

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SJR 810

INTRODUCER: Senator Garcia

SUBJECT: Miami-Dade County Home Rule Charter

DATE: March 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Unfavorable
2.			JU	
3.			RC	

I. Summary:

SJR 810 proposes to amend the State Constitution to authorize amendments or revisions to the home rule charter of Miami-Dade County by a special law approved by a vote of the electors in that county, and provides requirements for a bill proposing such a special law. This joint resolution also authorizes the Miami-Dade charter to provide for fixed term limits for Miami-Dade County Commissioners.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

This joint resolution amends Art. VIII, s. 6 of the Florida Constitution.

II. Present Situation:

Counties

Article VIII, s. 1 of the Florida Constitution requires the state to be divided into political subdivisions known as counties which shall provide state services at the local level. There are two types of counties that are recognized under the Florida Constitution: non-charter counties and charter counties.¹

Non-Charter Counties

Non-charter county governments only have such powers of self-government as are provided by general or special law.² In addition, non-charter counties may enact ordinances not inconsistent

¹ See FLA. CONST. art. VIII, s. 1(f)-(g).

² FLA. CONST. art. VIII, s. 1(f).

with general or special law.³ A county ordinance in a non-charter county that is in conflict with a municipal ordinance is not effective within the municipality to the extent of such conflict.⁴

Charter Counties

Although a non-charter county can be established through general law, a charter county can only be adopted, amended or related through a special election by the vote of the electors in that county. Charter counties have greater powers of self-government than non-charter counties. Counties operating under a charter have all powers of self-government not inconsistent with general law or with special law approved by the vote of the electorate.⁵ In a charter county, the charter must provide which prevails in the event of a conflict between county and municipal ordinances.⁶ Special acts that do not require referendum approval do not apply to charter counties.

Miami-Dade Home Rule Charter⁷

In 1955, the Legislature authorized the voters of Dade County to enact the first home rule charter in Florida, under an amendment to Art. VIII, s. 11 of the 1885 Florida Constitution.

Article VIII, s. 6(e) of the Florida Constitution, states that the provisions of the Metropolitan Dade (or Miami-Dade) County Home Rule Charter adopted by the electors of Miami-Dade County pursuant to Art. VIII, s. 11 of the Constitution of 1885 are valid and any subsequent amendments to the charter, authorized by Art. VIII, s. 11 of the Constitution of 1885, are authorized.⁸

Unique Powers

Article VIII, s. 11 of the Constitution of 1885 granted the electors of Miami-Dade County the authority to adopt a home rule charter government in Miami-Dade County of which the Board of County Commissioners of Miami-Dade County is the governing body. In contrast to charter governments created pursuant to Art. VIII, s. 1(g) of the State Constitution, Miami-Dade County is granted unique powers that include:

- Merging, consolidating, abolishing and changing the boundaries of municipal, county or district governments whose jurisdictions lie wholly within Miami-Dade County;
- Providing a method for establishing new municipal corporations, special taxing units, and other governmental units in Miami-Dade County;

³ *Id.*

⁴ *Id.*

⁵ FLA. CONST. art. VIII, s. 1(g).

⁶ *Id.*

⁷ Section 125.011(1), F.S., defines the term “county” to mean: any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word “county” within the above provisions shall include “board of county commissioners” of such county. The constitutional sections that are contained in s. 125.011(1), F.S., refer to Key West/Monroe County, Miami-Dade County and Hillsborough County, respectively.

⁸ FLA. CONST. art. VIII, s. 6(e).

- Providing an exclusive method for municipal corporations to make, amend, or repeal their own charters, which, once adopted, cannot be changed or repealed by the Legislature;
- Abolishing the offices of sheriff, tax collector, property appraiser, supervisor of elections and clerk of the circuit court and providing for the consolidation and transfer of their functions; and
- Changing the name of the county.

In addition, even though Art. VIII, s. 11(5) of the Florida Constitution of 1885 does not limit or restrict the power of the Legislature to enact general laws that apply to Miami-Dade County and any one or more other counties in Florida or to any municipality in Miami-Dade County and one or more other municipalities in Florida, Miami-Dade County ordinances control in the event of conflict with a special or general law only applicable to Miami-Dade County. Hence, the Legislature is prevented by Art. VIII, s. 11(5) of the Florida Constitution of 1885, as amended, from enacting special laws that apply only to Miami-Dade County, even if such a special act were approved by referendum.

Special Provisions

Miami-Dade County Home Rule Charter (Charter) was officially adopted on May 21, 1957. The Charter authorizes the Board of County Commissioners to create new municipalities; change municipal boundaries; and to establish, merge, and abolish special purpose districts. The Charter also abolishes the constitutional office of the Sheriff and authorizes the Board of County Commissioners to “[e]xercise all powers and privileges granted to municipalities, counties and county officers by the Constitution and laws of the state.”⁹

Court Interpretations

Florida courts have consistently invalidated the applicability of special acts passed by the Legislature that attempt to supersede the home rule powers of Miami-Dade County. The Florida Supreme Court has held that the constitutional provisions granting home rule authority to Miami-Dade County transferred to the county “the powers formerly vested in the state legislature with respect to the affairs, property and government of Dade County and all the municipalities within its territorial limits.”¹⁰

In the case of *Chase v. Cowart*,¹¹ the Florida Supreme Court was asked to determine whether the Miami-Dade County Budget Commission had been abolished by the electors of Miami-Dade County through the enactment of its home rule charter. The budget commission was originally established by the Florida Legislature with authority over the fiscal affairs of county boards and county officers of Miami-Dade County and whose jurisdiction fell entirely within Miami-Dade County.

In deciding the issue, the Court weighed the meaning of subsections (5), (6), (7), and (9), s. 11, Art. VIII of the Florida Constitution of 1885, as amended, which preserve to the Legislature the

⁹ Article 1, s. 1.01(21), *Miami-Dade County Home Rule Charter*.

¹⁰ *State v. Dade County*, 142 So. 2d 79, 85 (Fla. 1961) (citing *Chase v. Cowart*, 102 So. 2d 147 (Fla. 1958)).

¹¹ *Chase*, 102 So. 2d 147.

authority to enact general laws that apply to Miami-Dade County and any other counties. The Court also analyzed subsection (1)(c), s. 11, Art. VIII, of the Florida Constitution of 1885, which provides an express grant of power authorizing the voters of Miami-Dade County to adopt a charter, the provisions of which may abolish any board or governmental unit, whose jurisdiction lies wholly within Miami-Dade County, whether created by the Constitution, the Legislature or otherwise.

After conducting its analysis, the Court held that the electors of Miami-Dade County, through the enactment of its home rule charter, abolished the budget commission. The court reasoned that the limitations of subsections (5) and (9) do not prohibit the abolishment of the budget commission because the charter provision allowing abolishment of the commission comes within the exception to the limitations of subsections (5) and (9) that states “except as expressly authorized herein.” Specifically stating that s. 11(1)(c) is:

clearly an express grant of power which authorizes the voters of Dade County to adopt a charter, the provisions of which may abolish any board or governmental unit, whose jurisdiction lies wholly in Miami-Dade County, whether created by the Constitution or by the Legislature or otherwise. We think it crystal clear that the words ‘except as expressly authorized’ or ‘provided’ as found in subsections (5) and (9) relates directly to the specific grants of power contained in the various sub-subsections of subsection (1).¹²

The Court further stated that its reasoning did not weigh on the analysis of whether the law creating the budget commission was a general law, general law of local application, or a special act.

In *City of Sweetwater v. Dade County*,¹³ the Third District Court of Appeal held that general law provisions governing the annexation of land into municipalities did not apply within Miami-Dade County since municipal boundary change is “one of the areas of autonomy conferred on Dade County” by its Home Rule Charter.¹⁴ In reaching this holding, the appellate court upheld the trial court’s ruling, which relied on the autonomy granted to Miami-Dade County under Art. VIII, s. 11(1) of the Florida Constitution of 1885, as amended:

Subsections 1(a) through (i) of the Home Rule Charter Amendment constitute those organic areas of autonomy and authority in local affairs conferred upon Dade County by the Florida Constitution and may not be diminished and curtailed by general laws of the State enacted after 1956.¹⁵

Based on this information the Third District Court of Appeal determined “that the method provided by the Home Rule Charter... is effective and exclusive, notwithstanding the existence from time to time of a general state law which makes provision for some other method.”¹⁶

¹² *Id.* at 152-53.

¹³ *City of Sweetwater v. Dade County*, 343 So. 2d 953 (Fla. 3rd DCA 1977).

¹⁴ *Id.* at 954.

¹⁵ *Id.* (citations omitted).

¹⁶ *Id.*

III. Effect of Proposed Changes:

The joint resolution will allow the Miami-Dade County Home Rule Charter to be amended or revised by a special law approved by the electors of Miami-Dade County, notwithstanding Art. VIII, s. 11 of the Florida Constitution of 1885. If such amendments or revisions are approved by the electors of Miami-Dade County, they will become an amendment or revision of the charter by the electors of Miami-Dade County. A bill proposing such a special law must be filed by a member of the Miami-Dade County legislative delegation, and such filing must be approved by a majority of the members of the Miami-Dade County legislative delegation in each house of the Legislature.

The joint resolution also authorizes the Miami-Dade County charter to provide for fixed term limits of Miami-Dade County Board of County Commissioners.

The joint resolution conforms references in the Florida Constitution to reflect the county's current name, which is Miami-Dade County, not Dade County.

An effective date for the amendment is not specified, but the amendment would be submitted to the electorate at the next general election or at an earlier special election specifically authorized for that purpose. Therefore, the amendment, if approved by the electors at the 2016 General Election, will take effect on January 3, 2017.¹⁷

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:

Article XI, section 1 of the Florida Constitution, authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

Article XI, section 5(a) of the Florida Constitution, and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and

¹⁷ FLA. CONST. art. XI, s. 5(e).

unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”¹⁸

Article XI, section 5(d) of the Florida 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 estimates that the costs for advertising the proposed constitutional amendment will be approximately \$135 per word.¹⁹

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Upon voter approval, this joint resolution will allow Miami-Dade County home rule charter amendments or revisions to be made by special law approved by a vote of the electors. A bill proposing such a special law must be approved at a meeting of the local legislative delegation and filed by a member of that delegation. This joint resolution will also authorize the Miami-Dade County charter to provide term limits for its county commissioners.

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.²⁰ Costs for advertising vary depending upon the length of the amendment. The Division of Elections, within the Department of State, estimates that the costs for advertising the proposed constitutional amendment will be approximately \$135 per word.

¹⁸ *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

¹⁹ Phone conversation with Department of State staff (Feb. 24, 2015).

²⁰ FLA. CONST. art. XI, s. 5(d).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This joint resolution substantially amends Article VIII, section 6 of the Florida Constitution.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.