

**FLORIDA STATUTES, CHAPTER 125, PART IV
OPTIONAL COUNTY CHARTERS**

125.80 Short title.--This part shall be known and may be cited as the "Optional County Charter Law

125.81 Definitions.--As used in this part, the following words and terms shall have the meanings ascribed to them in this section except when the context clearly indicates otherwise:

- (1) "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.
- (2) "Form of county government" is that form adopted by the electors providing for the operation of a county government operating under a charter which shall be provided in the charter.
- (3) "Officer" means all officials of county government operating under a charter which shall be provided in the charter.

125.82 Charter adoption by ordinance.--

- (1) As a supplemental and alternative way to the provisions of ss. 125.60-125.64, inclusive, the board of county commissioners may propose by ordinance a charter consistent with the provisions of this part and provide for a special election pursuant to the procedures established in s. 101.161(1) with notice published as provided in s. 100.342. The time period provided in s. 125.64 does not apply to the proposal of a charter by ordinance under this section.
- (2) Any charter proposed under this section which was adopted by vote of the electors at an election conducted and noticed in conformance with the requirements of ss. 100.342 and 101.161(1) is hereby ratified.

125.83 County charters; general provisions.--

- (1) A county charter may prescribe one of the optional forms of government herein authorized, and shall clearly define the responsibility for legislative and executive functions in accordance with the provisions of this chapter.
- (2) The county charter shall require all elective offices to be filled only by qualified voters of the county. All appointed offices may be filled by nonresidents of the county; however, the charter may require that, upon appointment, such officers shall reside in the county during their tenure in office.

(3) The county charter shall define "vacancy in office" and provide methods for filling such vacancy.

(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.

(5) The county charter shall provide a schedule for the transfer of governmental functions into the charter form of government as adopted.

125.84 County charters; optional forms.--Any county desiring to adopt a county charter shall provide for one of the following optional forms of government:

(1) COUNTY EXECUTIVE FORM.--The county executive form shall provide for governance by an elected board of commissioners and an elected county executive and such other officers as may be duly elected or appointed pursuant to the charter. The elected county executive shall exercise the executive responsibilities assigned by the charter and shall, in addition, approve each ordinance by signing it or allowing it to become approved without signature by failing to veto it or may veto any ordinance by returning it to the clerk of the board within 10 days of passage with a written statement of his or her objections. If two-thirds of the members of the board present and voting and constituting a quorum shall, upon reconsideration, vote for the ordinance, the executive's veto shall be overridden and the ordinance shall become law in 10 days or at such other time as may be provided in the ordinance or by resolution of the board, without the executive's signature.

(2) COUNTY MANAGER FORM.--The county manager form shall provide for governance by an elected board of commissioners and an appointed county manager and such other officers as may be duly elected or appointed pursuant to the charter. The county manager shall be appointed by, and serve at the pleasure of, the board and shall exercise the executive responsibilities assigned by the charter.

(3) COUNTY CHAIR-ADMINISTRATOR PLAN.--The county chair-administrator plan shall provide for governance by an elected board of commissioners, presided over by an elected chair who shall vote only in case of tie, and an appointed county administrator and such other officers as may be duly elected or appointed pursuant to the charter. The county administrator shall be appointed by, and serve at the pleasure of, the chair. The chair shall exercise, in conjunction with the administrator, the executive responsibilities assigned by the charter.

125.85 County charters; executive responsibilities.--The executive responsibilities and power of the county shall be assigned to, and vested in, the appropriate executive officer, pursuant to the optional form adopted under s. 125.83, and shall consist of the following powers and duties:

- (1) Report annually, or more often if necessary, to the board of commissioners and to the citizens on the state of the county, the work of the previous year, recommendations for action or programs for improvement of the county, and the welfare of its residents;
- (2) Prepare and submit to the board for its consideration and adoption an annual operating budget, a capital budget, and a capital program; establish the schedules and procedures to be followed by all county departments, offices, and agencies in connection therewith; and supervise and administer all phases of the budgetary process;
- (3) Administer and carry out the directives and policies of the board of county commissioners and enforce all orders, resolutions, ordinances, and regulations of the board, the county charter, and all applicable general law, to assure that they are faithfully executed;
- (4) Supervise the care and custody of all county property, institutions, and agencies;
- (5) Supervise the collection of revenues, audit and control all disbursements and expenditures, and prepare a complete account of all expenditures;
- (6) Review, analyze, and forecast trends of county services and finances and programs of all boards, commissions, agencies, and other county bodies and report and recommend thereon to the board;
- (7) Develop, install, and maintain centralized budgeting, personnel, legal, and purchasing procedures as may be authorized by the administrative code;
- (8) Negotiate contracts, bonds, or other instruments for the county, subject to board approval; make recommendations concerning the nature and location of county improvements; and execute services determined by the board;
- (9) Assure that all terms and conditions imposed in favor of the county or its inhabitants in any statute, franchise, or other contract are faithfully kept and performed;
- (10) Supervise, direct, and control all county administrative departments;
- (11) Appoint, with the advice and consent of the board, all appointed departmental heads, who shall serve at his or her pleasure, and employ, pursuant to appropriation and the administrative code, such personnel as necessary to administer county functions and services;
- (12) Order, at his or her discretion, any agency under his or her jurisdiction as specified in the administrative code to undertake any task for any other agency on a temporary basis if he or she deems it necessary for the proper and efficient administration of the county government to do so; and

(13) Any other power or duty which may be assigned by county charter or by ordinance or resolution of the board.

125.86 County charters; legislative responsibilities.--The legislative responsibilities and power of the county shall be assigned to, and vested in, the board of county commissioners and shall consist of the following powers and duties:

- (1) Advise and consent to all appointments by the executive for which board confirmation is specified;
- (2) Adopt or enact, in accordance with the procedures provided by general law, ordinances and resolutions it deems necessary and proper for the good governance of the county;
- (3) Appoint a clerk to the board who shall serve at its pleasure and keep the records and minutes of the board;
- (4) Approve the annual operating and capital budgets and any long-term capital or financial program;
- (5) Conduct continuing studies in the operation of county programs and services and take action on programs for improvement of the county and the welfare of its residents;
- (6) Adopt, and amend as necessary, a county administrative code to govern the operation of the county;
- (7) 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
- (8) All other powers of local self-government not inconsistent with general law as recognized by the Constitution and laws of the state and which have not been limited by the county charter.

125.87 Administrative code; adoption and amendment.--

- (1) Following the organization of the first board of county commissioners elected pursuant to a charter, the board of commissioners shall 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.

(2) The administrative code shall be effective upon adoption or as otherwise provided therein, and all existing agencies shall assume the form, perform the duties, and exercise the power granted them under the administrative code and shall do so in the manner prescribed.

125.88 Civil service.--

(1) Upon adoption of an administrative code and also upon the adoption of a charter, all officers and employees in the classified service of the county shall be transferred to the department, division, or agency to which the functions, powers, and duties in which they were engaged are allocated under the administrative code. Such transfer shall be without examination or diminution of existing compensation, pension or retirement rights, privileges, or obligations of any such officer or employee existing immediately prior to the referendum at which the charter was adopted. It is the intent of the Legislature that the adoption of any plan required by the charter shall not adversely affect the civil service tenure, pension, seniority, or promotional rights of any county officer or employee in the classified service.

(2) The board of county commissioners of any county adopting a charter may, by ordinance, administer the merit system through a county department of civil service unless otherwise provided by the charter. Such administration shall include classification, recruitment, examination, establishment of eligibility lists, grievances, compensation, and other conditions of employment pursuant to law.

Introduction to Section 5

Although the voting protections of the Fifteenth Amendment and Section 2 of the Voting Rights Act are permanent, Section 5 remains in effect through 2031.

Coverage Under the Special Provisions of the Voting Rights Act

Section 5 freezes election practices or procedures in certain states until the new procedures have been subjected to review, either after an administrative review by the United States Attorney General, or after a lawsuit before the United States District Court for the District of Columbia. This means that voting changes in covered jurisdictions may not be used until that review has been obtained.

The requirement was enacted in 1965 as temporary legislation, to expire in five years, and applicable only to certain states. The specially covered jurisdictions were identified in Section 4 by a formula. The first element in the formula was that the state or political subdivision of the state maintained on November 1, 1964, a "test or device," restricting the opportunity to register and vote. The second element of the formula would be satisfied if the Director of the Census determined that less than 50 percent of persons of voting age were registered to vote on November 1, 1964, or that less than 50 percent of persons of voting age voted in the presidential election of November 1964. Application of this formula resulted in the following states becoming, in their entirety, "covered jurisdictions": Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. In addition, certain political subdivisions (usually counties) in four other states (Arizona, Hawaii, Idaho, and North Carolina) were covered. It also provided a procedure to terminate this coverage.

Under Section 5, any change with respect to voting in a covered jurisdiction -- or any political subunit within it -- cannot legally be enforced unless and until the jurisdiction first obtains the requisite determination by the United States District Court for the District of Columbia or makes a submission to the Attorney General. This requires proof that the proposed voting change does not deny or abridge the right to vote on account of race, color, or membership in a language minority group. If the jurisdiction is unable to prove the absence of such discrimination, the District Court denies the requested judgment, or in the case of administrative submissions, the Attorney General objects to the change, and it remains legally unenforceable.

In 1970, Congress recognized the continuing need for the special provisions of the Voting Rights Act, which were due to expire that year, and renewed them for another five years. It also adopted an additional coverage formula, identical to the original formula except that it referenced November 1968 as the date to determine if there was a test or device, levels of voter registration, and electoral participation. This additional formula resulted in the partial coverage of ten states.

In 1975, the special provisions of the Voting Rights Act were extended for another seven years, and were broadened to address voting discrimination against members of "language minority groups." An additional coverage formula was enacted, based on the presence of tests or devices and levels of voter registration and participation as of November 1972. In addition, the 1965 definition of "test or device" was expanded to include the practice of providing election information, including ballots, only in English in states or political subdivisions where members of a single language minority constituted more than five percent of the citizens of voting age. This third formula had the effect of covering Alaska, Arizona, and Texas in their entirety, and parts of California, Florida, Michigan, New York, North Carolina, and South Dakota.

In 1982, Congress extended Section 5 for 25 years, but no new Section 5 coverage formula was adopted. It did, however, modify the procedure for a jurisdiction to terminate coverage under the special provisions.

In 2006, Congress extended the requirements Section 5 for an additional 25 years.

The Voting Section is responsible for reviewing voting changes submitted to the Attorney General (15,000 to 24,000 changes each year) and for defending Section 5 declaratory judgments in court. The Voting Section also brings lawsuits to enjoin the enforcement of voting changes that have not received the required Section 5 review.

Almost all voting changes are submitted to the Attorney General, and over the past decade the Attorney General has received submissions of between 14,000 and 22,000 voting changes per year. The Attorney General may interpose an objection by informing the jurisdiction of the decision no later than 60 days after a voting change has been submitted. Most voting changes submitted to the Attorney General are determined to have met the Section 5 standard; since Section 5 was enacted, the Attorney General has objected to about one percent of the voting changes that have been submitted.

The Attorney General has published detailed guidelines that explain how to make Section 5 submissions and the process of how the Attorney General decides whether the jurisdiction has met its burden. Notices of Section 5 submissions are regularly posted to the Internet and can be mailed upon request to interested individuals, organizations and jurisdictions.

Judicial Review of Voting Changes

Section 5 provides two methods for a covered jurisdiction to comply with Section 5. The first method mentioned in the statute is by means of a declaratory judgment action filed by the covered jurisdiction in the United States District Court for the District of Columbia. A three-judge panel is convened in such cases. The defendant in these cases is the United States or the Attorney General, represented in court by attorneys from the Voting Section of the Civil Rights Division. Appeals from decisions* of the three-judge district court go directly to the United States Supreme Court.

The jurisdiction must establish that the proposed voting change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or [membership in a language minority group]." The status of a voting change that is the subject of a declaratory judgment review action is that it is unenforceable until the declaratory judgment action is obtained and the jurisdiction may not implement or use the voting change.

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Administrative Review of Voting Changes

The second method of compliance with Section 5 is known as administrative review. A jurisdiction can avoid the potentially lengthy and expensive litigation route by submitting the voting change to the Civil Rights Division of the Department of Justice, to which the Attorney General of the United States has delegated the authority to administer the Section 5 review process. The jurisdiction can implement the change if the Attorney General affirmatively indicates no objection to the change or if, at the expiration of 60 days, no objection to the submitted change has been interposed by the Attorney General. It is the practice of the Department of Justice to respond in writing to each submission, specifically stating the determination made regarding each submitted voting change.

Well over 99 percent of the changes affecting voting are reviewed administratively, no doubt because of the relative simplicity of the process, the significant cost savings over litigation, and the presence of specific deadlines governing the Attorney General's issuance of a determination letter.

In a typical year, the Voting Section receives between 4,500 and 5,500 Section 5 submissions, and reviews between 14,000 and 20,000 voting changes. Since the release of the 2000 Census, the Attorney General has reviewed under Section 5 approximately 3,000 redistricting plans, districting plans, and limited redistricting plans.

In conducting administrative review, the Attorney General acts as the surrogate for the district court, applying the same standards that would be applied by the court. The burden of establishing that a proposed voting change is nondiscriminatory falls on the jurisdiction, just as it would on the jurisdiction as plaintiff in a Section 5 declaratory judgment action.

There are occasions when a jurisdiction may need to complete the Section 5 review process on an accelerated basis due to anticipated implementation before the end of the 60-day review period. In such cases, the jurisdiction should formally request "Expedited Consideration" in its submission letter, explicitly describing the basis for the request in light of conditions in the jurisdiction and specifying the date by which the determination must be received. Although the Attorney General will attempt to accommodate all reasonable requests, the nature of the review required for particular submissions will necessarily vary and an expedited determination may not be possible in certain cases.

A determination by the Attorney General not to object removes the prohibition on enforcement imposed by Section 5. This decision not to object to a submitted change cannot be challenged in court. *Morris v. Gressette*, 432 U.S. 491 (1977). Although the jurisdiction may then implement that change, the change remains subject to a challenge on any other grounds. For example, a redistricting plan may still be challenged in court by the Attorney General as violating Section 2 of the Voting Rights Act, or any other applicable provision of federal law which the Attorney General is authorized to enforce. Similarly, private individuals with standing may challenge that practice under any applicable provision of state or federal law.

The declaratory judgment route remains available to jurisdictions even after the Attorney General interposes an objection. The proceeding before the three-judge federal court is *de novo* and does not constitute an appeal of the Attorney General's determination, although the Voting Section represents the defendant United States in these cases.

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FLORIDA COUNTIES SUBJECT TO PRECLEARANCE:

Collier County	Nov. 1, 1972	41 FR 34329	Aug. 13, 1976
Hardee County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975
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