

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 349 Miami-Dade County Home Rule Charter

SPONSOR(S): Lopez-Cantera

TIED BILLS: **IDEN./SIM. BILLS:** SJR 720

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Affairs Committee	18 Y, 0 N	Gibson	Tinker
2) State Affairs Committee			

SUMMARY ANALYSIS

HJR 349 proposes to amend the State Constitution to create the constitutional authority for Miami-Dade County's Home Rule Charter to be amended by a special law of the Legislature, provided that the special law is then approved by the vote of the electors of Miami-Dade County. The joint resolution also proposes to change references to "Metropolitan Dade County" to reflect the county's present name, "Miami-Dade 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. HJR 349 provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

The Division of Elections, within the Department of State, is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county. HJR 349 impacts state funds to the extent that the cost of placing the constitutional amendment on the ballot must be administered by the Department of State. The department estimated that the advertising costs for publishing this proposed constitutional amendment will be \$67,611.18. This sum will depend on the final wording of the joint resolution and the language that is to be placed on the ballot.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION:

In 1956, an amendment to the State Constitution of 1885 provided that Dade County has the authority to adopt, revise, and amend from time to time a home rule charter government for Dade County.¹ 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.

Article VIII, section 6(e), of the State Constitution provides that the Metropolitan Dade County Home Rule Charter provisions shall be valid if authorized under Article VIII, section 11 of the State Constitution of 1885, as amended. However, Article VIII, section 11(5) of the State Constitution of 1885 prohibits any charter provisions in conflict with the constitution or with general law relating to Miami-Dade County.²

Article VIII, section 11(5) of the State Constitution further provides that the charter and any subsequent ordinances enacted pursuant to the 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*,³ 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.⁴

A 1989 attorney general opinion cited *Dade County v. Dade County League of Municipalities*,⁵ 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.⁶

Currently, changes to the Miami-Dade County Home Rule Charter may only be made by the affirmative vote of the Miami-Dade County electorate, after an amendment is proposed and placed on the ballot either by the Board of County Commissioners or by petition of the citizens.

Constitutional Provision for Amending the Constitution

Article XI of the State Constitution, provides for amendment to the 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 of the legislature. 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,

¹ Section 11, Art. VIII, of the State Constitution of 1885, as amended.

² See also, *Dade County v. Wilson*, 386 So. 2d 556 (Fla. 1980).

³ 102 So. 2d 147 (Fla. 1958).

⁴ *Id.* at 150.

⁵ 104 So. 2d 512, 517 (Fla. 1958).

⁶ AGO 1989-9; see also *Dickenson v. Board of Public Instruction of Dade County*, 217 So.2d 553, 555 (Fla. 1969).

the amendment, if approved by three-fourths of the membership of each house and limited to a single amendment or revision, may be voted on at a special election held for that purpose.

EFFECT OF THE JOINT RESOLUTION:

HJR 349 proposes to amend the State Constitution to create the constitutional authority for the Miami-Dade County Home Rule Charter to be amended by a special law of the Legislature, provided that the special law is then approved by the vote of the electors of Miami-Dade County. The resolution also proposes to change references to “Metropolitan Dade County” to reflect the county’s present name, “Miami-Dade 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. HJR 349 provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

In addition to methods available locally, HJR 349 proposes to also authorize changes to the Miami-Dade County Charter through the following process:

1. A bill proposing a special law that would serve as a charter amendment would be approved at a meeting of the local legislative delegation.
2. The bill would be filed by a member of that delegation with the Florida House of Representatives and/or the Florida Senate.
3. The bill would require passage by the Legislature.
4. The special law would be placed on the ballot and require approval by the electors of Miami-Dade County.

B. SECTION DIRECTORY:

As this legislation is a joint resolution proposing a constitutional amendment, it does not contain bill sections. The joint resolution proposes to amend Article VIII, section 6 of the State Constitution, to authorize the amendment of the Miami-Dade County Home Rule Charter by special law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The joint resolution does not have a fiscal impact on state revenues.

2. Expenditures:

Article XI, section 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections, within the Department of State, estimated that the average cost per word to advertise an amendment to the State Constitution is \$106.14 for this fiscal year. The department estimated that the advertising costs for publishing this proposed constitutional amendment will be \$67,611.18. This sum will depend on the final wording of the joint resolution and the language that is to be placed on the ballot.

The Department of State is normally the defendant in lawsuits challenging proposed amendments to the State Constitution. The department reported that the cost for defending these lawsuits has ranged from \$10,000 to \$150,000, depending on a number of variables.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have a fiscal impact on local revenues.

2. Expenditures:

The joint resolution will have an indeterminate negative fiscal impact on Miami-Dade County. To the extent that special laws relating to Miami-Dade County are enacted, the county will have to expend funds to put the proposed charter amendments on the ballot.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

See, Fiscal Impact on State Government, above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The joint resolution does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

Article XI, section 1 of the State Constitution provides for proposed changes to the Constitution by the Legislature:

SECTION 1: Proposal by legislature.— Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

Article XI, section 5 of the State Constitution provides that the proposed amendment, if passed by the Legislature, must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published. Submission of a proposed amendment at an earlier special election held more than 90 days after the joint resolution is filed with the custodian of state records requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.

Article XI, section 5(e) of the State Constitution requires 60 percent voter approval for a proposed constitutional amendment to pass. 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.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES