

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 989 Broward County
SPONSOR(S): State Affairs Committee, Jacobs
TIED BILLS: **IDEN./SIM. BILLS:**

FINAL HOUSE FLOOR ACTION: 114 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 989 passed the House on February 26, 2020, and subsequently passed the Senate on March 11, 2020.

The Florida Constitution creates five county constitutional offices: sheriff, tax collector, property appraiser, clerk of the circuit court, and supervisor of elections. The clerk of the circuit court also serves as the ex officio clerk of the board of county commissioners (BOCC), auditor, recorder, and custodian of county funds, unless those duties are transferred as allowed in the Constitution.

Prior to January 8, 2019, the Florida Constitution permitted a county charter or special law approved by the county voters to transfer the county government duties of the clerk of the circuit court. In 1975, Broward County exercised this authority and adopted a county charter that transferred the county administrative duties of the clerk of the circuit to the county administrator and the clerk's county fiscal duties to the Broward County Department of Finance.

On November 6, 2018, the voters approved a proposed amendment that in part amended the Florida Constitution to eliminate the power by county charter to provide a different method for selecting certain county offices, the abolishment of such offices, and the transfer of such offices' functions and duties to another office. The constitutional amendment takes effect statewide on January 5, 2021, except in Broward and Miami-Dade Counties, where the amendment takes effect on January 7, 2025.

The bill creates a special act providing for the formal transfer of the duties of the clerk of the circuit court as ex officio clerk of the BOCC, auditor, and custodian of all county funds to the Broward County administrator. As a result, the bill allows Broward County to continue the transfer of duties authorized in the 1975 Broward County Charter, with the exception of the duties of recorder, to the Broward County government, if a majority of the qualified electors voting approves the question in a referendum placed on the 2020 general election ballot. If the question is not approved, the bill authorizes the BOCC to submit the question to the voters at a subsequent referendum. Unless approved by the voters, Broward County must return the functions of ex officio clerk of the BOCC, auditor, recorder, and custodian of all county funds to the clerk of the circuit court by January 7, 2025, unless an earlier date is agreed upon.

The Economic Impact Statement filed in support of the bill projects a decrease in revenue to the county of over \$8.1 million in FY 2024-2025.

The bill was approved by the Governor on June 9, 2020, ch. 2020-194, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Article VIII of the Florida Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties¹ and has the authority to choose to create municipalities.²

Pursuant either to general³ or special law, a county government may be adopted by charter approved by the county voters. A county without a charter has such powers of self-government as provided by general⁴ or special law.⁵ A county with a charter has all powers of self-government not inconsistent with general law or special law approved by the county voters.⁶ Article VIII, s. 6(e) of the Florida Constitution incorporates by reference sections of the 1885 Constitution, retaining in the 1968 Constitution unique authorization⁷ for specific home rule charters, including those of Duval⁸ and Miami-Dade Counties.⁹ Currently, 20 Florida counties have adopted charters.¹⁰

The Florida Constitution creates five specific county officers: sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court. The clerk of the circuit court also serves as the ex officio clerk of the board of county commissioners (BOCC), auditor, recorder, and custodian of county funds.¹¹

Before January 8, 2019, the Florida Constitution allowed a county to change the manner in which the five county constitutional officers were selected and their respective scope of duties. Specifically, a provision in a county charter or special law approved by the county voters could change the manner in which a county constitutional officer was selected, abolish an office (provided the duties of that office

¹ Art. VIII, s. 1(a), Fla. Const.

² Art. VIII, s. 2(a), Fla. Const.

³ S. 125.60, F.S.

⁴ Ch. 125, Part I, F.S.

⁵ Art. VIII, s. 1(f), Fla. Const.

⁶ Art. VIII, s. 1(g), Fla. Const.

⁷ Article VIII, s. 6(e), Fla. Const., states that specific provisions for Duval, Miami-Dade, Monroe, and Hillsborough Counties “shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article.”

⁸ The consolidated government of the City of Jacksonville was created by ch. 67-1320, Laws of Fla., adopted pursuant to Art. VIII, s. 9, Fla. Const. (1885).

⁹ In 1956, an amendment to the 1885 Florida Constitution provided Dade County with the authority to adopt, revise, and amend from time to time a home rule charter government for the 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. Article VIII, s. 11(5) of the 1885 Florida Constitution, now incorporated by reference in art. VIII, s. 6(e), Fla. Const. (1968), further provided the Metropolitan Dade County Home Rule 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 Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami-Dade Charter can only be altered through constitutional amendment, general law, or county actions approved by referendum. *Chase v. Cowart*, 102 So. 2d 147, 149-50 (Fla. 1958).

¹⁰ Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. See Local Government Formation Manual 2018-2020, Appendix B, at 104-109.

¹¹ Art. VIII, s. 1(d), Fla. Const. In a separate subsection, the Florida Constitution requires counties to be governed by a board of county commissioners unless otherwise provided in their respective charters, if any. Art. VIII, s. 1(e), Fla. Const.

were transferred to another office), or transfer the clerk of the circuit court's county duties to another office.¹²

In its charter adopted in 1975, Broward County transferred the county administrative duties of the clerk of the circuit court to the county administrator and the clerk's fiscal duties were transferred to the Department of Finance (now known as the Department of Finance and Administrative Services).¹³ Presently, the duties continue to be performed by the Broward County government.

On November 6, 2018, the voters approved a proposed amendment that in part amended art. VIII, s. 1(d) of the Florida Constitution.¹⁴ The amendment eliminated the power by county charter to provide a different method for selecting certain county offices, abolishing such offices, and transferring such offices' functions and duties to another office. The amendment restricts the ability to transfer the county duties of the clerk of the circuit court by requiring the approval of such a transfer by a special law approved by the voters.¹⁵ The amendment to art. VIII, s. 1(d) of the Florida Constitution takes effect statewide on January 5, 2021, except in Broward and Miami-Dade Counties, where the amendment takes effect on January 7, 2025.¹⁶ The effect of the amendment is to reinstate the elected, autonomous county constitutional officers¹⁷ in all counties with charters that previously altered one or more of the constitutional offices, including transferring the county duties of the clerk of the circuit court.¹⁸

Effect of the Bill

The bill creates a special act providing for the transfer of the duties of the clerk of the circuit court as ex officio clerk of the BOCC, auditor, and custodian of all county funds to the Broward County Administrator, subject to general law, the county charter, special law, and county ordinances and regulations. The practical effect will allow such duties, except for the duties of the recorder, to continue to be performed by the Broward County government under the current county charter, but only if approved by a majority of the qualified electors voting in a referendum placed on the ballot during the 2020 general election. If the referendum is not approved, the BOCC may submit the question to the voters at a subsequent referendum. Unless approved by the voters, the functions and duties prescribed by the Florida Constitution and general law for the office of clerk of the circuit court will revert to the clerk of the circuit court on January 7, 2025, or earlier if agreed to by interlocal agreement by the county and the clerk.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹² Art. VIII, s. 1(d), Fla. Const. (as in effect prior to January 8, 2019). See State of Florida, Official Florida Statutes 2018, vol. 6 (Tallahassee 2018).

¹³ BROWARD COUNTY FLORIDA, Code of Ordinances, Part I, Charter, ss. 3.03.G and 3.06.B, *available at* https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances (last visited January 6, 2020).

¹⁴ See results for "State and Local Government Structure and Operation," at <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=11&seqnum=24> (last visited January 6, 2020).

¹⁵ Art. V, s. 16, Fla. Const., provides in pertinent part: "Notwithstanding any other provision of the constitution, the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."

¹⁶ The amendment created a new art. VIII, s. 6(g), Fla. Const. (renumbering existing 6(g) as new 6(h)) providing for the delay in effect of the revisions to art. VIII, s. 1, Fla. Const. Under s. 6(g), the terms of the amendment apply to the elections conducted in 2020 except for Broward and Miami-Dade Counties, where the terms of the amendment apply to the elections in 2024. The revision to art. VIII, s. 6(g), Fla. Const., took effect on January 8, 2019. See art. XI, s. 5(e), Fla. Const.

¹⁷ As originally adopted in 1968, art. VIII of the Florida Constitution clearly was intended to apply to all counties and compel compliance with the provisions of its new sections, including provision for broad home rule. This is shown by the creation of art. VIII, s. 6(e), incorporating by reference four sections from the 1885 Florida Constitution (art. VIII, ss. 9, 10, 11, 24, Fla. Const. (1885, as amended)) to "remain in full force and effect as to each county affected, *as if this article had not been adopted...*" (emphasis supplied).

¹⁸ The charters of eight counties transferred the county duties of the clerk of the circuit court: Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia Counties.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The Economic Impact Statement filed with the bill projects a decrease in revenue to the county of over \$8.1 million in FY 2024-2025.

C. ECONOMIC IMPACT STATEMENT FILED? Yes No

D. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 17, 2019

WHERE? Sun-Sentinel newspaper in Broward County, Florida

E. REFERENDUM(S) REQUIRED? Yes No

F. IF YES, WHEN? November 3, 2020