

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Finance and Tax Committee

BILL: CS/SB 2848

INTRODUCER: Community Affairs Committee and Senator Diaz de la Portillia

SUBJECT: Local Governments

DATE: April 20, 2007

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|-----------------|-----------|-------------------------|
| 1. | <u>Herrin</u> | <u>Yeatman</u> | <u>CA</u> | <u>Fav/CS</u> |
| 2. | <u>Fournier</u> | <u>Johansen</u> | <u>FT</u> | <u>Favorable</u> |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The committee substitute (CS) prohibits a county from requiring a municipality formed after January 1, 2000, to pay a charge, assessment, tax, fee, or other consideration as a condition of incorporation.

This CS creates an unnumbered section of law.

II. Present Situation:

Municipal Incorporation

Chapter 165, F.S., provides statutory standards for forming Florida municipalities. The provisions of this act are the exclusive procedures pursuant to general law for creating or dissolving municipalities in this state, except in those counties operating under a home rule charter which provides for an exclusive method as specifically authorized by s. 6(e), Art. VIII of the State Constitution.

Constitutionally-chartered Counties

Section 6(e) of Art. VIII of the State Constitution provides that ss. 9, 10, 11 and 24 of Art. VIII of the Constitution of 1885, as amended, remain in full force and effect as to each county affected, until a county expressly adopts a charter or home rule plan pursuant to that article. Sections 9, 10, 11 and 24 refer to Duval, Monroe, Dade and Hillsborough counties, respectively. Within these provisions, only Section 11 authorizes Dade County to adopt a home rule charter which provides a method for establishing new municipal corporations.¹

¹ See s. 11 (e) of Art. VIII of the Constitution of 1885, as amended, as referenced in Section 6(e) of Art. VII.

Section 6(e) of Art. VIII of the State Constitution also provides that all provisions and amendments of the Metropolitan Dade County Home Rule Charter adopted by the electors of Dade County pursuant to s. 11 of Art. VIII of the Constitution of 1885, as amended, shall be valid, provided that said provisions and amendments are authorized under that article.

Miami-Dade County

Adopted in 1957, the Miami-Dade Home Rule Charter provides for the creation of new municipalities at section 5.05. This charter contemplates “pre-agreed conditions” between the County and a prospective municipality:

The Board of County Commissioners and only the Board may authorize the creation of new municipalities in the unincorporated areas of the county after hearing the recommendations of the Planning Advisory Board, after a public hearing, and after an affirmative vote of a majority of the electors voting and residing within the proposed boundaries. The Board of County Commissioners shall appoint a charter commission, consisting of five electors residing within the proposed boundaries, who shall propose a charter to be submitted to the electors in the manner provided in Section 5.03. The new municipality shall have all the powers and rights granted to or not withheld from municipalities by this Charter and the Constitution and general laws of the State of Florida. Notwithstanding any provision of this Charter to the contrary, with regard to any municipality created after September 1, 2000, the pre-agreed conditions between the County and the prospective municipality which are included in the municipal charter can only be changed if approved by an affirmative vote of two-thirds (2/3) of the members of the Board of County Commissioners then in office, prior to a vote of qualified municipal electors.

An Incorporation Process which was passed by a county-wide vote is provided for in Article II of the Miami-Dade Code of Ordinances.

III. Effect of Proposed Changes:

The CS prohibits a county from requiring any municipality formed after January 1, 2000, to pay a charge, assessment, tax, fee, or other consideration as a condition of incorporation. The prohibition in this CS is drafted to apply to all counties, including Miami-Dade County. Notwithstanding this language, the provisions of this CS would only apply to Miami-Dade County which is the only county which has the ability to provide a mechanism for municipal incorporation.

The CS takes effect July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 11(5) of Art. VIII of the Constitution of 1885, as referenced by s. 6, Art. VII of the State Constitution, provides that:

Nothing in this section shall limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties in the state of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida, and the home rule charter provided for herein shall not conflict with any provision of this Constitution nor of any applicable general laws now applying to Dade County and any other one or more counties of the State of Florida except as expressly authorized in this section nor shall any ordinance enacted in pursuance to said home rule charter conflict with this Constitution or any such applicable general law except as expressly authorized herein, nor shall the charter of any municipality in Dade County conflict with this Constitution or any such applicable general law except as expressly authorized herein, provided however that said charter and said ordinances enacted in pursuance thereof may conflict with, modify or nullify any existing local, special or general law applicable only to Dade County.

In interpreting the language of Art. VIII of the Constitution of 1885, the courts have held that in matters which affect only Miami-Dade County, and which are not the subject of specific constitutional provisions or valid general acts pertaining to Miami-Dade County and at least one other county, the electors of Miami-Dade County may “govern themselves autonomously and differently than the people of other counties of the state.”² The Florida Supreme Court has opined that a reasonable construction of the constitutional scheme formulated for the government of Miami-Dade County alone suggests that the Legislature “no longer has authority to enact laws which relate only” to the affairs of Miami-Dade County.³

Because this proposed legislation applies solely to Miami-Dade County, and will not apply to any other county in the State of Florida in the future without a change in current law, there could be an issue as to whether this is a local bill.⁴ A local bill, within the

² See *S & J Transportation, Inc. v. Gordon*, 176 So. 2d 69 (Fla. 1965).

³ See *id.*

⁴ The State Constitution defines a “special law” as a special or local law (the result of a local bill). Section 12(g), Art. X. of the Florida Constitution. As explained in case law, a local law is one relating to, or designed to operate only in, a specifically indicated part of the State, or one that purports to operate within classified territory when classification is not permissible or the classification is illegal. See

contemplation of s. 10, Art. III of the State Constitution, is required to be noticed as provided by general law⁵ unless the bill is conditioned on a referendum of the electors of the area effected.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Based on information supplied by Miami-Dade County, under this CS Miami-Dade County will no longer be able to collect approximately \$11 million in mitigation payments that are made annually, as a condition of incorporation, by three municipalities formed after January 1, 2000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Miami-Dade County Attorney's Office has indicated that the County requires "mitigation" to lessen the financial impact of incorporations on its Unincorporated Municipal Service Area (UMSA) budget. There were no new incorporations in Miami-Dade County for a number of decades. Then, during the 1990s, Key Biscayne incorporated followed by Aventura, Sunny Isles Beach and Pinecrest. It became apparent that wealthy areas of the UMSA were pursuing incorporation and removing these areas from the UMSA tax rolls. Looking to the future (and to the north at Broward County), the fear was that incorporations would continue among wealthy areas until the UMSA would be left only or predominantly with "donee" communities and no "donor" areas left in the UMSA to counterbalance the expense. (Court cases have required that the UMSA and the countywide budget be strictly segregated as if the UMSA was another city in Miami-Dade with the Board acting as the city commission.)

To address this concern, the Board adopted a mitigation policy that basically provided that it would calculate the impact of a particular proposed incorporation configuration on the UMSA, and then require a proposed city to pay approximately half of that impact if they chose to incorporate. A proposed city did not have to make a mitigation payment if it was configured in such a way that it "broke even" relative to the balance of the UMSA, i.e., was revenue neutral, or was configured as a donee area. Only if a proposed city was configured so as to "cherry pick" an

Department of Business Regulation v. Classic Mile, Inc., 541 So. 2d 1155 (Fla.1989) quoting from *State ex rel. Landis v. Harris*, 120 Fla. 555, 163 So. 237 (Fla. 1934).

⁵ See, s. 11.02, F.S.

aggregate donor area out of the UMSA would mitigation payments be required. The cities of Miami Lakes, Palmetto Bay, Doral, Miami Gardens and Cutler Bay all incorporated under this policy.

Miami Lakes, Palmetto Bay and Doral were donor areas and as such agreed to incorporate and configure their cities with the understanding that mitigation payments would be required as a result of the incorporation. Miami Gardens was configured as a donee area so it pays no mitigation; Cutler Bay also was configured as to be revenue neutral to the UMSA and, therefore, makes no mitigation payments.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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