

STORAGE NAME: h1069s1.sgc.doc
DATE: February 11, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS – LOCAL LEGISLATION**

BILL #: CS/HB 1069
RELATING TO: Miami-Dade County Home Rule Charter
SPONSOR(S): Representative Lacasa
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 11 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 12 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill revises the Miami-Dade Home Rule Charter contingent upon the general election approval of a constitutional amendment pursuant to HJR 471 (2001 Session). **(For details see Section II.C. “EFFECT OF PROPOSED CHANGES” ON PAGES 4 and 5; and Section V. “AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES”) on pages 10 and 11.**

The bill provides for an effectiveness contingent upon referendum.

According to the Economic Impact Statement, there is no impact on the state budget. However, it is anticipated that this bill will result in some local government savings achieved by the reduction and consolidation in some County managerial positions. Additionally, some reduction is anticipated to result from the transfer of procurement power from the County Commission to the County Mayor and County agencies.

On February 7, 2002, the Committee on Local Government & Veterans Affairs considered this bill, adopted two amendments, and passed the bill. (See section V. “AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:”.)

On February 7, 2002, the Council for Smarter Government considered HB 1069, adopted three amendments and approved a committee substitute for HB 1069. The Committee Substitute for HB 1069 engrossed the two traveling amendments from the Committee on Local Government & Veterans Affairs and the three amendments approved by the Council for Smarter Government.

Pursuant to House Rule 5.6(a) “if a committee or council determines that the substance of a local bill maybe enacted into law by ordinance of a local governing body, the committee or council shall not report the bill to the Clerk. However, if a local governing body would be required to call a referendum to enact the substance of a local bill into law, the committee or council may report the local bill.” As this bill requires a referendum, House Rule 5.6(a) does not appear to apply.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Statutory Law

Chapter 125, F.S., addresses county government. Part II of Chapter 125, F.S., contains provisions relating to county self-government.

Any county that does not have a chartered form of consolidated government may opt to adopt a county home rule charter, through a majority vote of the qualified electors of the county. (Section 125.60, F.S.)

Except through legislative special act, a home rule charter, adopted by the electors, may only be amended by the electors of the county. (Section 125.64, F.S.)

Florida Constitution

Article VIII, Section 1 of the State Constitution, provides that the state shall be divided by law into political subdivisions, known as counties. This section further provides that counties may be created, abolished, or changed by law, with a provision for payment or apportionment of the public debt.

Subsection (g) of s. 1, art. VIII endows charter counties with all powers of local self-government not inconsistent with general law, or with special law approved by a vote of the electors.

Local Bills and Miami-Dade County

In 1956, an amendment to the 1885 Florida Constitution provided that Dade County has the authority "to adopt, revise, and amend from time to time a home rule charter government for Dade County." (Art. VIII, Section 11 of the Constitution of 1885, as amended). 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, as it is the only county with its full charter included in the State Constitution.

Article VIII, Section 6(e) of the Florida Constitution provides that the Metropolitan Dade County Home Rule Charter provisions shall be valid if authorized under Article VIII, Section 11 of the Constitution of 1885, as amended.

As the Miami-Dade electors adopted the charter, the charter may only be amended by the electors of Dade County, (Article VIII, Section 11(3) of the 1885 Constitution). Article VIII, Section 11(5) of the 1885 Constitution prohibits any charter provisions in conflict with the Constitution or with general law relating to Miami-Dade County and any other one or more counties. Dade County v. Wilson, 386 So. 2d 556 (Fla. 1980).

Article VIII, Section 11(5) of the Florida Constitution further provides that this charter and any subsequent ordinances enacted pursuant to this 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, 102 So. 2d 147 (Fla.1958), 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.

In a 1989 opinion, the Attorney General cited Dade County v. Dade County League of Municipalities, 104 So. 2d 512, 517 (Fla. 1958), 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. (AGO 1989-9) See Dickenson v. Board of Public Instruction of Dade County, 217 So.2d 553, 555 (Fla. 1969).

Constitutional Provision for Amending the Constitution

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))

Charter Amendment and the Constitutional Amendment

The effective date of this bill is contingent upon the approval of the Constitutional amendment, at the general election in November 2002, pursuant to the provisions of HJR 471 (2001 Session).

C. EFFECT OF PROPOSED CHANGES:

This bill amends the Miami-Dade County Home Rule Charter as follows:

The title is changed to "Miami-Dade County Home Rule Charter."

The Bill of Rights is amended as follows:

Section A.1. is amended to empower the County Commission, County Mayor, County Comptroller, and Supervisor of Elections, with the duty to provide times and places for registration and voting, required inspections, and the transaction of business with the County.

Section A.10. is amended to provide that the Comptroller, rather than the County Manager, is responsible for periodic reporting.

Section A.11. is amended to provide the County Mayor, rather than the County Manager, is primarily responsible for preparing and presenting a budget request to the BCC (BCC).

Section A.12. is amended to provide that the Commission Budget Office, rather than the County Manager, is responsible for quarterly reporting.

Section A.15., is amended to provide that the County Mayor or any other municipal chief executive officer, rather than the County Manager, may require monthly reporting from employees for good cause.

Section A.17., is amended to provide that neither the County Commission nor the County Mayor appoints the members of the independent Commission on Ethics and Public Trust.

Section B. is amended to reflect the change of name of the County.

Section C., is amended to allow the recovery of reasonable attorney's fees in citizen suits for violation of this Article.

Article 1 is amended as follows:

Section 1.01.A.25., is created to provide the BCC with the authority to, by ordinance, establish a Commission Budget Office.

Section 1.01.A.26. is created to provide the BCC with the authority to consider by majority vote persons nominated by the County Mayor for the positions of Deputy County Mayor and Chief of Police.

Section 1.01.A.27. is created to provide the BCC with the authority to remove the County Comptroller for cause.

Section 1.02.H. is amended to remove obsolete language and requiring the maintenance of a general codification of all county ordinances and resolutions.

Section 1.03.A. is amended to change the number of County Commission Districts from eight to thirteen.

Section 1.03.C. is created to provide that the BCC shall adopt procedures for development of reapportionment plans.

Section 1.04. is amended to reflect the change to thirteen County Commission Districts; and changing the residency requirement for a County Commissioner from six months to one year.

Section 1.05. is amended to provide a leave of absence for County appointed officials and employees who qualify as a candidate for county office.

Section 1.06. is amended to provide to change the salary of County Commissioners from \$6,000 per year to the amount prescribed for state legislators.

Section 1.07.A. is amended to provide for filling a vacancy, created by other than expiration of a member's term.

Section 1.07.B. is created to provide for temporarily filling a vacancy in the Office of the County Mayor.

Section 1.08.A. is amended to provide that the County Mayor shall not be a member of the BCC; and to provide for the organization of the BCC, including the powers of the Chairperson.

Section 1.08.B. is amended to provide that the County Commission shall organize its own structure and rules of procedure.

Art. 2 is amended as follows:

Section 2.01 is renumbered and amended to clarify that the provision regarding election relates to the County Mayor.

Section 2.02 is renumbered and amended to clarify that it relates to the County Mayor as follows:

Section 2.02.A. clarifies that it relates to the County Mayor.

Section 2.02.B. amends provision related to succession into position of County Mayor.

Section 2.02.C. provides that all Deputy County Mayors serve at the pleasure of the County Mayor and deletes language authorizing the Mayor regarding standing committees.

Section 2.02.D. amends provision to clarify that the County Mayor prepares and submits an annual legislative budget request to the County Commission.

Section. 2.02.E. clarifies that the County Mayor delivers the annual budgetary address to the people.

Section 2.02.F. is created to provide that the County Mayor is authorized to exercise personnel actions, subject to civil service rules and regulations.

Section 2.02.G. is created to provide annual appropriation to the Executive Office of the County Mayor for specific functions.

Art. 3 is renumbered and amended as follows:

Section 3.01 is renumbered and amended as follows:

Section 3.01.A. is amended to remove obsolete language and to provide for when elections shall be held for even and odd numbered districts.

Section 3.01.C. is amended to clarify that it relates to the County Mayor.

Section 3.01.D. is deleted to remove obsolete provisions.

Section 3.02 is renumbered and created to provide that the Supervisor of Elections is elected in a nonpartisan election, with powers and duties as provided for by law.

Section 3.03 is renumbered and amended for clarification.

Section 3.04 is renumbered and amended for clarification.

Section 3.05 is renumbered and created to provide for the disqualification for elected office.

Section 3.06 is renumbered.

Section 3.07 is renumbered.

Art. 4 is renumbered and amended as follows:

Section 4.01 is renumbered and amended to provide for the functions of the Office of County Comptroller.

Section 4.02 is renumbered and amended to provide for the qualifications of the position of County Comptroller.

Section 4.03 is renumbered and amended to provide for the powers and duties of the County Comptroller.

Section 4.04 is renumbered and amended to provide for restrictions on the Office of Comptroller, including a prohibition against any County Commissioner directing or requesting appointment or removal of any individual by the Comptroller or the Comptroller's subordinates.

Art. 5 is renumbered and amended to provide as follows:

Section 5.01 is renumbered and amended to provide for the offices of the five Deputy County Mayors.

Section 5.02 is renumbered and amended to provide that the County Mayor, instead of the County Manager, has certain powers and responsibilities related to administrative procedure.

Section 5.03 is renumbered and amended as follows:

Section 5.03.A to provide that the Executive Office of the County Mayor, instead of the department of finance, is responsible for the financial administration of the County. Also, former s. 4.02.B is deleted.

Section 5.03.B is renumbered.

Section 5.03.C is renumbered and amended to provide that formal sealed bids shall be secured by; the procuring agent of the county. When the amount of the transaction exceeds the minimum established by the BCC by ordinance, then the transaction shall be evidenced by a written contract submitted and approved by the procuring agency. Additionally, any contract awarded on a no-bid basis must be open for formal competitive bidding within 6 months after the date of the award.

Section 5.03.D. is renumbered and amended to provide certain restrictions on the personal financial interest in any action by the BCC.

Section 5.03.E is renumbered.

Section 5.03.F is renumbered and amended to provide that the County Comptroller, not the BCC, shall provide for an audit of fiscal year finances. Also, former s. 4.02.H is deleted.

Section 5.04 is renumbered from s. 4.04 and s. 5.04.A is amended to relate to the County Mayor instead of the County Manager.

Section 5.05 is renumbered from 4.05 and amended to relate to Civil Service as follows:

Section 5.05.B. is renumbered from s. 4.05.C. and relates to the County Mayor rather than the County Manager. Also, former s. 4.05.B. is deleted removing the authority of the County Manager to appoint a personnel director.

Sections 5.05.C., D. and E. are renumbered from ss. 4.05.D., E. and F.

Section 5.06. is renumbered from s. 4.06; renamed; and amended to reflect the County Attorney as head of the Office.

Section 5.07 is renumbered from s. 4.07; renamed; and amended to reflect the functions of Demographic, Policy and Planning, under the Office of Deputy County Mayor of Planning and Infrastructure, under the supervision of the County Mayor and the Planning Advisory Board.

Section 5.08 is renumbered from s. 4.08.and ss. B. and C. are amended to make minor updating changes to the language.

Art. 6 is renumbered from Art. 5 and amended as follows:

Sections 6.01, 6.02 and 6.03 are renumbered from 5.01, 5.02 and 5.03. Additionally, s. 6.03A. contains a citation change.

Section 6.04 is renumbered from s. 5.04 and amended to reflect change in supervision of the function to the Office of Deputy County Mayor of Planning and Infrastructure.

Section 6.05 is renumbered from s. 5.05 and amended to reflect a citation change and to provide that conditions agreed to between the County and municipality, prior to September 1, 2000, which are included in the municipal charter, may only be changed by a two-thirds vote of the BCC, prior to a vote of qualified municipal electors.

Sections 6.06 and 6.07 are renumbered from ss. 5.06 and 5.07.

Art. 7 is renumbered from Art. 6 and amended as follows:

Preamble Note is deleted removing a statement that the Art. does not apply to municipal property in Coral Gables, Hialeah, Hialeah Gardens, Miami, Sweetwater and West Miami.

Sections 7.01, 7.02, and 7.03 are renumbered from 6.01, 6.02 and 6.03.

Section 7.04 is renumbered from s. 6.04 and amended to delete obsolete language.

Art. 8 is renumbered from Art. 7.

Section 8.01 is renumbered from 7.01 and deletes language requiring a petition to be attached to a sworn statement.

Section 8.02 is renumbered from 7.02 and amended to reflect the addition of the County Mayor to, and the removal of the Sheriff or any Constable from, the provisions relating to recall. Additionally, former s. 7.02.8. is deleted removing language related to the Sheriff and Constables.

Art. 9 is renumbered from Art. 8 and amended as follows:

Section 9.01.A. is renumbered from s. 8.01 and amended to reflect a change in effective date for the abolition of certain offices and transfer of those responsibilities to County Mayor from County Manager.

Section 9.01B is amended to reflect change to County Mayor from County Manager related to delegation of powers; and deletes language to reflect updating of the provision. Also, former s. 8.01.C is deleted.

Section 9.01.C is renumbered from 8.01.D and amended to provide a change in effective date; to reflect a change in the name of the Office; and to reflect that the County Mayor rather than the County Manager receives these responsibilities.

Section 9.01.D is created to provide, upon the effective date, for the abolition of the Office of County Manager and transfer of functions to the County Mayor, except for the duties of the Office of the County Comptroller.

Section 9.01.E is created to provide, upon the effective date, for the abolition of the Office of the County Supervisor of Registration and for transfer of duties to the County Supervisor of Elections.

Section 9.02 is renumbered from s. 8.02.

Section 9.03 is renumbered from s. 8.03 as amended to reflect deletion of language indicating that the County's tort liability is the same as that of municipalities in this State; and removing a note regarding the unconstitutionality of a County tort waiver.

Sections 9.04, 9.05 and 9.06 are renumbered from ss. 8.04, 8.05, and 8.06; including the deletion of former s. 8.03.B related to the Florida Railroad and Public Utilities Commission.

Sections 9.07, 9.08 and 9.09 are renumbered from 8.07, 8.08 and 8.09. Additionally, s. 9.08 includes a change of citation.

Art. 10 is renumbered from Art. 9 and amended to reflect renumbering of former s. 9.01 to 10.01.

Section 2 of the bill provides for an effective date that is contingent upon the electorate approval of a Constitutional Amendment at the statewide general election in November 2002, pursuant to the provisions of House Joint Resolution (HJR) 471 (2001 Session).

D. SECTION-BY-SECTION ANALYSIS:

Section 1 provides substantive and technical amendments to the Miami-Dade Home Rule Charter.

Section 2 provides an effective date contingent upon the electorate approval of a Constitutional Amendment at the general election in November 2002, pursuant to the provisions of HJR 471 (2001 Session).

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

WHERE?

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

November, 2003

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The authority of the Legislature to revise the Miami-Dade County Home Rule Charter is contingent upon the electorate approval of a Constitutional Amendment in the statewide general election of November 2002 pursuant to the provisions of HJR 471 (2001 Session). Without such electorate approval of the Constitutional Amendment, the Legislature may not revise the Miami-Dade County Home Rule Charter. **(See PRESENT SITUATION.)**

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 7, 2002, the Committee on Local Government & Veterans Affairs considered HB 1069, adopted two amendments, and passed the bill. The amendments, which are traveling with the bill, accomplish the following:

Amendment 1:

- Deletes Art. 1, s. 1.01.A.27. Similar language is added as s. 4.05 regarding the BCC's authority to remove the County Comptroller. (Amendment page 13, line 12)
- Adds a sentence to the end of Article 2, s. 2.01 that provides that no individual serving as either the County Comptroller or Inspector General shall be eligible for the position of County Mayor during or within 4 years after termination from said position. (Amendment page 20, lines 2 – 5)
- Adds language to Art. 4, s. 4.02.A. that clarifies that no individual serving as either the County Mayor or as a County Commissioner shall be eligible for the position of County Comptroller during or within 2 years after the expiration of their respective terms. (Amendment page 26, lines 3 and 4)
- Adds language to the end of Art. 4, s. 4.02.B. that provides that the term of appointment of the County Comptroller shall be six years and that no individual shall serve more than two consecutive terms in that position. (Amendment page 26, lines 18 – 21)
- Deletes and adds a word to change the title of Art. 4, s. 4.04. (Amendment page 28, line 18)
- Adds language to the end of Art. 4, s. 4.04 that provides that the County Mayor or a County Commissioner may request an inquiry into the activities of the Office of the County Comptroller or an individual within that Office. (Amendment page 28, lines 27 – 31)
- Adds Art. 4, s. 4.05 regarding provisions for the removal of the County Comptroller. (Amendment page 29, lines 15 – 21)
- Changes the date of the referendum to give effect to this bill upon voter approval from November 2002 to November 2003, contingent upon voter approval of HJR 471 (2001 Session). (Amendment page 55, line 25)
- Adds language to provide an effective date of upon becoming law for Section 2, giving effect to the referendum provisions. (Amendment page 55, lines 30 –31)

Amendment 2: Conformed the title to include the first amendment.

On February 7, 2002, the Council for Smarter Government considered HB 1069, adopted three amendments and approved a committee substitute for HB 1069. The Committee Substitute for HB 1069 engrossed the two traveling amendments from the Committee on Local Government & Veterans Affairs and the three amendments approved by the Council for Smarter Government. The three amendments approved by the Council for Smarter Government accomplish the following:

STORAGE NAME: h1069s1.sgc.doc

DATE: February 11, 2002

PAGE: 11

Amendment 1. Created ss. 3.05.A. and B. of the Miami-Dade County Home Rule Charter to address in separate provisions language providing term limits on the positions of County Mayor and County Commissioner.

Amendment 2. Created Article 11, of the Miami-Dade County Home Rule Charter, and amended s. 3 of the bill, to provide for the severability of the provisions of the Charter, and the bill, respectively.

Amendment 3. Provided a conforming title amendment.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Andrew S. Grayson, Esquire

Joan Highsmith-Smith

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Staff Director:

Andrew S. Grayson, Esquire

Don Rubottom