

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 Judiciary Committee

BILL: CS/SJR 1954

INTRODUCER: Community Affairs Committee and Senator Garcia

SUBJECT: Home Rule Charter of Miami-Dade County

DATE: April 11, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Fav/CS
2.	Munroe	Maclure	JU	Pre-meeting
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Senate Joint Resolution 1954 proposes an amendment to the Florida 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, and provides requirements for a bill proposing such a special law.

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 Article VIII, section 6, of the Florida Constitution.

II. Present Situation:

Counties

Article VIII, section 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: 1) counties that are not operating under a county charter, and 2) counties that are operating under a county charter.¹

A.) Non-Charter Counties

Non-charter county governments only have such powers of self-government as is provided by general or special law.² In addition, non-charter counties may enact ordinances not inconsistent with general or special law. A county ordinance in a non-charter county which is in conflict with a municipal ordinance is not effective within the municipality to the extent of such conflict.

B.) Charter Counties

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.³ Although a non-charter county can be established through general law, a charter county can only be established by a charter adopted, amended, or repealed through a special election by the vote of the electors in that county.⁴ In a charter county, the charter shall provide which shall prevail in the event of a conflict between a county and municipal ordinance. Special acts that do not require referendum approval do not apply to charter counties.

Miami-Dade Home Rule Charter⁵

In 1955, the voters of Dade County were authorized by the Legislature under an amendment to Article VIII, section 11, of the 1885 Florida Constitution to enact the first home rule charter in Florida.⁶

Article VIII, section 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 Article VIII, section 11 of the Constitution of 1885 are valid and any subsequent amendments to the charter, authorized by Article VIII, section 11 of the Constitution of 1885 are valid.⁷

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

² FLA. CONST. art. VIII, s. 1(f).

³ FLA. CONST. art. VIII, s. 1(g).

⁴ See FLA. CONST. art. VIII, s. 1(c). See generally, David G. Tucker, *A Primer on Counties and Municipalities, Part 1*, 81 FLA. B.J. 49, 49-50 (Mar. 2007) (procedures for enacting and implementing a county charter are outlined in ss. 125.60-125.64 and 125.80-125.88, F.S.).

⁵ 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.

⁶ Memorandum to Rip Colvin, Legislative Committee on Intergovernmental Relations (LCIR), from Carolyn Horwich, Staff Attorney (April 20, 2006).

⁷ FLA. CONST. art. VIII, s. 6(e).

A.) *Unique Powers*

Article VIII, section 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 Article VIII, section 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;
- Providing an exclusive method for a municipal corporation to make, amend, or repeal its own charter, 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 Miami-Dade County.

In addition, Article VIII, section 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 counties in Florida, or to any municipality in Miami-Dade County and one or more municipalities in Florida. However, Miami-Dade County ordinances control in the event of conflict with special or general law only applicable to Miami-Dade County. Hence, the Legislature is prohibited by Article VIII, section 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.

B.) *Special Provisions*

The Miami-Dade County Home Rule Charter (“Charter”) was officially adopted on May 21, 1957. The Charter authorizes the Board of County Commission 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 Commission to “exercise all powers and privileges granted to municipalities, counties and county officers by the Constitution and laws of the state.”⁸

C.) *Court Interpretations*

Florida courts have consistently invalidated the applicability of special acts passed by the Legislature which 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.” *See State v. Dade County*.⁹

⁸ Section 1.01(21), *Miami-Dade County Home Rule Charter*.

⁹ 142 So. 2d 79, 85 (Fla. 1961).

In the case of *Chase v. Cowart*,¹⁰ 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 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.¹¹

In deciding the issue, the Court weighed the meaning of subsections (5), (6), (7), and (9), section 11, Article VIII, of the Florida Constitution of 1885, as amended, which preserve to the Legislature the authority to enact general laws that apply to Miami-Dade County and any one or more counties. The Court also analyzed subsection (1)(c), section 11, Article 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 adopted by the Legislature in 1957 because of the charter provision allowing abolishment of any board or governmental unit whose jurisdiction lies completely within Miami-Dade County.¹² The court's rationale is based heavily on its findings regarding the exception to the limitations of subsections (5) and (9) on the county's home rule charter authority that states, "except as expressly authorized herein."¹³ The Court specifically stated that section 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 subsections of subsection (1).¹⁴

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.¹⁵

In *City of Sweetwater v. Dade County*,¹⁶ 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 changes is "one of the areas of autonomy conferred on

¹⁰ 102 So. 2d 147 (Fla. 1958).

¹¹ *Id.* at 151.

¹² *Id.* at 152-53.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 154.

¹⁶ 343 So. 2d 953 (3rd DCA 1977).

Dade County” by its Home Rule Charter.¹⁷ In reaching this holding, the Third District Court of Appeal upheld the trial court’s ruling which relied on the autonomy granted to Miami-Dade County under Article VII, section 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 1956.¹⁸

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.”¹⁹

III. Effect of Proposed Changes:

This joint resolution would allow the Miami-Dade Home Rule Charter to be amended or revised by special law approved by the electors of Miami-Dade County, notwithstanding any provision of Article VII, section 11, of the Florida Constitution of 1885.

If such amendments or revisions are approved by the electors of Miami-Dade County, they shall be deemed an amendment or revision of the charter by the electors of Miami-Dade County.

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 also conforms references in the Florida Constitution to reflect the county’s current name, which is Miami-Dade County, and not Dade County.

An effective date for the amendment is not specified. Therefore, the amendment, if approved by the voters, will take effect on the first Tuesday after the first Monday in January following the election at which it is approved.²⁰

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁷ *Id.* at 954.

¹⁸ *Id.* (citations omitted).

¹⁹ *Id.*

²⁰ FLA. CONST. art. XI, s. 5(e).

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Constitutional Amendments

Section 1, Article XI, of the Florida Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote 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, or at a special election held for that purpose.

Section 5(d), Article XI, 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 estimated that the average cost per word to advertise an amendment to the State Constitution is \$106.14 for this fiscal year.

Section 5(e), Article XI, of the Florida Constitution, requires a 60 percent voter approval for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Upon voter approval, this joint resolution would 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.

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.²¹ Costs for advertising vary depending upon the length of the amendment. 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 28, 2011:

Makes a technical amendment to clarify that the joint resolution is amending Article VIII, section 6 of the Florida Constitution.

- B. **Amendments:**

None.

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

²¹ FLA. CONST. art. XI, s. 5(d).