(g), Art. VIII; see also *State ex rel. Dade County v. Dickinson*, 230 So.2d 130, 137 (Fla. 1969), holding that the constitutional limitations contained in s. 9(b), Art. VII, apply to 'home rule and consolidated governments as well as traditional counties and municipalities'; *Davis v. Gronemeyer*, *supra*, at 5, holding that noncharter counties have home rule power only to the limited extent provided by s. 6(d), Art. VIII, the clear implication of which is that the provisions of s. 6(d), Art. VIII apply to charter as well as noncharter counties; *In re Advisory Opinion to the Governor*, 313 So.2d 717 (Fla. 1975), applying the provisions of s. 1(f), Art. IV, State Const., referring to 'any vacancy in state or county office,' to a charter county; *Alsdorf v. Broward County*, 333 So.2d 457 (Fla. 1976), applying the provisions of s. 1(h), Art. VIII, State Const., with reference to a 'county' to a charter county; and *cf. In re West Water Management District*, 269 So.2d 405 (2 D.C.A. Fla., 1972), applying the provisions of present s. 125.01(1)(j), F.S., to a charter county and, by way of dicta, the provisions of present s. 125.01(1)(q), F.S.; *City of Ormond Beach v. County of*

Volusia, 383 So.2d 671, 673 (5 D.C.A. Fla., 1980), stating a charter county is authorized by s. 1(g), Art. VIII, State Const., and s. 125.01(1)(f), F.S., to operate a library system; and State ex rel. Volusia County v. Dickinson, 269 So.2d 9 (Fla. 1972), reading s. 9(a), Art. VII, referring to 'counties,' and s. 1(g), Art. VIII, referring to charter counties, together and applying the same to a charter county for purposes of the cigarette tax.

The inquiry and supplemental materials furnished to this office suggest that s. 1(g), Art. VIII, State Const., controls this question. Sarasota County v. Town of Longboat Key, 355 So.2d 1197 (Fla. 1978), seems to militate against this notion. In any event, it is beyond the powers of this office to conclusively determine such constitutional, jurisdictional questions. In Sarasota County v. Town of Longboat Key, *supra*, the county contended that charter counties were excluded from the transfer of powers provisions of s. 4, Art. VIII, State Const. (referring in material part to 'a county') by reason of s. 1(g), Art. VIII, or alternately that the transfer requirements of s. 4, Art. VIII, were met by s. 125.86(7), F.S., which vests the board of county commissioners with the power to:

Adopt, pursuant to the provisions of the charter, such ordinances of countywide force and effect as are necessary for the health, safety, and welfare of the residents. It is the specific legislative intent to recognize that a county charter may properly determine that certain governmental areas are more conducive to uniform countywide enforcement and may provide the county government powers in relation to those areas as recognized and as may be amended from time to time by the people of that county;

and suggested that because it operated under a charter form of government, s. 1(g), Art. VIII alone governed its powers. The Supreme Court disagreed and held that s. 4, Art. VIII applies both to charter and noncharter counties. On the county's assertion that s. 4, Art. VIII contemplated a general law such as s. 125.86(7), F.S., by which counties might accomplish a transfer of municipal functions by county resolution, the court held that the 'by law' reference in s. 4, Art. VIII, connotes the need for a separate legislative act or statute addressed to a specific transfer of a function or power and that s. 125.86(7), F.S., 'does no more than provide general authority for county commissions to exercise police powers.' Analogously, the provisions of s. 6(d), Art. VIII, referring to 'a county' without distinction, would appear to apply both to charter and noncharter counties and operate to prohibit a chartered form of county government from amending or repealing, or, as stated in your question, superseding or altering, by county ordinance existing special laws relating to a county which affect the incorporated areas as well as the unincorporated areas of the county. Just as the

Supreme Court in *Sarasota County v. Town of Longboat Key*, *supra*, was 'reluctant to elevate the general provisions of Article VIII, Section 1(g) to a dominant position over the specific provisions of Article VIII, Section 4,' this office, even if possessing the authority so to do, would be reluctant to and could not justify raising the general provisions of ss. 1(c), 1(g), Art. VIII, and the implemental legislation, parts II and IV of ch. 125, F.S., to a position of supremacy over s. 6(d), Art. VIII.

Therefore, until judicially determined otherwise, I conclude that if Hillsborough County adopts a charter form of county government under s. 1(c), Art. VIII, State Const., its governing body will possess no constitutional authority to amend or repeal or supersede or alter by county ordinance any existing and effective special law relating to the county and the incorporated areas therein, except for those local and special laws relating only to the unincorporated area of the county in force and effect on the effective date of Art. VIII which, pursuant to s. 6(d), Art. VIII, may be amended or repealed by county ordinance.

AS TO QUESTION 3:

This question arises under part IV of ch. 125 (ss. 125.80-125.88), F.S., and questions whether the prescribed chartered form of county government may be validly established if the constitutional county officers are not made charter officers but retain their present status. ★

Part IV of ch. 125, F.S., does not make any provisions for or require that these constitutional officers be made charter officers or that the designated offices be abolished and the duties thereof transferred to another (charter created) office. Neither does part II of ch. 125, F.S., which part IV supplements and provides for an alternative way for the adoption of a county charter. This question is controlled by s. 1(d), Art. VIII, State Const. 1968.

★ Section 1(d), Art. VIII, State Const., plainly provides that the designated county officers shall be elected by the electors of the county, 'except, when provided by county charter . . . any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office.' (Emphasis supplied.) Unless otherwise provided by the county charter, the clerk of the circuit court shall be the ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds. See also s. 16, Art. V, State Const. While s. 1(d), Art. VIII provides for an alternative procedure for choosing or selecting these county officers or for the abolition of any of the designated offices and the transfer of the duties of an office so abolished to another office created by the charter, it does not ★

require that either alternative be adopted or utilized by the county, nor does it require that such constitutional officers be intrinsically included or excluded as charter officers, or designated as such in any charter adopted by the county. Cf. ss. 11(1)(a), 11(1)(f), 24, Art. VIII, State Const. 1885, as amended; ss. 601.1(a), and (b)(2), (3), (4), (5), 602, 602.1, Art. VI, and ss. 1507, 1508, 1511, 1512, Art. XV, ch. 70-966, Laws of Florida, the Volusia County Charter Act; see also s. 2, ch. 70-967, relating to the Volusia County Charter Act; and AGO 073-356, Questions One and Two, concluding that a county home rule charter could abolish all the constitutional officers and transfer the duties thereof to other officers, but that such transfer of duties to other county officers would not remove the *3694 transferee officers from the control of Florida Statutes directed toward the constitutional officers. Section 1(d), Art. VIII in effect creates or establishes the denominated county offices and officers as constitutional officers and, absent appropriate provision in a validly adopted county charter for the abolition of any one, or more, or all of such offices and the transfer of the duties thereof to another office created by the county charter, their status as such is not affected by the adoption of a county charter under s. 1(c), Art. VIII, State Const., and part IV of ch. 125, F.S. Cf. Broward County Home Rule Charter which, except for abolishing the office of tax collector (and the office of county comptroller) and transferring the functions and duties thereof to the county department of finance (s. 4.03B. and C., Art. IV), makes no mention of the other constitutional county officers denominated in s. 1(d), Art. VIII, State Const. (s. 2.03C, Art. II of the Broward County Charter also transfers the ex officio duties of the office of the Clerk of the Circuit Court relating to 'ex officio Clerk of the Board of County Commissioners' to the County Administrator 'or designate' and the fiscal functions and duties of the Clerk's office relating to 'custodian of all county funds, auditor and recordation of public documents' were transferred to the county department of finance by s. 4.03C, Art. IV of the Charter). See also In re Advisory Opinion to the Governor, 313 So.2d 717 (Fla. 1975), stating that the Sarasota County Home Rule Charter provided:

ELECTED OFFICERS. There shall be a Sheriff, a Tax Assessor, a Tax Collector and a Supervisor of Elections, elected for terms of four years. They shall perform those duties prescribed by ordinance and those duties required to be performed by all the constitutional sheriffs, tax assessors, tax collectors and supervisors of elections, respectively, in the state. [313 So.2d at 721.]

The Charter also provided:

The Review Board shall also fill vacancies as they occur in all elected county offices, providing the remaining term is fourteen

months or less, otherwise a special election will be held to fill the vacancy. [313 So.2d at 719.]

That advisory opinion states in effect that s. 1(d), Art. VIII does not provide an alternative constitutional procedure for the filling of vacancies in the constitutionally prescribed county offices, and, in the absence of any other constitutional provision in derogation of the Governor's power under s. 1(f), Art. IV, State Const., to fill by appointment any vacancy in county office, the Governor was authorized to fill the vacancy in county office in the manner as provided for in s. 1(f), Art. IV. 313 So.2d at 720-721.

On the foregoing considerations, and unless and until judicially determined otherwise, I therefore conclude that a chartered form of county government may be validly established for Hillsborough County under s. 1(c), Art. VIII, State Const., and part IV of ch. 125, F.S., if the constitutional officers denominated in s. 1(d), Art. VIII, are not included as charter officers but retain their present status as constitutional officers. The Constitution does not require such constitutional officers to be intrinsically included in a county home rule charter as charter officers or to be designated as such therein.

AS TO QUESTION 4:

Section 1(c), Art. VIII, State Const., which is implemented by parts II and IV of ch. 125, F.S., does not address and makes no mention of the subject of compensation of charter officers of counties operating under county home rule charters; neither does s. 1(e) with respect to the governing body of a charter county, nor s. 1(d) relating to the constitutional officers therein specified. As stated by the Supreme Court of Florida in *In re Advisory Opinion to the Governor, supra*, at 721, it has consistently been held that provisos or exceptions contained in constitutional provisions, such as those contained in ss. 1(d), 1(e), Art. VIII, do not enlarge or extend the sections of the constitution of which they are a part, but act as limitations on the language employed therein, and are construed strictly and limited to the objects fairly within their terms. It would therefore seem to follow that this question is not controlled by ss. 1(c), (d) and (e), Art. VIII, State Const. The only constitutional provision addressing the compensation and method of payment of 'county officers' is s. 5(c), Art. II, State Const., which requires their compensation to be fixed by 'law,' i.e., a law (special or general) enacted by the State Legislature. See, e.g., *Advisory Opinion to Governor*, 22 So.2d 398, 400 (Fla. 1945); and cf. *Merriman v. Hutchinson*, 116 So. 271, syllabus (1) (Fla. 1928). As indicated by *Sarasota County v. Town of Longboat Key, supra*, s. 1(g), Art. VIII, would not seem to operate to exclude charter counties, or the officers thereof, from the requirement of s. 5(c), Art. II, State Const., that the compensation of all county officers be fixed by law. Section 5(c), Art. II, State

Const., makes no distinction between 'county officers' of charter counties or those of noncharter counties; neither does it distinguish between appointive or elective officers of a county, charter or noncharter. As hereinbefore discussed, under Question Two, and as indicated in In re Advisory Opinion to the Governor, 313 So.2d 717 (Fla. 1975), applying the provisions of s. 1(f), Art. IV, relating to 'any vacancy in . . . county office' to a charter county and office of its tax collector, and, in Sarasota County v. Town of Longboat Key, supra, at 1201, applying s. 4, Art. VIII,--referring to 'a county'--to a charter county, where such terms as 'county' or 'counties' and 'county office' or 'county officer' are used in the Constitution without distinction or qualification they apply to or refer both to charter and noncharter counties and the officers thereof. Thus, it appears that the Constitution requires that the compensation or salaries of all county officers of all counties, charter or noncharter, 'shall be fixed by law.' s. 5(c), Art. II, State Const. However, s. 125.83(4), F.S., provides:

The county charter shall provide that the salaries of all county officers shall be provided by ordinance and shall not be lowered during an officer's term in office. (Emphasis supplied.)

As noted in AGO 077-88, s. 125.83(4), F.S., must be presumed to be valid and given effect until judicially determined otherwise, and this office is without the requisite authority to determine the validity of this or any other duly enacted act of the Legislature. Therefore, the validity and legal effectiveness of s. 125.83(4), F.S., are matters for the courts to resolve. However, inasmuch as s. 125.83(4), F.S., appeared to delegate to counties the power to declare what the compensation of all county officers shall be, this office did opine that this statute was constitutionally suspect as an invalid delegation of the legislative power in contravention of the constitutional requirement contained in s. 5(c), Art. II, that the salary of county officers 'be fixed by law'; and concluded that until judicially determined otherwise, and pursuant to the mandate of s. 5 (c), Art. II, State Const., s. 125.83(4), F.S., probably could not constitutionally prescribe that a county charter provide that salaries of all county officers be provided by ordinance, or delegate to the governing bodies of the counties the authority to fix by ordinance the compensation of all county officers. Attorney General Opinion 077-88; cf. Merriman v. Hutchinson, supra, syllabus (1) at 271; State ex rel. Nuveen v. Greer, 102 So. 739, syllabus (16) and (17) at 745 (Fla. 1924). While AGO 073-356 states there exists implied authority for a 'charter act [an act of, or a law enacted by, the Legislature] to fix the salary schedule of the newly created county officers,' (emphasis supplied) it found that the question of whether a county home rule charter (adopted pursuant to general law) 'could authorize the county commissioners to fix the salary schedule of newly created officers is an entirely different matter,' and went

on to conclude that a county home rule charter 'probably cannot authorize the county commission to fix by ordinance the compensation of county officers.'

I conclude, therefore, until judicially determined otherwise, that pursuant to the mandate of s. 5(c), Art. II, State Const., s. 125.83 (4), F.S., probably cannot constitutionally prescribe or require that a county home rule charter provide that the salaries of all county officers be provided by ordinance, or constitutionally delegate to the governing body a home rule charter county the power to fix by ordinance the compensation or salaries of all county officers.

AS TO QUESTION 5:

Your question does not make it clear to me the nature of the alterations or adjustments 'to accommodate, amplify or facilitate the particular optional form of government chosen' which the county has in mind or proposes to make in the home rule charter now under consideration. Therefore, your question must be addressed in general terms and general rules of law and statutory construction applied.

Section 125.83(1), F.S., plainly provides that a county home rule charter may prescribe one of the optional forms of government enumerated in s. 125.84 and 'shall clearly define the responsibility for legislative and executive functions [as enumerated in s. 125.85 and s. 125.86] in accordance with the provisions of [ch. 74-193, Laws of Florida, codified as parts III and IV of ch. 125, F.S.]' (Emphasis supplied.) The several optional forms of government are enumerated in s. 125.84, F.S., and each of them requires that the designated county executives or coexecutives exercise the prescribed executive responsibilities assigned by the charter. Section 125.81(2) defines 'form of county government' to mean 'that form . . . providing for the operation of a county government operating under a charter which shall be provided in the charter.' Section 125.86 requires the prescribed legislative responsibilities to be assigned to and vested in the board of county commissioners which, in addition to the other listed powers, shall have all other powers of local self-government (not inconsistent with the Constitution or general law) which have not been limited by the county charter. Section 125.85(13), F.S., similarly provides that the appropriate executive officer shall have 'any other power or duty which may be assigned by county charter or by ordinance or resolution of the board [of county commissioners]'. (Emphasis supplied.) From a reading of part IV of ch. 125, F.S., in its entirety, it becomes apparent to me that the executive and legislative powers delegated by ss. 125.85 and 125.86, respectively, are general in nature and scope and the executive and legislative duties imposed by ss. 125.85 and 125.86, respectively, likewise, are general in scope. Once a charter form of county government becomes operative, the board of county commissioners is mandated to adopt an administrative code organizing the

administration of the county government and setting forth the duties and responsibilities and powers of all county officials and agencies pursuant to the provisions of the charter. Section 125.87(1), F.S. It would seem that the county could and should utilize the administrative code to make the accommodations and amplifications mentioned in your fifth question, and to effectuate the specific administrative details and procedures in the execution and enforcement of the general powers and duties prescribed by the county home rule charter, unless otherwise limited by the charter.

Both ss. 125.85 and 125.86, F.S., specify that the respective responsibilities and powers of the county 'shall consist of the following powers and duties' (emphasis supplied) and s. 125.83(1), F.S., operates to require the county charter to clearly define these executive and legislative functions, powers and duties in accordance or consistent with all of the provisions of part IV of ch. 125, F.S. I therefore suggest that any 'adjustment' or 'amplification' of such general executive and legislative functions, powers and duties as defined in and prescribed by the proposed county home rule charter may not be inconsistent with or contravene the general powers and duties or jurisdictional executive and legislative responsibilities prescribed by ss. 125.85 and 125.86, F.S., or any other section or sections of part IV of ch. 125, F.S.

It is a settled rule of statutory construction that the express mention of one thing in a statute implies the exclusion of another, *expressio unius est exclusio alterius*. Thus, when a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned. *Thayer v. State*, 335 So.2d 815, 817 (Fla. 1976); *Interlachen Lakes Estates, Inc. v. Snyder*, 304 So.2d 433, 434 (Fla. 1973); and *Dobbs v. Sea Isle Hotel*, 56 So.2d 341, 342 (Fla. 1952). Moreover, when the controlling law (here part IV of ch. 125, F.S.), directs how a thing shall be done, that is, in effect, a prohibition against its being done in any other way. *Alsop v. Pierce*, 19 So.2d 799, 805-806 (Fla. 1944); *State ex rel. Reno v. Barquet*, 358 So.2d 230 (3 D.C.A. Fla., 1978). See also *In re Advisory Opinion of the Governor Civil Rights*, 306 So.2d 520 (Fla. 1975). Along the same line, the Legislature is presumed to know the meaning of words and to have expressed its intent by the use of particular words found in a statute. *Thayer v. State*, *supra*. By the use of the imperative 'shall' in both ss. 125.85 and 125.86, F.S., it appears that the Legislature intended that no alteration of or deviation from those responsibilities, functions, powers and duties prescribed by it be made in the formulation and adoption of an optional county charter or optional form of county government pursuant to part IV of ch. 125, F.S. The prescribed executive and legislative responsibilities, functions, powers and duties--unless otherwise circumscribed, qualified or added to by another section or sections of part IV of ch. 125--are the same for any or all of the

several optional forms of county government prescribed by s. 125.84, F.S., and may not be altered or deviated from by the county in adopting one or the other of the prescribed optional forms of government. Subsections (1) and (3) of s. 125.84, F.S., do prescribe additional powers for the county executives or co-executives therein specified. See also the additional requirements for the charter set forth in s. 125.83, F.S.

Unless and until judicially determined otherwise, I therefore conclude that the general executive and legislative responsibilities, functions, powers and duties prescribed by ss. 125.85 and 125.86, F.S., must be included in and defined by a county home rule charter adopted under part IV of ch. 125, F.S., and no alteration of or deviation from the same may be made in formulating and adopting such county home rule charter; no provision in the charter for either optional form of county government may be inconsistent with or contravene any provision for or limitations on optional county charters prescribed in part IV of ch. 125, F.S.

Prepared by:

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Florida Attorney General Advisory Legal Opinion

Number: AGO 77-88

Date: August 30, 1977

Subject: Counties, officers' salaries, provisions

Richard I. Lott
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QUESTION:

May s. 125.83(4), F. S., constitutionally require that a county charter provide that salaries of all county officers be provided by ordinance?

SUMMARY:

Until judicially determined otherwise, and pursuant to the mandate of s. 5(c), Art. II, State Const., s. 125.83(4), F. S., probably cannot constitutionally prescribe that a county charter provide that salaries of all county officers be provided by ordinance or delegate to the county commission the authority to fix by ordinance the compensation of all county officers.

Section 125.83(4), F. S., which concerns provisions to be included within optional county charters, adopted under the provisions of s. 1(c), Art. VIII, State Const., and part IV of Ch. 125, F. S., provides as follows:

The County charter shall provide that the salaries of all county officers shall be provided by ordinance and shall not be lowered during an officer's term in office. (Emphasis supplied.)

However, s. 5(c), Art. II, State Const., provides:

The powers, duties, compensation and method of payment of state and county officers shall be fixed by law. (Emphasis supplied.)

It is settled in this state that a statute found on statute books must be presumed to be valid and must be given effect until it is judicially declared unconstitutional. *White v. Crandon*, 156 So. 303, 305 (Fla. 1934); *Evans v. Hillsborough County*, 186 So. 193, 196 (Fla.

1938); *Pickerill v. Schott*, 55 So.2d 716, 719 (Fla. 1951). I am of course without authority to rule any duly enacted act of the Legislature invalid. But inasmuch as the legislative enactment cited above appears to delegate to counties the power to declare what the compensation of all county officers shall be, I feel it is constitutionally suspect.

The Florida Supreme Court has recognized that the Legislature may grant additional powers to and impose additional duties upon constitutional and statutory officers where not forbidden or inconsistent with the Constitution. *State ex rel. Watson v. Caldwell*, 23 So.2d 855 (Fla. 1946); *Whittaker v. Parsons*, 86 So. 247 (Fla. 1920). Such inhibition or inconsistency was found by the high court in a factual and legal situation strikingly similar to that presented herein. In *State ex rel. Buford v. Spencer*, 87 So. 634 (Fla. 1921), the court held that a legislative enactment which vested in the county commissioners the power and duty to fix the compensation of all county officers who were paid fees was violative of s. 27, Art. III, State Const. (1885), the precursor to s. 5(c), Art. II, dealt with herein. The court stated:

The provision giving the county commissioners power to fix the salaries of the officers according to the fancy of the board of county commissioners, which may vary in each of the 52 counties of the State, destroys that uniformity which is contemplated by the Constitution requiring the compensation of county officers to be fixed by law [*Supra* at 636.]

See also *State ex rel. Douglass v. Board of Public Instruction of Duval County*, 123 So. 540 (Fla. 1929), holding unconstitutional a legislative enactment conferring upon the county board of public instruction powers to fix compensation of school attendance officers; *Musleh v. Marion County*, 200 So.2d 168 (Fla. 1967), to the same effect regarding a legislative enactment authorizing board of county commissioners to determine compensation of an elected county prosecutor; and AGO 073-356, concluding that a county charter probably cannot delegate to the county commission the authority to fix by ordinance the compensation of county officers.

Until judicially determined otherwise, it is my opinion that s. 125.83(4), F. S., may well prove to be an invalid delegation of legislative power in its authorization for the fixing of salaries of all county officers by ordinance, and I cannot in good conscience advise or suggest to the county that it attempt to exercise the purported authority prescribed in s. 125.83(4) until the courts have resolved the question.

In this vein, it is well to point out that if Escambia County contemplates either adoption of the county manager form of government

pursuant to s. 125.84, F. S., or provisions for the appointment of other county officers, provisions for fixing of salaries of such officers are found solely within the terms of s. 125.83(4), F. S., and s. 5(c), Art. II, State Const. As such, and given the doubts expressed herein concerning the constitutionality of s. 125.83(4), F. S., remedial legislation for this class of appointed officers may be necessitated. It is otherwise with those county officials enumerated within Ch. 145, F. S., wherein the Legislature has given definite guidelines concerning salaries.

Prepared by:

Joseph W. Lawrence, II
Assistant Attorney General

Note: It is Chapter 145 that addresses salaries of county commissioners and other officials.

R

CHAPTER 145

COMPENSATION OF COUNTY OFFICIALS

provided in this chapter) of counties which have a chartered consolidated form of government as provided in chapter 67-1320, Laws of Florida.

History.—s. 2, ch. 69-346; s. 15, ch. 73-173; s. 45, ch. 73-333; s. 1, ch. 77-102; s. 1, ch. 80-377.

145.021 Definitions.—As used in this chapter:

(1) "Population" means the population according to the latest annual determination of population of local governments, produced by the Executive Office of the Governor in accordance with s. 186.901.

(2) "Salary," when referring to amounts payable under the schedules set forth in this chapter, means the total annual compensation to be paid to an official as personal income.

History.—s. 1, ch. 61-461; s. 3, ch. 69-346; s. 1, ch. 73-173; s. 89, ch. 79-190; s. 20, ch. 87-224.

145.022 Guaranteed salary upon resolution of board of county commissioners.—

(1) Any board of county commissioners, with the concurrence of the county official involved, shall by resolution guarantee and appropriate a salary to the county official, in an amount specified in this chapter, if all fees collected by such official are turned over to the board of county commissioners. Such a resolution is applicable only with respect to the county official who concurred in its adoption and only for the duration of such official's tenure in his or her current term of office.

(2) A board of county commissioners, with the concurrence of the county official involved, may, by resolution, rescind any resolution adopted pursuant to subsection (1), effective only upon the conclusion of the current fiscal year of the county.

(3) This section shall not apply to county property appraisers or clerks of the circuit and county courts in the performance of their court-related functions.

History.—s. 4, ch. 69-346; s. 8, ch. 69-82; ss. 12, 35, ch. 69-106; s. 16, ch. 73-172; s. 1, ch. 77-102; s. 16, ch. 80-377; s. 2, ch. 88-158; s. 852, ch. 95-147; s. 37, ch. 2001-266; s. 86, ch. 2003-402.

145.031 Board of county commissioners.—

(1) Each member of the board of county commissioners shall receive as salary the amount indicated, based on the population of his or her county. In addition, compensation shall be made for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the grouping times the group rate.

Pop. Group	County Pop. Range		Base Salary	Group Rate
	Minimum	Maximum		
I	-0-	9,999	\$4,500	\$0.150
II	10,000	49,999	6,000	0.075
III	50,000	99,999	9,000	0.060
IV	100,000	199,999	12,000	0.045
V	200,000	399,999	16,500	0.015
VI	400,000	999,999	19,500	0.005
VII	1,000,000		22,500	0.000

(2) No member of a governing body of a chartered county or a county with a consolidated form of govern-

relative intent.
 applicability.
 provisions.
 Guaranteed salary upon resolution of board of county commissioners.
 Board of county commissioners.
 Clerk of circuit court; county comptroller.
 Sheriff.
 Supervisor of elections.
 Property appraiser.
 Tax collector.
 Other income to be income of the office.
 Repeal of other laws relating to compensation; exceptions.
 Repeal of other laws relating to compensation of district school board members.
 Compensation of other county officials; guarantee.
 Deficiency to be paid by board of county commissioners.
 Special laws or general laws of local application prohibited.
 Supplemental compensation prohibited.
 Annual percentage increases based on increase for state career service employees; limitation.

145.011 Legislative intent.—
 In compliance with s. 5(c), Art. II of the State Constitution, it is the intent of the Legislature to provide the annual compensation and method of payment to several county officers named herein.
 The Legislature has determined that a uniform salary law is not arbitrary and discriminatory salary law is needed to replace the haphazard, preferential, inequitable and probably unconstitutional local law method of setting elected county officers.
 It is further the intent of this Legislature to promulgate a general law for such uniform compensation of county officials having substantially equal duties and responsibilities, taking into account the multitude of factors that have affected these offices within the past decade.

The salary schedules in this chapter are therefore based on a classification of counties according to county's population, which the Legislature determines to be the most practical basis from which to establish an adequate, uniform salary system.
 History.—s. 1, ch. 61-461; s. 1, ch. 67-576; s. 4, ch. 69-216; s. 1, ch. 69-346; s. 2, ch. 69-403.

145.012 Applicability.—This chapter applies to all officials herein designated in all counties of the state, except those officials whose salaries are not subject to the provisions set by the Legislature because of the provisions of a county home rule charter and except officials (other than the property appraiser, clerk of the circuit court, superintendent of schools, sheriff, supervisor of elections and tax collector who if qualified shall receive in addition to their salaries a special qualification salary as

ment shall be deemed to be the equivalent of a county commissioner for the purposes of determining the compensation of such member under his or her respective charter.

History.—s. 1, ch. 61-461; s. 1, ch. 63-560; s. 1, ch. 65-356; s. 1, ch. 67-543; s. 2, ch. 67-576; s. 5, ch. 69-346; s. 2, ch. 73-173; s. 853, ch. 95-147.

145.051 Clerk of circuit court; county comptroller.

(1) Each clerk of the circuit court and each county comptroller shall receive as salary the amount indicated, based on the population of his or her county. In addition, a compensation shall be made for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the group times the group rate.

Pop. Group	County Pop. Range		Base Salary	Group Rate
	Minimum	Maximum		
I	-0-	49,999	\$21,250	\$0.07875
II	50,000	99,999	24,400	0.06300
III	100,000	199,999	27,550	0.02625
IV	200,000	399,999	30,175	0.01575
V	400,000	999,999	33,325	0.00525
VI	1,000,000		36,475	0.00400

(2)(a) There shall be an additional \$2,000 per year special qualification salary for each clerk of the circuit court who has met the certification requirements established by the Supreme Court. Any clerk of the circuit court who is certified during a calendar year shall receive in that year a pro rata share of the special qualification salary based on the remaining period of the year.

(b) In order to qualify for the special qualification salary provided by paragraph (a), the clerk must complete the requirements established by the Supreme Court within 6 years after first taking office.

(c) After a clerk meets the requirements of paragraph (a), in order to remain certified the clerk shall thereafter be required to complete each year a course of continuing education as prescribed by the Supreme Court.

History.—s. 1, ch. 61-461; s. 1, ch. 63-560; s. 1, ch. 65-356; s. 2, ch. 67-576; s. 5, ch. 69-346; s. 27, ch. 72-404; s. 4, ch. 73-173; s. 4, ch. 74-325; ss. 2, 12, ch. 80-377; s. 1, ch. 85-322; s. 1, ch. 88-175; s. 27, ch. 91-45; s. 854, ch. 95-147.

145.071 Sheriff.—

(1) Each sheriff shall receive as salary the amount indicated, based on the population of his or her county. In addition, a compensation shall be made for population increments over the minimum for each group, which shall be determined by multiplying the population in excess of the minimum for the group times the group rate.

Pop. Group	County Pop. Range		Base Salary	Group Rate
	Minimum	Maximum		
I	-0-	49,999	\$23,350	\$0.07875
II	50,000	99,999	26,500	0.06300
III	100,000	199,999	29,650	0.02625
IV	200,000	399,999	32,275	0.01575
V	400,000	999,999	35,425	0.00525
VI	1,000,000		38,575	0.00400

(2)(a) There shall be an additional \$2,000 per year special qualification salary for each sheriff who has met the qualification requirements established by the Department of Law Enforcement. Any sheriff who so qualifies during a calendar year shall receive in that year a pro rata share of the special qualification salary based on the remaining period of the year.

(b) In order to qualify for the special qualification salary described in paragraph (a), the sheriff must complete the requirements specified in that paragraph within 6 years after first taking office.

(c) After a sheriff meets the requirements of paragraph (a), in order to remain qualified the sheriff shall thereafter be required to complete each year a course of continuing education as prescribed by the Department of Law Enforcement.

History.—s. 1, ch. 61-461; s. 1, ch. 63-560; s. 1, ch. 65-356; s. 2, ch. 67-543; s. 2, ch. 67-576; s. 5, ch. 69-346; ss. 1-3, ch. 70-395; s. 5, ch. 73-173; s. 46, ch. 73-333; ss. 3, 13, ch. 80-377; s. 1, ch. 81-216; s. 5, ch. 85-322; s. 21, ch. 87-224; s. 1, ch. 89-178; s. 28, ch. 91-45; s. 855, ch. 95-147.

145.09 Supervisor of elections.—

(1) Each supervisor of elections shall receive as salary the amount indicated, based on the population of his or her county. In addition, a compensation shall be made for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the group times the group rate.

Pop. Group	County Pop. Range		Base Salary	Group Rate
	Minimum	Maximum		
I	-0-	49,999	\$17,228	\$0.075
II	50,000	99,999	20,228	0.060
III	100,000	199,999	23,228	0.025
IV	200,000	399,999	25,728	0.015
V	400,000	999,999	28,728	0.005
VI	1,000,000		31,728	0.004

(2) The above salaries are based upon a 5-day workweek. If a supervisor does not keep his or her office open 5 days per week, then the salary will be prorated accordingly.

(3)(a) There shall be an additional \$2,000 per year special qualification salary for each supervisor of elections who has met the certification requirements established by the Division of Elections of the Department of State. The Department of State shall adopt rules to establish the certification requirements. Any supervisor who is certified during a calendar year shall receive in that year a pro rata share of the special qualification salary based on the remaining period of the year.

(b) In order to qualify for the special qualification salary described in paragraph (a), the supervisor must complete the requirements established by the Division of Elections within 6 years after first taking office.

(c) After a supervisor meets the requirements of paragraph (a), in order to remain certified the supervisor shall thereafter be required to complete each year a course of continuing education as prescribed by the division.

History.—s. 1, ch. 61-461; s. 1, ch. 63-560; s. 2, ch. 65-60; s. 1, ch. 65-356; s. 2, ch. 67-576; s. 5, ch. 69-346; s. 1, ch. 70-429; s. 7, ch. 73-173; s. 2, ch. 79-327; ss. 6, 17, 22, ch. 80-377; s. 2, ch. 85-322; s. 4, ch. 88-175; s. 29, ch. 91-45; s. 856, ch. 95-147; s. 75, ch. 2005-277.

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