

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20040638

1. REQUESTED MOTION:

ACTION REQUESTED: 1. Receive the Final Report from the Lee County Charter Review Committee II, which includes the Committee's proposed Amendments to the Lee County Charter for electorate consideration on November 2, 2004. 2. Vote on each of the Amendments individually for their subsequent placement on the November 2, 2004 ballot. 3. Authorize staff to set and advertise for a public hearing to be held on Tuesday, June 22, 2004 at 5:00 p.m. for the Board's consideration of the adoption of (a) a Resolution directing the placement of the Board-selected Amendments onto the November 2, 2004 ballot, and (b) an Ordinance amending the Lee County Charter with the Board-selected Amendments to be approved at the November 2, 2004 General Election.

WHY ACTION IS NECESSARY: Per the Lee County Charter, the Charter Review Committee is obligated to present to the Board of County Commissioners, its proposals for any Amendments to the Lee County Charter to be voted upon by the electorate at the November 2, 2004 election, and for the Board to approve the proposed Amendments.

WHAT ACTION ACCOMPLISHES: Complies with Charter requirements for the Charter Review Committee's presentation of its proposals for Charter Amendments to the Lee County Charter for electorate consideration on November 2, 2004.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT # CW

A12B

3. MEETING DATE:

06-01-2004

4. AGENDA:

CONSENT
 ADMINISTRATIVE
 APPEALS
 PUBLIC
 WALK ON
 TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

STATUTE
 ORDINANCE 96-01, as amended
 ADMIN. CODE
 OTHER Co. Charter

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER
B. DEPARTMENT County Attorney
C. DIVISION General Services
BY: *David M. Owen*
Chief Assistant County Attorney

7. BACKGROUND:

The Lee County Charter, Ordinance No. 96-01, at Article IV, Section 4.1 B., provides that a Charter Review Committee shall bring any proposed Amendments to the Lee County Charter to Board of County Commissioners for its consideration for placement on the ballot each General (Presidential) Election year.

(BACKGROUND CONTINUED - NEXT PAGE)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>5/18/04</i>	OA <i>RK 5/18/04</i>	OM <i>5/18/04</i>	RISK <i>5/18/04</i>	GC <i>5/18/04</i>	<i>5-20-04</i>

10. COMMISSION ACTION:

APPROVED
 DENIED
 DEFERRED
 OTHER

CO. ATTY. 5/18/04
FORWARDED
TO CO. ADMIN.
11:00 am sent

RECEIVED BY
COUNTY ADMIN: *DL*
5/18/04
11:10 am sent
COUNTY ADMIN
FORWARDED TO:
5/18/04
436

25

BACKGROUND: (Continued)

In 2003, the Board of County Commissioners appointed the requisite fifteen-member Charter Review Committee II, which began meeting regularly in January, 2004. The Committee has now concluded its review sessions (to include three (3) public hearings in the community) and is presenting its Final Report to the Board for its consideration.

At its final regular meeting of May 13, 2004, the Committee formally directed its Final Report to be presented to the Board, which includes three (3) proposed Amendments to the Lee County Charter for electorate consideration on November 2, 2004.

The three proposed Amendments are as follows:

Proposed Amendment No. 1. revises Article II, Section 2.2.H. of the Charter relating to the adoption of County Ordinances by initiative. Currently, there are no geographical limitations on the location(s) for initiative signatures. The proposed Amendment places a "cap" of thirty percent (30%) on the number of initiative signatures that may be obtained from any single Commission District so that initiative issues proposing County Ordinances will be truly "County-wide" matters. No change is made to the percentage for the total number of signatures needed for the initiative, which is five percent (5%) of the electors qualified to vote in the last General Election (see attached verbiage).

Proposed Amendment No. 2. revises Article IV, Section 4.1.A. of the Charter relating to the adoption of Amendments to the Charter by initiative. Like Amendment No. 1. above, a thirty percent (30%) "cap" is placed on the number of initiative signatures that may be obtained from any single Commission District. Also, as in Proposed Amendment No. 1. above, there is no change to the total number of signatures required for the initiative, which is seven percent (7%) of the electors qualified to vote in the last General Election (see attached verbiage).

Proposed Amendment No. 3. revises two parts of Article IV, Section 4.1.B. of the Charter, which relate to: a) the time of appointment of the Charter Committee members (duration of the Committee), and b) the composition of the Charter Committee membership itself. a) The term of the Committee is being proposed to be extended by six (6) months in order to provide additional time in order to examine potential Charter subjects, and to potentially meet on a monthly rather than a bi-weekly basis so as to facilitate the accomplishment of its charge under the Charter. Members will be appointed by the Board of County Commissioners eighteen (18) months prior to each General (Presidential) Election after November, 2004. b) The Lee County Constitutional Officers are precluded from membership (see attached verbiage).

Presentation of the Committee's Final Report will be made by Mr. Rick Diamond, the Committee's Chair and Mr. Kurt Spitzer, the Committee's consultant. Committee members will be in attendance, as their schedules permit.

Upon the Board's receipt of the Committee's Final Report and at the conclusion of that meeting's business, the Committee will be officially dissolved per the terms of the present Charter.

With the receipt of the Charter Review Committee's Final Report, the Board must then direct the proposed Amendments approved by the Board to be placed on the November 2, 2004 ballot by Resolution, at a duly advertised public hearing to be conducted by the Board. The suggested time and date is 5:00 p.m., Tuesday, June 22, 2004, in Chambers.

REQUESTED ACTION:

1. Receive the Final Report and proposed Charter Amendments from the Charter Review Committee II.
2. Vote on each of the Amendments chosen to be placed on the November 2, 2004 ballot.
3. Authorize County staff to set and advertise for a public hearing to be held Tuesday, June 22, 2004, at 5:00 p.m., for the Board's consideration of the adoption of: a) a Resolution directing the placement of the Board-selected Amendments onto the November 2, 2004 ballot, and b) an Ordinance amending the Lee County Charter with the Board-approved Amendments to be approved by the electorate at the November 2, 2004 General Election.

From: "Kurt Spitzer" <kurt@ksanet.net>
To: <diamondrmd@aol.com>, <owend@bocc.co.lee.fl.us>
Date: ✓ 5/14/04 3:31PM
Subject: Revised Final Report

Gentlemen -

Attached please find an updated version of the Final Report, based on the discussion last night. Let me know if you have any suggestions for further revisions. When you're done, I will coordinate with Lucy to get the document printed.

Thanks,
Kurt

Kurt Spitzer
719 East Park Avenue
Tallahassee, FL 32301
850/561-0904
850/222-4124 FAX
kurtspitzer@ksanet.net

CONTENTS

<i>Section</i>	<i>Page</i>
Introduction and Overview	2
Committee Membership and Staff	4
Committee Operating Processes	6
Subject Reviewed	7
Issues Debated	9
Recommendations for Amendments to the Charter	11
Current Lee County Charter	Appendix A
Proposed Charter Amendments	Appendix B
Meeting Dates and Agendas	Appendix C
Meeting Minutes	Appendix D

INTRODUCTION and OVERVIEW

This report is submitted pursuant to Section 4.1(B) of the Lee County Charter, which requires that a Charter Review Committee (the "Committee") review the Home Rule Charter and recommend any amendments or revisions that may be advisable for placement on the general election ballot.

The Lee County Charter requires Charter Review Advisory Committees constituted by the Board of County Commissioners every four years. This is the second such Committee that has been formed since the Lee County electorate adopted the charter in 1996.

Recommendations of Charter Review Committees are presented to the Board of County Commissioners for their consideration. The County Commission may accept or reject the recommendations. Recommendations that are approved by the County Commission are then placed on the ballot for consideration by the voters of Lee County.

Lee County is one of 19 counties in Florida where the electorate has adopted a charter form of government. Over 80% of the population in Florida now lives in a charter county. Of the 19 charter counties, 17 have a process whereby there is a regularly scheduled review of the charter by a committee composed of lay people.

However, the Lee Charter is different from most of the other 18 in that the recommendations of the reviewing entity (the Committee) are not directly placed in front of the voters for their consideration. Only the Lee and Osceola county charters have charter review *advisory* committees where their recommendations are transmitted to the Board of County Commissioners for their approval or rejection.

Further, the Lee County Charter is the only such document requiring that any proposals of the Committee must be approved by a two-thirds vote of its entire membership before being transmitted to the County Commission for their consideration. Thus, even if only 12 out of the Committee's 15-person membership were present when considering final recommendations,

positive votes of 10 people would still be necessary for adoption. No other county charter in Florida has such a requirement.

Generally, adopting a charter form of government permits the public to exercise greater control in matters concerning governance in their county. Absent a charter, the structure and service delivery mechanisms of the county government are fixed by the State of Florida, no matter how complex the problems confronting a county may be to resolve. The local community in a non-charter county is (to a great extent) prohibited from making changes that can result in more efficient and effective governance.

With a charter form of government, the public – through the exercise of their rights as provided in the Florida Constitution – are able to fully realize the principles of Home Rule: Structure, service delivery mechanisms and intergovernmental relationships can be tailored to address local problems in the county.

However, note that significant changes to governance in Lee County have not been brought forth for the electorate's consideration - either through a recommendation from a Charter Review Committee, by ordinance of the County Commission or by petition of the voters.

COMMITTEE MEMBERSHIP and STAFF

Members of the Lee County Charter Review Committee are listed herein. They served without compensation.

Rick Diamond, Chair	Ft. Myers
David Butcher, Vice Chair	Ft. Myers
Mike Buff	Alva
Vicki Culver	Lehigh Acres
Dan Delisi	Estero
Michael Fletcher	Bonita Springs
Marcus Goodson	Ft. Myers
Brian Griffin	Matlacha
Tom Hoolihan	Ft. Myers
Gary Lee	Ft. Myers
Richard "Cole" Peacock	Ft. Myers
Patti Schnell	Cape Coral
Virginia Splitt	Ft. Myers
Jeffrey Tuscan	Alva
Ronald Wilkins	Ft. Myers

Kurt Spitzer of Kurt Spitzer and Associates, Inc., Tallahassee, provided consulting services to the Committee. David Owen, Assistant County Attorney, provided legal services. Lucy Crook of the County Manager's Office served as the Committee's Executive Secretary.

COMMITTEE OPERATING PROCESSES

During the early stages of the Committee's work, a tentative list of issues to be further examined was identified. A schedule that set an agenda for each meeting was then adopted. Additions could be added to the schedule by simple majority vote of the Committee. The Committee used Robert's Rules of Order to govern their deliberations.

As mentioned earlier, the Charter contains a stringent requirement governing the final recommendations of the Committee. Section 4.1(B)(4) of the Charter provides that no proposed amendment or revision to the Charter shall be submitted to the County Commission unless passed by an affirmative vote of at least a two-thirds majority of the entire membership of the Review Committee. Thus a positive vote of at least 10 people was required for recommendations, even if less than 15 members were present.

During the course of the work, the Committee met 11 times in public meetings, including three public hearings on its recommendations.

SUBJECTS REVIEWED

The Committee considered the following issues during the course of its work:

1. *Board of County Commissioners* – The structure of and districting methodology for the Board of County Commissioners were discussed. The Lee County Legislative Delegation was invited to attend CRC meetings and present the rationale for proposals to place the question of single-member districts in front of the voters but did not attend.

The Committee also discussed residency requirements for the BCC. Currently, members of the Board are required to live in their district during their term of office. However, there is no district residency requirement for *candidates* for office.

2. *Nonpartisan Elections* – The Committee examined the subject of non-partisan elections, especially the office of the Supervisor of Elections.
3. *Initiative Process* – The process by which the public can directly place and adopt ordinances on the ballot was reviewed. Recommendations for charter amendments are attached herein.
4. *City-County Relations* – The Committee examined the relationship between the county government and the municipalities in Lee County, especially as relates to the authority of the county to adopt policy in certain policy areas countywide and the possible effects of continued incorporations of new cities.
5. *Charter Review Advisory Committee* – The Committee reviewed the composition and authority of the Charter Review Committee. Recommendations concerning the authority of the CRC were considered but failed to receive the necessary 10 affirmative votes. One recommendation concerning composition of the CRC was approved and is attached herein.

6. *County Officers* - The Committee discussed the roles and responsibilities of the independent County "Constitutional" Officers. The Committee makes no recommend concerning those offices.

7. *County Medical Examiner* – The Committee spent two meetings discussing the office of the Medical Examiner. Central to that discussion was the ability of the County to review the financial records of the Medical Examiner. After discussion and research, it was decided that the County Commission, as a charter county, currently enjoys the power to convert the Medical Examiner's position to that of a county employee. Thereafter, no further discussion on this subject was undertaken by the CRC.

ISSUES DEBATED

The Committee had identified several policy issues for consideration as recommendations to the Board of County Commissioners. Most of the subjects concerned the process by which the charter is reviewed and powers, membership, duration, *et cetera*, of future Charter Review Committees. One subject concerned the distribution of signatures needed in an initiative process.

Signatures for an Initiative Process

The charter currently provides that ordinances and charter amendments may be proposed by initiative of the electors. Ordinances require signatures equal to 5% of the electors qualified to vote in the last proceeding general election and charter amendments require 7%. Neither section of the charter speaks to the distribution of the signatures throughout the county, raising the possibility that one area of the county could drive the placement of a question on the ballot that impacts the entire county. There were several options considered by the Committee.

1. *Equal Distribution of Signatures* – Require that the overall percentage of signatures required (e.g. 5% or 7%) be obtained in each of the five BCC districts.
2. *Partial Distribution of Signatures* – Similar to Option 1 (above) but require that the overall percentage of signatures required be obtained in something less than each of the five BCC districts. For example, 5% or 7% must be obtained countywide and also in at least three of the five BCC districts.
3. *Deterrent to Single Areas Proposing Initiatives* – Here the objective is similar to the two examples above but operates differently. Of the total number of signatures required, place a cap on the percentage of the gross signatures allowed from any single commission district. For example, no more than 25 or 40% could be obtained in one district.

Charter Review Process

1. *Powers of the Charter Review Committee* - The CRC adopted two topics for discussion as possible recommendations to the BCC. Those topics were mutually exclusive - if one had been adopted, the question whether the other topic was necessary would have been moot. Neither option was approved by the required 10 votes.

- a. Independent CRC – Under this model, the recommendations of the CRC go to the BCC only as a formality so that the BCC can schedule the amendments to be considered during the next general election. The BCC has no power to amend or reject any of the CRC’s recommendations and they must be presented to the voters for their consideration.
- b. Advisory CRC with Extraordinary Vote – The recommendations of the CRC are provided to the BCC who must schedule them for consideration of the voters *unless* there is an extraordinary vote of the BCC to reject a recommendation. An “extraordinary vote” would be defined as a majority plus one of the entire membership of the BCC. Thus, unless at least four members of the BCC vote to reject a recommendation, the recommendation must be presented to the voters.

2. *CRC Frequency* – The CRC currently meets every four years. A proposal was discussed that would have changed the meeting frequency to every eight years. The proposal was unanimously rejected by the CRC.

3. *CRC Duration* – The charter requires the CRC to be appointed at least 12 months before the general election every four years. The proposal was to change the duration to at least 18 months prior to the general election. A recommendation is attached herein.

4. *Restrictions on CRC membership* – The charter currently provides that no member of the legislative delegation, the BCC or an elected officer of a municipality can serve on the CRC. The proposal would add elected county constitutional officers to the list of persons who may not serve. A recommendation is attached herein.

Alternate CRC Members

Additionally, although not proposed as an amendment to the charter, the Committee recommends that the Board of County Commissioners consider appointing or identifying alternate members to future Charter Review Committees when the original appointments are made for regular members. There were several times during the past year when unfilled vacancies contributed to poor attendance at meetings. It can take a significant amount of time to fill vacancies.

Having alternate appointees identified early on in the process permits vacancies to be filled quickly. Also, such persons may choose to attend meetings of the CRC (even as an alternate), become familiar with the discussion and be ready to serve if a vacancy occurs.

RECOMMENDATIONS for REVISIONS to the CHARTER

1. Ordinances and Charter Amendments by Initiative

RECOMMENDATION: The Committee recommends that a “cap” be placed on the number of signatures that may be obtained from any single BCC district in a voter initiative process.

This amendment revises both Section 2.2(H) concerning ordinances proposed by initiative and Section 4.1(A) concerning amendments to the Charter that are proposed by initiative, so that no more than 30% of the signatures needed to place a question on the ballot may be obtained from any single County Commission district. The proposal has no effect on the overall percentage of signatures needed, which currently is 5% of the electors qualified to vote in the last general election for ordinances and 7% for charter amendments.

The effect of the proposal is to help ensure that the placement of a question on the countywide ballot cannot be driven by one area of the county. Similar policies have been adopted in several other county charters in Florida.

2. Composition of the Charter Review Advisory Committee

RECOMMENDATION: The Committee recommends that the membership of future Charter Review Advisory Committees be adjusted so that the County “Constitutional” Officers may not serve thereon.

This amendment revises Section 4.1(B) of the Charter. Currently, members of the Board of County Commissioners, the Legislative Delegation and elected municipal officials are prohibited from serving on a Review Committee. The proposal adds elected County Officers to the list of officials who may not serve and should assist in guaranteeing that the work of the CRC is more independent of influence from those entities that may be examined by a CRC in the future.

3. Duration of the Charter Review Advisory Committee

RECOMMENDATION: The Committee recommends that future Charter Review Advisory Committees be appointed 18 months prior to the next general election.


This amendment revises Section 4.1(B) of the Charter. Currently, the Charter requires the Committee to be appointed by the Board of County Commissioners no later than 12 months prior to the next general election. The proposal provides that the CRC is appointed no later than 18 months prior to the next general election.

The current Committee had found it necessary to meet twice each month in order to complete its work on time. Adding six months to the time within which the CRC is required to complete its work will allow the Committee the option of examining issues more thoroughly. It will also provide greater flexibility to the CRC when setting its schedule.

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: May 13, 2004

TO: Rick Diamond, Chairman
Charter Review Committee II

FROM: 
David M. Owen
Chief Assistant County Attorney

RE: **PROPOSED LEE COUNTY AMENDMENTS FROM CHARTER
REVIEW COMMITTEE II**

Mr. Chairman;

I have attached the three (3) proposed Amendments to the Lee County Charter as discussed and approved by the Committee by requisite vote. Each is set out in Legislative Amendment format so that the revisions can be observed from the current text.

If approved by the Committee to be forwarded to the Board of County Commissioners for their consideration, I will then format same as ballot questions once approved by the Board to be placed on the November 2, 2004 ballot.

For purposes of tonight's meeting, I am recommending that the proposed Amendments be taken up individually for the vote to forward them to the Board of County Commissioners for its consideration. This procedure will make for a better record. A "show of hands" will be sufficient.

Once the Committee has taken its final action on the Amendments, I will advise with respect to a proposed schedule for consideration by the Board (regular morning meeting), and the public hearing required to adopt the amending Ordinance with direction to place the Amendments on the November ballot (after 5:00 p.m. meeting).

It has been my pleasure and privilege to assist the Committee with this second exercise in reviewing the Charter, and I wish you and all of the Committee Members well.

If I can be of any further service, just call.

DMO/dm
Attachments

Rick Diamond, Chairman
May 13, 2004
Page 2

**RE: PROPOSED LEE COUNTY AMENDMENTS FROM CHARTER
REVIEW COMMITTEE II**

xc: Charter Review Committee II Members
James G. Yaeger, County Attorney
Donald D. Stilwell, County Manager
Holly Schwartz, Assistant County Manager
Lucy Crook, Recording Secretary, Charter Review Committee II
Kurt Spitzer, Facilitator, Charter Review Committee II

ART. II, SECTION 2.2 H. (1)

H. Initiative.

(1) The electors of Lee County shall have the right to initiate County ordinances in order to establish new ordinances and to amend or repeal existing ordinances upon petition of qualified electors in the County. The number of qualified elector signatures for a valid petition must equal at least five percent (5%) of the electors qualified to vote in the last preceding general election. No more than thirty percent (30%) of the total number of signatures required will be allowed in any single Board of County Commission District.

ART. IV, SECTION 4.1 A. (1)

A. Amendments Proposed by Petition.

(1) The electors of Lee County shall have the right to initiate proposed amendments to this Home Rule Charter upon petition of the qualified electors in the County. The number of qualified elector signatures for a valid petition must equal at least seven percent (7%) of the electors qualified to vote in the last preceding general election. No more than thirty percent (30%) of the total number of signatures required will be allowed in any single Board of County Commission District.

ART. IV, SECTION 4.1 B (1)

B. Amendments and Revisions by Charter Review Committee

(1) A Charter Review Committee consisting of fifteen (15) electors of the County shall be appointed by the Board of County Commissioners at least ~~twelve (12)~~ eighteen (18) months ~~before~~ prior to the general election held every four (4) years after the general election occurring in ~~1996~~ 2004. The Charter Review Committee 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, the Board of County Commissioners, any County Constitutional Officer, nor any elected officer of a municipality shall be a member of the Charter Review Committee. Vacancies shall be filled within thirty (30) days in the same manner as the original appointments.