

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 521 Miami-Dade County Home Rule Charter

**SPONSOR(S):** Artiles and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SJR 810

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	9 Y, 2 N	Miller	Miller
2) Civil Justice Subcommittee			
3) Local & Federal Affairs Committee			

### SUMMARY ANALYSIS

HJR 521 proposes to amend the State Constitution to create the constitutional authority for Miami-Dade County's Home Rule Charter to be amended by a special law of the Legislature, provided that the special law is then approved by the vote of electors of Miami-Dade County. The resolution authorizes the charter to provide fixed term limits for Miami-Dade County Commissioners. The resolution also proposes to change references to "Metropolitan Dade County" to reflect the county's present name, "Miami-Dade County."

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. HJR 521 provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

HJR 521 impacts state funds to the extent that the cost of placing the constitutional amendment on the ballot must be administered by the Department of State. The department has estimated the printing and publication costs for advertising the joint resolution and other necessary materials will be approximately \$94,227.21. This sum will depend on the final wording of the joint resolution and the language that is to be placed on the ballot.

**A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.**

**The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

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.<sup>1</sup> The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County,<sup>2</sup> has unique home rule status.<sup>3</sup>

Under the current State Constitution the Metropolitan Dade County Home Rule Charter provisions are valid if authorized under article VIII, s. 11 of the 1885 State Constitution, as amended.<sup>4</sup> However, the 1885 State Constitution prohibited any charter provisions in conflict with the Constitution or with general law relating to Miami-Dade County.<sup>5</sup>

Article VIII, s. 11(5) of the 1885 State Constitution 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.

As stated by the Florida Supreme Court:

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.<sup>6</sup>

In 1989, the Attorney General was asked whether the Legislature could amend a 1945 local law pertaining to certain public employee pensions in Dade County because that law was enacted before the constitutional amendment authorizing the Home Rule Charter. In the resulting formal opinion the Attorney General cited the Florida Supreme Court<sup>7</sup> 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 enacted prior to the adoption of the Dade County Home Rule Charter<sup>8</sup>.

##### **Term Limits**

The Florida Constitution prohibits certain state officials from serving more than eight consecutive years in a specific office.<sup>9</sup> By its terms this prohibition does not apply to local officials but local governments are not precluded from adopting some form of term limits for various officers, including county or city commissioners. The Miami-Dade County Home Rule Charter limits those elected as mayor to no more

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<sup>1</sup> Art. VIII, s. 11, Fla. Const. (1885), as amended

<sup>2</sup> Included within the home rule powers authorized by the amendment to the 1885 Constitution was the authority to change the County's name. Art. VIII, s. 11(1)(h), Fla. Const. (1885). In 1997, the County adopted ordinance 97-212, amending the charter and changing the official name to Miami-Dade County. Art. 10, s. 10.01, Miami-Dade County Home Rule Charter, at <https://library.municode.com/index.aspx?clientId=10620> (accessed 2/22/2015).

<sup>3</sup> *Dickenson v. Board of Public Instruction of Dade County*, 217 So.2d 553, 555 (Fla. 1969).

<sup>4</sup> Art. VIII, s. 6(e), Fla. Const. (1968).

<sup>5</sup> Art. VIII, s. 11(5), Fla. Const. (1885). See also, *Dade County v. Wilson*, 386 So. 2d 556, 561 (Fla. 1980).

<sup>6</sup> *Chase v. Cowart*, 102 So. 2d 147, 150 (Fla.1958),

<sup>7</sup> *Dade County v. Dade County League of Municipalities*, 104 So. 2d 512, 517 (Fla. 1958)

<sup>8</sup> Op. Att'y. Gen. 89-9 (1989). See also, *Dickenson*, supra.

<sup>9</sup> Art. VI, s. 4(b), Fla. Const. The list includes state representatives, senators, all members of the Florida Cabinet, and the Lt. Governor.

than two consecutive four-year terms.<sup>10</sup> Beginning with terms commencing in 2012, the Charter restricted those elected as Commissioners to no more than two consecutive four-year terms.<sup>11</sup>

### **Constitutional Provision for Amending the Constitution**

The Legislature is authorized to propose amendments to the Constitution by joint resolution passed by three-fifths of the membership of each house.<sup>12</sup> 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's office.<sup>13</sup> The proposed amendment must be approved by at least 60 percent of the votes cast in order to pass.<sup>14</sup>

### **Effect of the Joint Resolution**

HJR 521 proposes to amend article VIII, s. 6(e) of the State Constitution to authorize amending Miami-Dade County's Home Rule Charter by a special law of the Legislature subject to specific conditions:

- The bill proposing the special law must be filed only by a legislator whose House or Senatorial district includes part of Miami-Dade County.
- Filing the bill must be approved by a majority of the senators whose districts include parts of Miami-Dade County and by a majority of the representatives whose districts include parts of the County.
- The proposed special law must then be approved in a referendum of electors of Miami-Dade County.

The resolution authorizes the Miami-Dade County Home Rule Charter to provide fixed term limits for the Miami-Dade County Commissioners. The resolution also proposes to change references to "Metropolitan Dade County" to reflect the county's present name, "Miami-Dade County."

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The House Joint Resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

If the resolution is adopted and the proposed amendment approved by the voters, in addition to methods available locally, changes to the Miami-Dade County Charter could be enacted with the following process;

1. A bill proposing a special law that would serve as a charter amendment would be approved at a meeting of the local legislative delegation.
2. If approved as required in the proposed amendment, the bill would be filed by a member of that delegation with the Florida House of Representatives and/or the Florida Senate.
3. The bill would require passage by the Legislature and approval by the Governor.
4. The special law would be placed on the ballot and require approval by the electors of Miami-Dade County.

### **B. SECTION DIRECTORY:**

As this legislation is a joint resolution proposing a constitutional amendment, it does not contain bill sections. The joint resolution proposes to amend Art. VIII, s. 6 of the State Constitution, to authorize the amendment of Miami-Dade County's Home Rule Charter by special law, the adoption of fixed term limits for Miami-Dade County Commissioners, and to change the name to "Miami-Dade County" in the present text.

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<sup>10</sup> Art. III, s. 3.01.D, Miami-Dade County Home Rule Charter.

<sup>11</sup> Art. III, s. 3.01.E, Miami-Dade County Home Rule Charter.

<sup>12</sup> Art. XI, s. 1, Fla. Const.

<sup>13</sup> Art. XI, s. 5(a), Fla. Const. Alternatively, this section provides the amendment may be voted on at a special election held for that purpose more than 90 days from the filing with the Secretary of State if so provided in a law passed by three-fourths of the members of each chamber.

<sup>14</sup> Art. XI, s. 5(e), Fla. Const.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The joint resolution does not have a fiscal impact on state revenues.

#### 2. Expenditures:

Article XI, s. 5(d) of the State 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 10th week and again in the sixth week immediately before the week the election is held. The Department of State, Division of Elections estimated the average cost per word to advertise an amendment to the State Constitution is \$135.97 for this fiscal year. The department has estimated the publication costs for advertising the joint resolution will be at least \$94,227.21. This sum will depend on the final wording of the joint resolution and the language that is to be placed on the ballot.

The department normally is the defendant in lawsuits challenging proposed amendments to the Florida Constitution. The cost for defending these lawsuits has ranged from \$10,000 to \$150,000, depending on a number of variables.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The joint resolution does not appear to have a fiscal impact on local revenues.

#### 2. Expenditures:

The joint resolution will have an indeterminate negative fiscal impact on Miami-Dade County. To the extent that special laws relating to Miami-Dade County are enacted, the county will have to expend funds to put those charter amendments on the ballot.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

### D. FISCAL COMMENTS:

See, Fiscal Impact on State Government, above.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The joint resolution does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

#### 2. Other:

Article XI, s. 1 of the State Constitution, provides for proposed changes to the Constitution by the Legislature:

**SECTION 1: Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation

in each county where a newspaper is published. Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision. Article XI, s. 5(e) of the State Constitution, requires 60 percent voter approval for a proposed constitutional amendment to pass.

If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election.<sup>15</sup>

**B. RULE-MAKING AUTHORITY:DRAFTING ISSUES OR OTHER COMMENTS:**

The resolution does not provide authority or require implementation by administrative agency rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The proposed constitutional amendment would require any bill proposing a special law amending or revising the Miami-Dade County Home Rule Charter first “must be approved by a majority of senators whose senatorial districts include part of Miami-Dade County and a majority of members of the house of representatives whose representative districts include part of Miami-Dade County.” This language precisely describes the legislators for Miami-Dade County who are referenced informally as the “legislative delegation.”

The specific terms used in the resolution are created and defined by the Florida Constitution.<sup>16</sup> In contrast, the term “legislative delegation” is neither created nor referenced by the Florida Constitution and refers to “a group of legislators who represent parts of the same county or geographical area, meet to hear issues, consider requests for funding, and afford citizens an opportunity to discuss issues of concern.”<sup>17</sup>

HJR 1321, a similar resolution considered in 2011, proposed special laws affecting Miami-Dade County “must be approved at a meeting of the local delegation...” SJR 810, the current companion to HJR 521, is not identical because it refers to “members of the Miami-Dade County legislative delegation...” Using the term “legislative delegation” in the Florida Constitution without further definition or limitation could be interpreted to give constitutional status to the Miami-Dade County local legislative delegation, or creating such entities for each local government authorized to exercise home rule powers. Because using the phrase “local legislative delegation” could create uncertainty under the Constitution, the more precise constitutional text of HJR 521 provides better guidance and clarity in applying the new constitutional provision.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>15</sup> Art. XI, s. 5(e), Fla. Const.

<sup>16</sup> Art. III, s. 1, Fla. Const.

<sup>17</sup> *Local Bill Policies and Procedures Manual 2015-2016*, p. 2, n. 3, available through the House website at <http://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?Committeed=2836>.