

STORAGE NAME: h0405.go

DATE: March 29, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 405

RELATING TO: County Government/Charter Commission

SPONSOR(S): Representative Goode

COMPANION BILL(S): SB 984 (identical)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 8 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

When the citizens of a county believe it is in their best interest to enhance self-government, they have the opportunity to establish a chartered form of consolidated government.

Section 125, Part II, F.S., provides the procedure for becoming a chartered county. First, the county commissioners must adopt a resolution, or the electorate must submit a petition. Next, a charter commission must be established to perform certain functions, including preparing and submitting a county charter to the board of county commissioners. Public meetings must be held, and eventually, a finalized proposed charter must be voted on in a referendum election.

HB 405 amends the requirements relating to the number and type of members on a charter commission.

This bill specifies that there will be 15 members, rather than 11 - 15 members on a charter commission.

This bill also specifies that, unless otherwise provided for in the initiative petition, the membership on charter commissions will include appointments made by 5 persons, if holding certain elected offices, including the: clerk of the circuit court, property appraiser, tax collector, supervisor of elections, and sheriff.

The board of county commissioners will normally appoint 10 of the 15 members.

If the initiative petition directs, all 15 members would be appointed by the county legislative delegation. In lieu of qualifying officers to make appointments, the board of county commissioners would make such appointments.

In addition to members of the Legislature and boards of county commissioners, county constitutional officers, as well as employees of these types of employers (including employees of legislative delegations), are prohibited from serving as members on charter commissions.

Miami-Dade is exempted from the provisions of this bill regarding the 5 named elected officers' selections. All 15 appointments would be made by the board of county commissioners.

This bill has an effective date of upon becoming a law.

NOTE: There is an amendment traveling with this bill which extends the provisions of this bill to appointed charter **review** commissions, as well as to original charter commissions.

This bill does not appear to have a direct fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Part II, Chapter 125, Florida Statutes:

Part II of Chapter 125, F.S., contains the provisions of general law that are to be utilized by a non-charter county seeking to initiate and adopt a county home rule charter. Following the adoption of a resolution by the board of county commissioners, or upon submission of a petition to the commission signed by at least 15 percent of the qualified electors of the county requesting the establishment of a charter commission, such a charter commission shall be appointed.

Members of the charter commission are appointed by the board of county commissioners or, if so directed in the initiative petition, by the legislative delegation. No member of the Legislature or of the board of county commissioners may serve as a member of the commission.

The charter commission is charged with the responsibility of conducting a comprehensive study of the operation of county government, and of the ways in which the conduct of county government might be improved or reorganized. After holding public hearings, the commission is required to present the proposed charter to the board of county commissioners within 18 months of its initial meeting unless such time is extended by appropriate resolution of the county commission.

Upon the charter commission's submission of the charter, the board of county commissioners is required to call a special election to determine by referendum whether the proposed charter shall be adopted. Upon acceptance or rejection of the proposed charter by the electors, the charter commission is dissolved and all property of the charter commission becomes the property of the county.

B. EFFECT OF PROPOSED CHANGES:

The bill provides that a county charter commission be composed of 15 members rather than 11-15 members, and that appointments to a commission be made by up to 5 elected county constitutional officers in addition to appointments made by the board of county commissioners.

The bill expands the prohibition against members of the Legislature or board of county commissioners serving on a commission to include employees of legislative delegations, any elected county constitutional officers and employees of constitutional officers.

The bill provides that in Miami-Dade County, the board of county commissioners appoints all members.

The bill also provides that if directed in the initiative process, the legislative delegation appoints all 15 members.

The effect of this bill is to provide representation, through appointments to charter commissions, to constitutional officers, and to reduce the number and percentage of appointments made by members of the county commission (unless otherwise provided for).

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

Yes. Members of charter commissions develop the important elements of the charter, which is the fundamental document describing how a county is going to do business. By changing the makeup of persons who may make selections for membership on charter commissions, the selectors, indirectly may be able to exercise some influence relative to rules and disputes.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Indirectly, perhaps, depending on what elements are included in a charter.

- (3) any entitlement to a government service or benefit?

Indirectly, perhaps, depending on what elements are included in a charter.

- b. If an agency or program is eliminated or reduced:

Not applicable.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

Not directly.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

Not directly.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Perhaps, depending on what elements are included in a charter.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Perhaps, depending on what elements are included in a charter.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

Not applicable.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

Not applicable.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 125.61, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends subsection 125.61(2), Florida Statutes, requiring the charter commission to consist of 15 members to be appointed as follows:

- The board of county commissioners must appoint 10 members, except that in Miami-Dade County, the board of county commissioners must appoint all members.
- If elected, the clerk of the circuit court, tax collector, property appraiser, supervisor of elections, and sheriff must appoint 1 member each to a charter commission.
- If the above listed officers are appointed or if an office does not exist, the board of county commissioners must make the appointment that would otherwise be made by that officer. This requirement does not apply in Miami-Dade County.
- If directed in the initiative petition, in lieu of the appointments provided for above, all 15 members must be appointed by the legislative delegation.
- The following classes of persons are prohibited from serving as a member of the charter commission:
 - ▶ Employee of a member of the Legislature;
 - ▶ Employee of a legislative delegation;
 - ▶ Employee of the board;
 - ▶ Elected County Constitutional Officer; and
 - ▶ Employee of any elected county constitutional officer.

Section 2: Provides an effective of upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Unknown. This depends on whether an initiative is undertaken, and the cost of such process.

2. Recurring Effects:

Unknown. This depends on what elements are included in a successful charter.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

No material impact.

2. Recurring Effects:

Unknown.

3. Long Run Effects Other Than Normal Growth:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Unknown. It depends on what elements are included in a charter.

2. Direct Private Sector Benefits:

Unknown. It depends on what elements are included in a charter.

3. Effects on Competition, Private Enterprise and Employment Markets:

Unknown. It depends on what elements are included in a charter.

D. FISCAL COMMENTS:

The elements of any successful charter would determine any fiscal impact.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds, or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Association of Counties: The Florida Association of Counties has the following concerns about this bill:

Present law authorizes two separate processes for appointment to a charter commission. Both appointment processes rely on a governing body or policy making body, the legislature or the county commission, respectively. HB 405 preserves the legislative option, but appears to grant unprecedented authority to certain constitutional officers that traditionally serve more of an administrative function. Likewise, HB 405 appears to dilute or undermine the traditional policy making authority of the commission.

The present law provides for the greatest amount of flexibility when appointing a charter commission at the local level. HB 405 appears to eliminate much of the flexibility.

One of the primary applications of a charter commission is to review the "form and function" of local government agencies. The appointment structure proposed in HB 405 sets a precedent for various segments of the local government structure to establish "barriers" for change. The appointment process will establish immediate "turf lines" or territories before serious evaluation occurs.

Other interest groups like cities, neighborhood associations and the like will now look for state legislative action to automatically include themselves in the charter commission appointment process.

The Florida Association of Property Appraisers: The Florida Association of Property Appraisers supports this bill. The Association provided the following statement:

County Constitutional Officers should have the right to appoint members to County Charter Study Commissions and Charter Review Commissions. Currently, the statute gives all appointments to the County Commission.

County Constitutional Officers perform their duties pursuant to provisions within Florida Statutes. Since County Charters cannot conflict with general law, accordingly they should not contain provisions which would usurp or adversely affect the ability of the Constitutional Officers to do their State-mandated work. Charter Commissions, appointed by only the County Commission, often attempt to establish provisions which give the County Commission control over the elected Constitutional Officers. The inappropriateness of this is best typified by the Property Appraiser who establishes the assessed value of property tax for ad valorem tax purposes. Since the County Commission is a major tax levying authority within the County, it should not also have control over the entity which establishes the assessed value of property for tax purposes.

Local Constitutional Officers, in order to be adequately represented, should also be a part of the process whereby members of the Charter Commission are appointed. This will provide a check and balance on Charter Commissions and Charter Review Commissions which otherwise may be inclined to adopt proposals only favorable to the County Commissioners who appointed them.

Florida Sheriffs Association: The Florida Sheriffs Association supports this bill and feels that the inclusion of constitutional officers in this process is a step in the right direction toward making any charter considerations reflect the input of the potentially affected elected independent constitutional officers. It is appropriate that each constitutional officer's appointee should be a voting member of any charter formulation or review commission.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 22, 1999, the House Committee on Community Affairs adopted an amendment to provide that appointed charter review commissions are subject to the requirements of the bill.

VII. SIGNATURES:

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