

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SJR 1700

SPONSOR: Senator Garcia

SUBJECT: Proposing the creation of Section 7 of Article VIII of the State Constitution

DATE: April 1, 2001 REVISED: 04/04/01 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This Senate Joint Resolution proposes creating a new Section 7 of Article VIII of the State Constitution, providing that any home rule county charter may be amended by special law approved by the vote of the electors, and that any such special act shall be deemed to be an amendment to the charter by the electors of the county.

II. Present Situation:

Article VIII of the State Constitution provides for the powers of local governments, including counties and municipalities. The form of governance of counties can generally be characterized as non-charter or charter governments. Non-charter county governments only have such power of self government as is provided by general or special law.¹ In addition, such counties may enact ordinances not inconsistent with general or special law. Finally, a county ordinance in conflict with a municipal ordinance is not effective within the municipality to the extent of such conflict.

Charter counties have greater powers of self-government than do non-charter counties. Counties operating under a charter form of government have all powers of self-government not inconsistent with general law or with special law approved by the vote of the electorate.² Special acts that do not require referendum approval do not apply to charter counties. There are presently 16 charter county governments in Florida, including: Alachua, Brevard, Broward, Charlotte, Clay, Miami-Dade, Hillsborough, Lee, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole and Volusia. In addition, Duval County has a charter government created through consolidation pursuant to Article VIII, section 3 of the State Constitution.

¹ Article VIII, section 1(f), *State Constitution*

² Art. VIII, section (1)(g), *State Constitution*

Article VIII, section 6(e) of the State Constitution states that the provisions of the Metropolitan 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 authorized.³

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 6(g) of the State Constitution, Metropolitan Miami-Dade County is granted unique powers that include:

- Changing the boundaries of, merging, consolidating and abolishing municipalities, county or district governments whose jurisdictions lies 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 municipal corporations 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 provide for the consolidation and transfer of their functions; and
- Changing the name of Miami-Dade County.

In addition, while section 11(5), of Article VIII of the 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, 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 section 11(5) of Article VIII of the 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.

On May 21, 1957, the Miami-Dade County Home Rule Charter (“Charter”) was adopted. 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 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.”⁴

The courts have consistently invalidated the applicability of special acts passed by the Legislature that attempt to supercede the home rule powers of Miami-Dade County. The Florida Supreme Court has held that the constitutional provisions granting home rule to Miami-Dade

³ Art. VIII, section 6(e), *State Constitution*

⁴ Section 1.01(21), *Dade County Home Rule Charter*

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.” *State v. Dade County*, 142 So.2d 79, 85 (Fla. 1961).

Similarly, in *Chase v. Cowart*, 102 So.2d 147 (Fla. 1958), the court decided whether the Miami-Dade County Budget Commission, a commission 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, had been abolished by the electors of Miami-Dade County through the enactment of its home rule charter. In deciding the issue, the court weighed the meaning of subsections (5), (6), (7), and (9), s. 11, Art. VIII, 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, and the provision of subsection (1)(c) which is an express grant of power which authorizes 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 or by the Legislature or otherwise.

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 Board because the charter provision allowing abolishment of the board comes within the exception to the limitations of subsections (5) and (9) that states “except as expressly authorized herein.”

Section 11(1) (c) is clearly an express grant of power which authorizes 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 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).

Finally, the court further stated that it did not matter to its analysis whether the law creating the Budget Board was a general law, general law of local application, or a special act.

In the case of *City of Sweetwater v. Dade County*, 343 So.2d 953 (3rd DCA 1977), the court held that general law provisions governing the annexation of land into municipalities did not apply within Miami-Dade County because the changing of boundaries of municipalities is an area of autonomy conferred on Miami-Dade County by its Home Rule Charter. In reaching this holding the court characterized the autonomy granted Miami-Dade County by s. 11(1), Art. VII of the 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 1956.⁵

⁵ *City of Sweetwater v. Dade County*, at p. 954.

Hence, the matter of changing boundaries of municipalities was found by the court to be one of the areas of autonomy conferred on Miami-Dade County by the Home Rule Amendment, with the result 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.”⁶

Article XI, section 1, of the Florida Constitution, provides for amendment to the state 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. 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, the amendment may be voted on at a special election held for that purpose.

Article XI, section 5 of the Florida Constitution, provides, in part:

A proposed amendment...shall be submitted to the electors at the next general election held more than ninety days after the joint resolution... proposing it is filed with the secretary of state. (Article XI, section 5(a))

If the proposed amendment...is approved by vote of the electors, it shall be effective as an amendment to...the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.... (Article XI, Section 5(c))

III. Effect of Proposed Changes:

The major effect of the joint resolution, should it be passed by a majority of the electorate, would be to eliminate the unique constitutional home rule powers afforded by the State Constitution to Metropolitan Miami-Dade County so that the powers of Metropolitan Miami-Dade County would really be no greater than that of a charter county government established under Article VIII, section 1(g) of the State Constitution. In the case of Metropolitan Miami-Dade County, should the amendment pass, the Legislature could, by special act approved by a vote of the electors, create municipalities, change county, and municipal boundaries, and establish special districts.

The joint resolution does not define by reference to the State Constitution, what is meant by a county home rule charter. As discussed above, the powers granted to charter governments by Article VIII, section 1(g), and Article VIII, section 6(e) are significantly different. The only time the term “home rule” is used in Article VIII of the State Constitution is in reference to the “Metropolitan Dade County Home Rule Charter”, however, as the term “home rule” is not defined the joint resolution is unclear as to whether it is intended to apply to county charters created under section 1(g). If the proposed constitutional change were intended to apply to county charters governments created by section 1(g), the amendment would have the effect if adopted, of requiring that special acts approved by the electorate in that jurisdiction “shall be deemed an amendment of the charter by the electors of the county.”

⁶ *Id.*

The joint resolution provides that the ballot language be submitted to the electorate for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose. Providing the amendment is approved during the general election, the amendment will take effect in January 2003, consistent with the constitutional provision regarding the effective date.

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:

The placement of the proposed constitutional amendment is a new section 7 amending Article VIII that appears to expand the reach of the amendment to other charter counties besides Miami-Dade County.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Article XI, section 5 of the Florida Constitution requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. It is estimated that the cost to the Division of Elections would be approximately \$47,000, statewide, for each amendment proposed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Comprehensive Planning, Local and Military Affairs:

Limits the application of the proposed constitutional amendment to Miami-Dade County by moving the placement of the amendment from a new section 7 to Article VIII of the State Constitution to section 6 of Article VIII. Section 6 of Article VIII of the State Constitution retains that section of the Constitution of 1885, as amended, that grants Miami-Dade County its home rule charter authority.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
