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DATE: March 30, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 857

RELATING TO: An Act Creating Hialeah County

SPONSOR(S): Representative Rojas

COMPANION BILL(S): CS/SB 88 (s)

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

- (1) COMMUNITY AFFAIRS YEAS 8 NAYS 2
- (2) GOVERNMENTAL OPERATIONS
- (3) FINANCE AND TAXATION
- (4) EDUCATION APPROPRIATIONS
- (5)

I. SUMMARY:

This bill creates Hialeah County out of the portion of Miami-Dade County that now comprises the City of Hialeah.

A strike-everything amendment was adopted by the Committee on Community Affairs on March 30, 1999, which directs the Legislative Committee on Intergovernmental Relations to conduct a research project on the feasibility of creating Hialeah County.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

History of Counties in Florida

While the provisional government and territorial councils provided for county forms of government in Florida, it was not until 1861 that counties were provided some form of constitutional status. The new Constitution of 1885 addressed counties and municipalities in separate articles, with counties recognized as legal subdivisions of the state. In addition, the Legislature was granted the power to create new counties and alter county boundaries. By 1925, county boundaries were fairly fixed and have, with a few minor changes, remained that way today. There are currently 67 counties in Florida.

In 1956, an amendment to the 1885 Florida Constitution provided that Dade County had the authority "to adopt, revise and amend from time to time a home rule charter government for Dade County." The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status as it is the only county with its charter included in the State Constitution.

The authors of the revised Florida Constitution of 1968 amended the provision in the 1885 Constitution relating to county formation and included the following clause:

The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished, or changed by law, with provision for payments or apportionment of the public debt. *Article VIII, Section 1 of the State Constitution.*

The Constitution also provided for general "home rule" authority for counties. In addition, chapter 125, F.S., outlines the powers and duties of counties. There is no provision in the statutes addressing the creation and abolishing of counties.

Recent Research on the Creation of New Counties

In March 1995 the Florida Institute of Government published *The Creation of New Counties in Florida: History and Future Prospects*. The author concluded that the Legislature must decide whether the creation of a new county is in the best interest of the state and its residents, weighing the impact of creating an additional county on the state's governmental structure against the value of the implied right of citizens to reform government.

The paper proposed a set of standards to be applied when evaluating whether to create a new county. These standards are as follows:

- The new county should not significantly affect the "parent" county's ability to equitably finance and provide county services to their remaining residents.
- The essential demographic characteristics of the new county should be similar to the remaining county. This is necessary to prevent the creation of counties solely on the grounds of income, race, ethnicity, and age. Each of these characteristics is likely to be linked to the county's tax base and the demand for services.
- The general tax base of the new county should not be significantly different from that of the parent county. This standard is necessary to prevent the partitioning of a county into a rich new county and a poorer parent county. Without this standard, the creation of a new county could make it more expensive for the parent county to continue to provide the same level and quality of county services.
- The new county should be an area separate and distinct from the existing county.

The Advisory Council on Intergovernmental Relations (ACIR, which was renamed the Legislative Advisory Council on Intergovernmental Relations, or LCIR, in 1996) contributed to the research by publishing *ACIR Comments on the Formation of Counties* in May 1995. The report offered additional standards to minimize the unanticipated negative consequences of creating new counties, to include:

- Setting a minimum population size for the new and parent counties, thereby ensuring each has the financial reserves and tax base necessary to provide the services required under current law;

- Establishing a population density requirement;
- Requiring proposed counties to become charter counties, thereby establishing how the new county would interact with all affected local governments, including the parent county and school district, and county constitutional officers;
- Requiring a feasibility study, which would provide:
 - Background information on the area within the proposed boundaries of the new county;
 - Identification of problems or difficulties confronting the area residents who would reside within the boundaries of the new county and an explanation of why the formation of a new county is the only or the best available method to address the identified problems;
 - Proposed budget expenditures, and revenue sources for the new county;
 - A 5-year projection of revenue sources and amounts, and proposed budget expenditures for the new county;
 - A letter of intent or memorandum of understanding from all local governments identified as provider of services to the new county; the local government should verify that it is prepared to provide the identified service for the amount specified in the budget expenditure section of the feasibility study;
 - An analysis of the new county's fiscal impact on municipalities within the "parent" county and within the new county;
 - An analysis of the new county's fiscal and legal impact on all affected special districts contained in part or completely within the boundaries of the "parent" county and the new county;
 - An analysis of fiscal impact on the new county's formation on all affected state shared-revenue programs and affected local option taxes;
 - Identification of all pre-existing interlocal agreements affected by the formation of the new county and a brief explanation on how the new county proposes to mitigate those impacts;
 - A time-line schedule that specifies dates of critical events, including the date the Legislature approves the formation of the new county, the date of referendum for the county formation, date of local elections, and the date(s) for transfer of specified responsibilities from the "parent" county to the new county; and
 - Identification of the potential costs incurred by the state as a result of the new county's creation.

The last time the Legislature created a new county was in 1925 (Gilchrist County), and the impact on both the new and parent counties was relatively minimal compared to the impact of a similar action today. In 1965, legislation was proposed to create "Kennedy County" out of a portion of Dade County. The bill included a number of notable provisions:

- A referendum approval requirement by the voters of the proposed county;
- Designation of the city of Hialeah as the temporary county seat;
- Creation of a school district and county constitutional offices, and transfer of associated public records;
- Pro-ration of indebtedness of county and school districts; and
- Transfer of county convicts whose offenses were committed within the territory included in Kennedy County.

B. EFFECT OF PROPOSED CHANGES:

This bill creates Hialeah County out of the portion of Miami-Dade County that now comprises the City of Hialeah.

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?

The bill will create a new county that will have all the rights and responsibilities granted to counties in chapter 125 and the Florida Constitution, including the authority to adopt ordinances.

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

N/A

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

N/A

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

(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?

Indeterminate. The bill creates a new county, which will have the authority to levy all taxes authorized for counties in the Florida Statutes and in the Florida Constitution.

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

Indeterminate. The bill creates a new county, which will have the authority to assess all fees authorized for counties in the Florida Statutes and in the Florida Constitution.

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

N/A

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

N/A

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

See 2a.

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

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

- (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?

N/A

- 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:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

This bill creates a new section 7.275, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates s. 7.275, F.S., to define the boundaries of the proposed Hialeah County.

Section 2: Amends s. 7.275, F.S., to re-define the boundary lines for Miami-Dade County, excluding the land defined as Hialeah County in section 1. It appears that an enclave is created by the boundaries of the proposed new county and the enclave lies in Miami-Dade County.

Section 3: Transfers all property owned by Dade County located in Hialeah County to Hialeah County on the effective date of this act.

Personal property owned by Dade County is transferred in an amount equal to the proportion of the value of property the proposed Hialeah County bears to the value of property in Miami-Dade County as of the previous January 1. Hialeah County must assume responsibility for the obligations of Miami-Dade County, as of the effective date of this bill, to the proportion of the value of property the proposed Hialeah County bears to the value of property in Miami-Dade County as of the previous January 1.

Section 4: Directs the Miami-Dade County Board of County Commissioners to call and hold a special election that coincides with the 2000 primary and general election to select officers for Hialeah County. The costs in excess of the cost that would otherwise be incurred for the election will be reimbursed to Miami-Dade County by the Hialeah County Board of Commissioners. Electors in the proposed Hialeah County are declared eligible to vote in this election.

Section 5: Provides that the act will take effect only upon the approval by a majority vote of qualified electors of the proposed Hialeah County, in an election to be held on September 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

There would be a significant tax and fee revenue loss to Miami-Dade County. The exact costs are indeterminate at this time. It is recommended that a comprehensive cost analysis be conducted to address the fiscal issues.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill may require Miami-Dade County to spend money to transition county services. In addition, the bill will result in a loss of assets to Miami-Dade County. The bill does not require municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill significantly reduces Miami-Dade County's revenue-raising authority.

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

The bill would result in a reduction of state tax revenue shared with Miami-Dade County and all municipalities within Miami-Dade county.

V. COMMENTS:

The County Attorney for Miami-Dade County opined that this proposed legislation creating a new county lying wholly within Miami-Dade County's current boundaries contravenes the Home Rule Amendment in the State Constitution and, thus, would be unconstitutional. The Home Rule Amendment to the Florida Constitution grants the citizens of Miami-Dade broad home rule powers and apports control over local affairs between the Legislature and the County. *Article VIII, Section (6)(e), n.3, State Constitution (1968).*

However, the State Constitution provides the Legislature the authority to create new counties and alter the boundaries of existing counties. *Article VIII, Section 1 of the State Constitution.*

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A strike-everything amendment was adopted by the Committee on Community Affairs on March 30, 1999 which directs the Legislative Committee on Intergovernmental Relations to conduct an interim research project to identify constitutional issues, general law issues, and the requirements and costs associated with creating Hialeah County.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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