

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 1373 County Constitutional Officers

SPONSOR(S): Fernandez-Barquin and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1490

FINAL HOUSE FLOOR ACTION: 113 Y's

3 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 1373 passed the House on April 26, 2023, and subsequently passed the Senate on May 4, 2023.

The Florida Constitution requires the state to be divided into counties and recognizes two types of county governments: those operating under a county charter and those without a charter. The Florida Constitution also requires each county to have an elected sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court (collectively, county constitutional officers), serving a four-year term. As of January 5, 2021, for all counties except Broward and Miami-Dade, a county charter may not abolish the office of any county constitutional officer; transfer the duties of those officers to another officer or office; change the length of the four-year term of office; or provide an alternative method of selection of any county constitutional officer other than by election by the electors of the county. This provision applies to all counties effective January 7, 2025.

Local governments may be eligible to participate in revenue sharing beyond the minimum entitlement amount if they satisfy certain statutory requirements. Each county is required to prepare, approve, adopt, and execute a budget for each fiscal year using a budget system established by statute.

The bill prohibits a county from creating or expanding the powers or authority of any office, special district, or governmental unit if the purpose of such creation or expansion is to exercise any power or authority allocated exclusively to a county constitutional officer by the Florida Constitution or general law. Under the bill, a county commissioner who votes in favor of a proposed ordinance for such a creation or expansion of powers is guilty of misfeasance or malfeasance in office.

The bill provides that if a county adopts such an ordinance, the State may withhold all or part of any distribution under local government revenue sharing, which is otherwise allocable to the county, other than any distribution exclusively for school purposes or required for existing bond debt service, during the period such ordinance is in force. Additionally, the bill authorizes a county constitutional officer or a resident of the county to bring an action in circuit court against a county that adopts such an ordinance. The bill authorizes a court to enter a judgment awarding declaratory and injunctive relief, damages, costs, and reasonable attorney fees to a prevailing county constitutional officer or resident of the county.

The bill prohibits a county from including funding within its budget for any office, special district, or governmental unit that is exercising any power or authority allocated exclusively to a county constitutional officer by the Florida constitution or general law.

The bill does not appear to have a fiscal impact on state or local government.

The bill was approved by the Governor on June 28, 2023, ch. 2023-306, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

County Constitutional Officers

The Florida Constitution requires the Legislature to divide the state into counties.¹ Statutes divide the state into 67 counties, establishing their boundaries by providing the exact legal description of each county.² The Florida Constitution recognizes two types of county governments: those operating under a county charter and those without a charter.³ Non-charter county governments may exercise those powers of self-government that are provided by general or special law.⁴ Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.⁵

The electors of each county elect county constitutional officers (the sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court) to a four-year term.⁶ Before 2018, a county charter could provide an alternative method of selecting county constitutional officers or abolish those offices, as long as the duties of the office prescribed by general law were transferred to another office.⁷ During the 2018 general election, voters approved Amendment 10, requiring all county constitutional officers to be elected to a four-term year and prohibiting the transfer of those duties to another office.⁸ Most counties were required to comply with this requirement by January 5, 2021, while Broward and Miami-Dade Counties were given until January 7, 2025.⁹

Local Government Revenue Sharing Eligibility

Each county and municipality must receive revenue sharing sufficient to meet its obligations as a result of pledges, assignments, or trusts entered into which obligated funds received from revenue sources or proceeds which by terms of the Revenue Sharing Act of 1972 are distributed out of revenue sharing trust funds.¹⁰ In any fiscal year, a county or municipality may receive revenue sharing beyond the minimum entitlement amount, if the county or municipality does all of the following:

- Reports its finances for its most recently completed fiscal year to the Department of Financial Services (DFS);
- Makes provisions for annual post-audits of its financial accounts in accordance with law;
- Levies an ad valorem tax, exclusive of taxes levied for debt service or other voter-authorized special millages, or a mix of ad valorem tax, occupational license tax, utility tax, and remittances from the county to produce revenue equivalent to a millage rate of 3 mills based on the taxable values certified by the property appraiser in the latter of 1973 or the year in which the municipality was incorporated; and
- Certifies certain information relating to its law enforcement officers, firefighters, and dependent special districts.¹¹

¹ Art. VIII, s. 1(a), Fla. Const.

² See ch. 7, F.S.

³ Art. VIII, ss. 1(f), (g), Fla. Const.

⁴ Art. VIII, s. 1(f), Fla. Const.

⁵ Art. VIII, s. 1(g), Fla. Const.

⁶ Art. VIII, s. 1(d), Fla. Const.

⁷ Art. VIII, s. 1(d), Fla. Const. (2018).

⁸ See art. VIII, s. 1(d), Fla. Const.

⁹ Art. VIII, s. 6(g), Fla. Const.

¹⁰ S. 218.21(7), F.S. This amount is referred to as the "minimum entitlement."

¹¹ S. 218.23(1)(a)-(f), F.S.

County Budget System

The finances of each county in the state are subject to a budget system established by general law.¹² Each county must prepare, approve, adopt, and execute a budget for each fiscal year. At a minimum, the budget must show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit that are at least as detailed as the categories required for the county's annual financial report to DFS.¹³

Each county's budget must:

- Be prepared, summarized, and approved by the board of county commissioners;
- Be balanced so that the total of the estimated receipts available from taxation and other sources, including balances brought forward from prior fiscal years, equals the total of appropriations for expenditures and reserves;¹⁴
- Contain a reserve for contingencies that does not exceed 10 percent of the total appropriations and for cash balances to be carried over for the purpose of paying expenses from October 1 of the next fiscal year until the revenues for that year are expected to be available;¹⁵
- Make an appropriation for outstanding indebtedness in order to provide for the payment of vouchers that have been incurred in and charged against the budget for the current year or a prior year, but that are expected to be unpaid at the beginning of the next fiscal year; and
- Provide that any surplus arising from an excess of the estimated cash balance over the estimated amount of unpaid obligations to be carried over in a fund at the end of the current fiscal year may be transferred to any of the other funds of the county, and the amount so transferred must be budgeted as a receipt to such other funds.¹⁶

Effect of the Bill

The bill creates s. 125.691, F.S., to prohibit a county from creating or expanding the powers or authority of any office, special district, or governmental unit if the purpose of such creation or expansion is to exercise any power or authority allocated exclusively to a county constitutional officer by the Florida Constitution or general law. The bill provides that a county commissioner who votes in favor of a proposed ordinance for such a creation or expansion of powers is guilty of misfeasance or malfeasance in office.

The bill provides that if a county adopts such an ordinance, the state may withhold all or part of any distribution under local government revenue sharing, which is otherwise allocable to the county, other than any distribution exclusively for school purposes or required for existing bond debt service, during the period such ordinance is in force.

The bill allows a sheriff, tax collector, property appraiser, supervisor of elections, clerk of the court, or any resident of a county to bring an action in circuit court against a county for the adoption of such an ordinance. The bill provides that a court may award declaratory and injunctive relief, damages, and costs, and may award reasonable attorney fees to a prevailing party but prohibits a court from making such an award if the county is the prevailing party.

The bill amends s. 129.01, F.S., to prohibit a county from including within its budget funding for any office, special district, or governmental unit exercising any power or authority allocated exclusively to a county officer by the Florida Constitution or general law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹² See ch. 129, F.S.

¹³ S. 129.01(1), F.S.

¹⁴ Budgeted receipts must include 95 percent of all receipts reasonably anticipated from all sources, including taxes to be levied and 100 percent of the amount of the balances estimated to be brought forward at the beginning of the fiscal year. S. 129.01 (2)(b), F.S.

¹⁵ The cash balance reserve may not exceed 20 percent of total appropriations. S. 129.01(2)(c)2., F.S.

¹⁶ S. 129.01(2), F.S.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.