

**Constitution Revision Commission
Legislative Committee
Proposal Analysis**

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

Proposal #: CS/P 61

Relating to: LOCAL GOVERNMENT, Counties; Municipalities

Introducer(s): Local Government Committee and Commissioner Smith

Article/Section affected:

Date: January 30, 2018

	REFERENCE	ACTION
1.	<u>LO</u>	<u>Fav/CS</u>
2.	<u>LE</u>	<u>Pre-meeting</u>

I. SUMMARY:

The Proposal amends Sections 1 and 2 of Article VIII of the Florida Constitution to provide that any law enacted by the Legislature that preempts the home rule powers granted to municipalities or restricts the home rule powers to non-charter and charter governments must meet certain criteria.

Any law which restricts power granted to a municipality must:

- 1) State with specificity the statewide necessity justifying the preemption;
- 2) Be no broader than necessary to accomplish the statewide necessity expressed;
- 3) Contain only one preemption of a power granted herein; and
- 4) Relate to one subject

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Constitution calls for the state to be divided into political subdivisions called counties.¹ Specifically, Article VIII of the Florida Constitution provides for two types of counties: charter counties and non-charter counties.² Additionally, Article VIII establishes the authority for home rule by counties and municipalities.

¹ Art. VIII, s. 1(a), Fla. Const.

² Art. VIII, s. 1(f),(g), Fla. Const.

Non-Charter Counties

If a county does not operate under a charter, the county has only such power of self-government as is provided by general or special law.³ If the Legislature has authorized a non-charter county to govern a particular area, the board of county commissioners may enact county ordinances not inconsistent with general or special law. Currently, there are 47 non-charter counties in Florida.

Section 125.01, F.S., provides that the legislative and governing body of a county shall have the power to carry on county government and, “to the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:”

- Provide for the prosecution and defense of legal causes on behalf of the county or state and retain counsel and set their compensation.
- Provide and maintain county buildings.
- Provide fire protection, including the enforcement of the Florida Fire Prevention Code, and adopt and enforce local technical amendments to the Florida Fire Prevention Code.
- Provide hospitals, ambulance service, and health and welfare programs.
- Provide parks, preserves, playgrounds, recreation areas, libraries, museums, historical commissions, and other recreation and cultural facilities and programs.
- Prepare and enforce comprehensive plans for the development of the county.
- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.
- Adopt and enforce housing and related technical codes and regulations.
- Establish and administer programs of housing, slum clearance, community redevelopment, conservation, flood and beach erosion control, air pollution control, and navigation and drainage and cooperate with governmental agencies and private enterprises in the development and operation of such programs.
- Provide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, and conservation programs.
- Provide and operate air, water, rail, and bus terminals; port facilities; and public transportation systems.
- Provide and regulate arterial, toll, and other roads, bridges, tunnels, and related facilities; eliminate grade crossing; regulate the placement of signs, lights, and other structures within the right-of-way limits of the county road system; provide and regulate parking facilities; and develop and enforce plans for the control of traffic and parking.
- License and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county.
- Establish and enforce regulations for the sale of alcoholic beverages in the unincorporated areas of the county pursuant to general law.

³ Art. VIII, s. 1(f), Fla. Const.

- Enter into agreements with other governmental agencies within or outside the boundaries of the county for joint performance, or performance by one unit on behalf of the other, of any of either agency's authorized functions.
- Establish municipal taxing service or benefit units for any part or all of the unincorporated area of the county, which may be provided for fire protection; law enforcement; beach erosion control; recreation service and facilities; water; alternative water supplies; streets; sidewalks; street lighting; garbage and trash collection and disposal; waste and sewage collection disposal; drainage; transportation; indigent health care services; mental health care services; and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit.
- Adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law.
- Approve or disapprove the issuance of industrial development bonds authorized by law for entities within its geographic jurisdiction.
- Enforce the Florida Building Code and adopt and enforce local technical amendments to the Florida Building Code.

Additionally, Section 125.01, F.S., provides that the aforementioned provisions shall be liberally construed in order to secure the counties' broad exercise of home rule powers authorized by the State Constitution.⁴

Charter Counties

Pursuant to either general or special law, a county charter may be adopted, amended, or repealed by approval of the electors of the county in a special election. If a county operates under a charter, the county has all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.⁵ Therefore, even if the Legislature has not specifically authorized a charter county to govern a particular area, the Florida Constitution grants the board of county commissioners broad authority to enact county ordinances not inconsistent with general law. Currently, there are 20 charter counties in Florida.

The most significant distinction between charter and non-charter county authority is the constitutional provision for direct power of self-government to a county upon charter approval, where as a non-charter county has "such power of self-government as is provided by general or special law." Therefore, charter counties possess greater home rule authority than non-charter counties:

- A special act of the Legislature may not diminish the home rule powers of a charter county unless the act is approved by the electors in the county.
- A county's charter may authorize the county to regulate an activity on a countywide basis and provide that the county regulation prevails over any conflicting municipal ordinance.

⁴ Fla. Stat. §125.01(3)(b)

⁵ Id.

- A charter county may levy any tax within its jurisdiction that is authorized by general law for a municipality unless the general law prohibits levy by a county.

Home Rule

Florida law provides four fundamental limitations on the exercise of municipal home rule authority: the state legislature, the citizens of the municipality, the state constitution, and a county's charter.⁶ Municipalities are granted broad home rule authority to pass ordinance to govern the local community in areas that are not specifically addressed or reserved by state legislation or the state constitution.⁷ However, municipal ordinances must yield to state law to the extent the ordinance conflicts with existing state law and a municipality's power to act or regulate in a particular area may be preempted by general law.⁸

In a field where both the State and local government can legislate concurrently, a city cannot enact an ordinance that directly conflicts with a state statute. Local ordinances are inferior to the laws of the state and must not conflict with any controlling provision of a statute. If a city has enacted such an inconsistent ordinance, the ordinance must be declared null and void.

Currently there are no laws that require legislation that preempts municipal home rule authority to follow a prescribed process.

Art. VII, Section 18 of the Florida Constitution mandates that any law passed by the Florida Legislature that requires a municipality to spend funds or take action requiring the expenditure of funds must fulfill an important state interest, and must have funds appropriated to fund the expenditure, or must authorize the municipality to enact a funding source they may use to fund the mandate. Any law which is deemed an "unfunded mandate" must:

- 1) Pass by 2/3 vote of each house of the legislature
- 2) The law must apply to all individuals similarly situated, including state or local governments, or
- 3) The law is either required to comply with a federal requirement, or is required for eligibility for a federal entitlement that specifically contemplates actions by counties or municipalities.⁹

B. EFFECT OF PROPOSED CHANGES:

The proposal establishes a process that the Legislature must follow when enacting restrictions on the powers granted to; non-charter governments in Article VIII, Section 1(f); charter governments in Article VIII, Section 1(g); and, municipalities in Article VIII, Section 2(b). The proposal follows similar processes established in the Florida

⁶ F.S. §166.021(3)

⁷ F.S. §166.021(1)

⁸ Lake Worth Utils. Auth. v. Lake Worth, 468 So. 2d 215 (Fla. 1985)

⁹ Fla. Const. Art VII, §18(a)

Constitution for enacting legislative mandates that require counties or municipalities to expend funds not otherwise provided for by the legislation.

The proposal requires the Legislature to pass future preemptions of county and municipal home rule authority by filing a standalone bill that only contains one preemption of the powers granted in Article VIII, Sections 1(f), 1(g) and 2(b). The law must specify the statewide necessity justifying the preemption; be no broader than necessary to accomplish the statewide necessity expressed; contain only one preemption; and, relate to only one subject.

C. FISCAL IMPACT:

None.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

The Local Government Committee adopted amendments to extend the additional requirements of the Legislature for preemptions of home rule authority to also include non-charter and charter governments, and removed the following requirements: pass by 2/3 vote of each house of the Legislature; be considered by at least one committee of each house, who must notice consideration of the legislation at least 48 hours before consideration.

B. Amendments:

The Local Government Committee adopted two amendments: Barcodes 4513952 and 3674101

C. Technical Deficiencies:

None

D. Related Issues:

None.