RESOLUTION NO. 2020-337

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

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

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

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

WHEREAS, the County is a diligent custodian of the public’s money;
WHEREAS, in 2018, the Florida Constitution Revision Commission, a body created under Article XI, section 2, of the Florida Constitution, submitted Amendment 10 to the Florida electorate;

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

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

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

WHEREAS, the Florida Legislature approved Committee Substitute for House Bill 989 (the “Special Law”) during the 2020 legislative session, which, if approved by a majority of the electorate of Broward County, would maintain the current role of the County Administrator as ex officio clerk of the Board of County Commissioners, and would ensure the County is able to control its own finances by permitting the County Administrator to perform the duties of custodian and the auditor of County funds;
WHEREAS, if the Special Law is not approved by the voters of Broward County, the Broward County Clerk of Courts will assume the duties of custodian and the auditor of County funds and ex officio clerk of the Board of County Commissioners on January 7, 2025;

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

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

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

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

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

Section 2. In accordance with Section 100.342, Florida Statutes, at least thirty (30) days’ notice of the referendum election shall be published by the County
Administrator in a newspaper of general circulation in Broward County. The publication shall be made at least twice, including once in the fifth week and once in the third week prior to the week in which the referendum is to be held. The notice is hereby attached as Exhibit B and made a part hereof.

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

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

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

Section 6. The County Administrator shall furnish a certified copy of this adopted Resolution to the Supervisor of Elections for Broward County on or before July 1, 2020.
Section 7. The title and summary of the referendum question to appear on the General Election ballot on November 3, 2020, as embodied in this enabling Resolution, shall be as follows, with the appropriate Chapter reference to the Laws of Florida, when available, inserted:

APPROVES LAWS OF FLORIDA, CHAPTER __-__, RELATING TO GOVERNMENTAL DUTIES OF BROWARD COUNTY

“Approves special law enabling County Administrator to continue serving as ex officio clerk of the County Commission and enabling County to continue serving as auditor and custodian of all County funds, which duties County has performed since 1975 and would otherwise be required to be transferred to the Clerk of Courts in 2025; and authorizing agreement to transfer County recorder duties to the Clerk of Courts before 2025, when such duties would otherwise automatically transfer.”

YES ____________  
NO ____________  

Section 8. Severability.

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

Section 9. Effective Date.
This Resolution shall be in force and take effect immediately upon its adoption by the Broward County Board of County Commissioners.

ADOPTED this 16th day of June, 2020. Item 83

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

By /s/ Joseph K. Jarone 06/15/2020
Joseph K. Jarone (date)
Assistant County Attorney

By /s/ René D. Harrod 06/15/2020
René D. Harrod (date)
Deputy County Attorney

JKJ/ck
Clerk Duties Charter Amendment
06/15/2020 #511599v5
An act relating to Broward County; providing legislative findings; providing for the transfer of certain county-related functions and duties, including ex officio clerk of the board of county commissioners, county recorder, auditor, and custodian of county funds to the county government; providing that the County Auditor maintain power and authority as prescribed in the Broward County Charter; providing an exception to general law; providing for an interlocal agreement for the transfer of recorder functions and duties; providing for a referendum; providing an effective date.

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

Section 1. (1) Broward County became a charter county on January 1, 1975, pursuant to a vote of the electors on November 5, 1974. When approved by the county's electors, s. 7.06 of the Broward County Charter, relating to the County Comptroller Act, chapter 72-407, Laws of Florida, provided for the transfer of the county comptroller's functions, responsibilities, duties, and obligations to the county government, including ex officio clerk of the board of county commissioners, county recorder, auditor, and custodian of county funds. More specifically,
Subsection C. of s. 2.03 of the county charter transferred to the County Administrator of Broward County all functioning duties prescribed by the State Constitution and general law for the clerk of the circuit court or county comptroller relating to their duties as ex officio clerk of the board of county commissioners. In addition, Subsection C. of s. 4.03 of the county charter transferred to the Department of Finance, now the Department of Finance and Administrative Services, all fiscal functions and duties prescribed by the State Constitution and general law for the clerk of the circuit court or county comptroller relating to their duties as the custodian of all county funds, auditor, and recorder of public documents.

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

(3) On November 6, 2018, Florida voters statewide approved Amendment 10, relating to state and local government structure and operation, which, in part, amended Article VIII, s. 1(d), of the State Constitution to eliminate the power by county charter to provide a different method of selecting certain county offices, the abolishment of such offices, and the transfer of...
such county offices’ functions and duties to another office.
Consequently, effective January 7, 2025, Broward County may be
required by Amendment 10 to return the functions of ex officio
clerk of the board of county commissioners, auditor, recorder,
and custodian of all county funds to the clerk of the circuit
court, unless otherwise provided by special law approved by the
electors of Broward County.

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

(2) The aforementioned county-related functions and duties
now prescribed by the State Constitution and general law for the
office of the clerk of the circuit court relating to the duties
of recorder shall be transferred by Broward County to the clerk
of the circuit court effective January 7, 2025, or an earlier
date agreed to by Broward County and the clerk of the circuit
court. To ensure an orderly transition of the recorder functions
and duties, Broward County and the clerk of the circuit court
may enter into an interlocal agreement providing for the
transfer of all hardcopy documents and files; all electronic
documents; all other files and related information; existing and
necessary furnishings, equipment, and personnel; all funding
appropriated by the Broward County Board of County Commissioners
relating to the recorder functions and duties in fiscal year
2024-2025 or an earlier date to which Broward County and the
clerk of the circuit court agree; and such other issues as may
be agreed to by Broward County and the clerk of the circuit
court to effectuate the orderly transfer of the recorder
functions and duties.

Section 3. (1) The Board of County Commissioners of
Broward County shall submit to a referendum election, on the
same date as the 2020 November general election, the question
concerning the approval of this special act. The ballot measure
shall comply with provisions of s. 101.161, Florida Statutes.
(2) Should the referendum question submitted to Broward
County electors pursuant to subsection (1) fail to receive

CODING: Words stricken are deletions; words underlined are additions.
majority approval, the board of county commissioners may submit the question at other referendum elections as determined by the board of county commissioners, unless this act is repealed by the Legislature.

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

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

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

As set forth in enabling Resolution No. 2020-337, adopted on June 16, 2020, by the Board of County Commissioners of Broward County, Florida, the title and summary to appear on the referendum ballot shall be as follows, with the appropriate Chapter reference to the Laws of Florida, when available, inserted:

APPROVES LAWS OF FLORIDA, CHAPTER __-__, RELATING TO GOVERNMENTAL DUTIES OF BROWARD COUNTY

Approves special law enabling County Administrator to continue serving as ex officio clerk of the County Commission and enabling County to continue serving as auditor and custodian of all County funds, which duties County has performed since 1975 and would otherwise be required to be transferred to the Clerk of Courts in 2025; and authorizing agreement to transfer County recorder duties to the Clerk of Courts before 2025, when such duties would otherwise automatically transfer.

YES ______________

NO ______________
A complete copy of House Bill 989 is available at
https://www.flSenate.gov/Session/Bill/2020/989/BillText/er/PDF.

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

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

Instructions:

A. Publish two (2) times:

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

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

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

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

   Board of County Commissioners
   Accounting Division, Room 201
   Governmental Center
   115 S. Andrews Avenue
   Fort Lauderdale, Florida, 33301
STATE OF FLORIDA          
                      )
                       ) SS
COUNTY OF BROWARD     )

I, Bertha Henry, County Administrator, in and for Broward County, Florida, and Ex-Officio Clerk of the Board of County Commissioners of said County, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Resolution 2020-337 the same appears in the minutes of said Board of County Commissioners meeting held on the 16th day of June, 2020. (Item 83)

IN WITNESS WHEREOF, I have hereunto set my hand and official seal
dated this 13th day of July, 2020.

BERTHA HENRY
COUNTY ADMINISTRATOR

By
Deputy Clerk