

STORAGE NAME: h0471.jo.doc
DATE: March 18, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HJR 471
RELATING TO: County Home Rule Charter
SPONSOR(S): Representatives Lacasa, Rubio, and Others
TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS YEAS 8 NAYS 0
 - (2) JUDICIAL OVERSIGHT
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
-

I. SUMMARY:

HJR 471 is a House Joint Resolution, proposing to amend Article VIII, Section 7 of the Florida Constitution. The Resolution authorizes the amendment of county home rule charters by special law, approved by the vote of electors of the county.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The House Joint Resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the general election to be held in November of 2002.

This Resolution impacts state funds to the extent that the cost of placing the amendment on the ballot is approximately \$47,000.

A strike-everything amendment was adopted by the Committee on Local Government and Veterans Affairs the resolution to correctly place the proposed amendments in Section 6, Article VIII of the Florida Constitution rather than in Article VIII, Section 7 of the Florida Constitution. This amendment also updates obsolete language.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Statutory Law

Chapter 125, F.S., addresses county government. Part II of Chapter 125, F.S., contains provisions relating to county self-government.

Any county that does not have a chartered form of consolidated government may opt to adopt a county home rule charter, through a majority vote of the qualified electors of the county. (Section 125.60, F.S.)

Except through legislative special act, a home rule charter, adopted by the electors, may only be amended by the electors of the county. (Section 125.64, F.S.)

Florida Constitution

Article VIII, Section 1 of the State Constitution, provides that the state shall be divided by law into political subdivisions, known as counties. This section further provides that counties may be created, abolished, or changed by law, with a provision for payment or apportionment of the public debt.

Subsection (g) of s. 1, art. VIII endows charter counties with all powers of local self-government not inconsistent with general law, or with special law approved by a vote of the electors.

Local Bills and Miami-Dade County

In 1956, an amendment to the 1885 Florida Constitution provided that Dade County has the authority "to adopt, revise, and amend from time to time a home rule charter government for Dade County." (Art. VIII, Section 11 of the Constitution of 1885, as amended). 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 full charter included in the State Constitution.

Article VIII, Section 6(e) of the Florida Constitution provides that the Metropolitan Dade County Home Rule Charter provisions shall be valid if authorized under Article VIII, Section 11 of the Constitution of 1885, as amended.

As the Miami-Dade electors adopted the charter, the charter may only be amended by the electors of Dade County, (Article VIII, Section 11(3) of the 1885 Constitution). Article VIII, Section 11(5) of the 1885 Constitution prohibits any charter provisions in conflict with the Constitution or with general law relating to Miami-Dade County and any other one or more counties. Dade County v. Wilson, 386 So. 2d 556 (Fla. 1980).

Article VIII, Section 11(5) of the Florida Constitution further provides that this charter and any subsequent ordinances enacted pursuant to this charter may conflict with, modify or nullify any existing local, special or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Metropolitan Dade County Home Rule Charter may implicitly, as well as expressly, amend or repeal a special act, when it conflicts with a Miami-Dade County ordinance.

In Chase v. Cowart, 102 So. 2d 147 (Fla.1958), the Florida Supreme Court concluded that:

When the Legislature enacted Chapter 31420, Laws of 1956, creating the metropolitan charter and providing the method of presenting the home rule charter to the voters of Dade County, and more specifically when the electors of Dade County adopted the home rule charter on May 21, 1957, the authority of the Legislature in affairs of local government in Dade County ceased to exist. Thereafter, the Legislature may lawfully exercise this power only through passage of general acts applicable to Dade County and any other one or more counties, or a municipality in Dade County and any other one or more municipalities in the State.

In a 1989 opinion, the Attorney General cited Dade County v. Dade County League of Municipalities, 104 So. 2d 512, 517 (Fla. 1958), for the proposition that, following adoption of the Dade County Home Rule Charter, the Legislature is limited to enacting only general laws relating to Miami-Dade County and may not amend a special act relating to a municipality within Miami-Dade County that was enacted prior to the adoption of the Dade County Home Rule Charter. (AGO 1989-9) See Dickenson v. Board of Public Instruction of Dade County, 217 So.2d 553, 555 (Fla. 1969).

Constitutional Provision for Amending the Constitution

Article XI, Section 1, of the Florida Constitution, provides for amendment to the state constitution by the Legislature. The Legislature is authorized to propose amendments to the Constitution by joint resolution passed by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office; alternatively, the amendment may be voted on at a special election held for that purpose.

Article XI, Section 5 of the Florida Constitution, provides, in part:

A proposed amendment...shall be submitted to the electors at the next general election held more than ninety days after the joint resolution... proposing it is filed with the secretary of state. (Article XI, Section 5(a))

If the proposed amendment...is approved by vote of the electors, it shall be effective as an amendment to...the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.... (Article XI, Section 5(c))

C. EFFECT OF PROPOSED CHANGES:

This Resolution authorizes the amendment of county home rule charters by special law, approved by the vote of electors of the county. As such, this Resolution appears to only affect Miami-Dade County, for those special acts relating to Miami-Dade County.

Providing that the amendment is successfully approved during the general election, as the Resolution does not indicate an effective date, the amendment will take effect in January of 2003, consistent with the constitutional provision providing for an effective date.

D. SECTION-BY-SECTION ANALYSIS:

A new section is added to Article VIII of the Florida Constitution, titled "Special laws amending county home rule charters." This section provides that, notwithstanding any limitation under Article VIII, the charter of any county which has adopted a home rule charter may be amended by special law, approved by county referendum, and, once approved, shall be considered an amendment of the charter by the electors of the county.

The Resolution specifies that the statewide referendum is to be held during the general election, in November of 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

Article XI, Section 5 of the Florida Constitution requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. It is estimated that the cost to the Division of Elections would be approximately \$47,000, statewide, for each amendment proposed.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

As a House joint resolution proposing an amendment to the Florida Constitution, the provisions of Article VII, Section 18 of the Florida Constitution do not apply.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

As a House joint resolution proposing an amendment to the Florida Constitution, the provisions of Article VII, Section 18 of the Florida Constitution do not apply.

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

As a House joint resolution proposing an amendment to the Florida Constitution, the provisions of Article VII, Section 18 of the Florida Constitution do not apply.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Article XI, Section 1 of the Florida Constitution, provides that a constitutional amendment may be proposed by joint resolution of the Legislature. Final passage in the House and Senate requires a three-fifths vote in each house, passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, Article XI, Section 5, Florida Constitution, provides that that the proposed amendment would be placed before the electorate at the 2002 general election.¹ Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published. If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election.²

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

An attorney with the Florida Association of Counties has been contacted and has not responded, to date.

An assistant county attorney with Miami-Dade County expresses that the county opposes this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A strike-everything amendment was adopted by the Committee on Local Government and Veterans Affairs, on March 15, 2001. This strike-everything amendment places the resolution, upon voter approval, in the proper section of the Florida Constitution, and updates obsolete language.

¹ The 2002 general election is on November 5, 2002.

² The first Tuesday after the first Monday in January after the election is Tuesday, January 7, 2003.

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VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Cindy M. Brown

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

Lynne Overton

Lynne Overton