

The Constitution Revision Commission
COMMITTEE MEETING EXPANDED AGENDA

LEGISLATIVE
Commissioner Diaz, Chair
Commissioner Keiser, Vice Chair

MEETING DATE: Friday, February 2, 2018
TIME: 9:00 a.m.—12:30 p.m.
PLACE: 37 Senate Office Building, Tallahassee, Florida

MEMBERS: Commissioner Diaz, Chair; Commissioner Keiser, Vice Chair; Commissioners Armas, Carlton, Lee, Levesque, and Rouson

| TAB | PROPOSAL NO. and INTRODUCER | PROPOSAL DESCRIPTION and COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|---|------------------------------|
| 1 | CS/P 66 Executive / Lee | EXECUTIVE, Lieutenant governor; Section 2 of Article IV of the State Constitution to require the Lieutenant Governor to serve as the head of a department as assigned by the Governor. EX 01/19/2018 Fav/CS EE 01/26/2018 Favorable LE 02/02/2018 Favorable | Favorable Yeas 4 Nays 0 |
| 2 | CS/P 61 Local Government / Smith | LOCAL GOVERNMENT, Counties; Municipalities; Sections 1 and 2 of Article VIII of the State Constitution to provide that any law enacted by the Legislature that restricts the home rule powers granted to counties and municipalities must meet certain criteria. LO 11/29/2017 Temporarily Postponed LO 01/26/2018 Fav/CS LE 02/02/2018 Unfavorable | Unfavorable Yeas 2 Nays 2 |
| 3 | P-46 Thurlow Lippisch | MISCELLANEOUS, Land Acquisition Trust Fund; Section 28 of Article X of the State Constitution to revise the manner of the distribution of funds that are deposited into the Land Acquisition Trust Fund from a portion of the net revenues derived from the excise tax on documents. LE 12/13/2017 Temporarily Postponed LE 01/26/2018 Temporarily Postponed LE 02/02/2018 Withdrawn GP 02/01/2018 Withdrawn | Withdrawn |

COMMITTEE MEETING EXPANDED AGENDA

Legislative

Friday, February 2, 2018, 9:00 a.m.—12:30 p.m.

| TAB | PROPOSAL NO. and INTRODUCER | PROPOSAL DESCRIPTION and COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|--|------------------|
| 4 | P 95 Lee (If Received) | LOCAL GOVERNMENT, creates s. 6; a new Section 6 of Article VIII of the State Constitution and to renumber present section 6 of that article to limit the power of a county, municipality, or special district to regulate commerce, trade, or labor unless the regulation applies exclusively within the respective entity's own boundaries in a manner not prohibited by law, and to specify that such regulation may not intrude upon or impede commerce, trade, or labor across the respective entity's boundaries. LO 01/26/2018 Temporarily Postponed LO 02/02/2018 LE 02/02/2018 Not Received | Not Received |

**Constitution Revision Commission
Ethics and Elections Committee
Proposal Analysis**

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

Proposal #: CS/P 66

Relating to: EXECUTIVE, Lieutenant governor

Introducer(s): Executive Committee and Commissioner Lee

Article/Section affected: Article IV

Date: January 30, 2018

| | REFERENCE | ACTION |
|----|-----------|--------------------|
| 1. | <u>EX</u> | <u>Fav/CS</u> |
| 2. | <u>EE</u> | <u>Fav/CS</u> |
| 3. | <u>LE</u> | <u>Pre-meeting</u> |

I. SUMMARY:

The proposal requires the Lieutenant Governor, as assigned by the Governor, to serve as the head of any department whose head is a Secretary appointed by the Governor. The Lieutenant Governor is not subject to qualifications or Senate confirmation requirements pertaining to the Secretary of the department.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Lieutenant Governor

Article IV, section 2 of the Florida Constitution establishes Florida's Lieutenant Governor. The Lieutenant Governor is required to perform duties as assigned by the Governor and provided by law.¹ Article IV, section 3(a) of the Florida Constitution provides that the Lieutenant Governor becomes Governor upon a vacancy in the office of Governor and serves for the remainder of the term.²

Article IV, section 5 of the Florida Constitution provides that the Governor and Lieutenant Governor, along with members of the Cabinet, are elected each calendar year that is even but not a multiple of four. The four-year terms begin on the first Tuesday after the first Monday in January of the year succeeding the election.³ Candidates for

¹ Article IV, s. 2, FLA. CONST.

² Further succession to the office of Governor is provided in s. 14.055, F.S.

³ Article IV, s. 5, FLA. CONST.

Lieutenant Governor are not required in primary elections, however all candidates for Governor and Lieutenant Governor must form joint candidacies in the general election.⁴

Article IV, section 6 of the Florida Constitution provides that each executive department must be placed under the supervision of the Governor, the Lieutenant Governor, the Governor and Cabinet, a Cabinet member, or an officer or board appointed by the Governor. Section 20.05, F.S., provides that the Governor may assign the Lieutenant Governor, without Senate confirmation, the duty of serving as the head of any one department whose head is a Secretary appointed by the Governor.

Lieutenant Governors in Other States

Duties of the Lieutenant Governor vary from state to state. Three states currently have a Lieutenant Governor who serves as Secretary of State.⁵ The Governor has the authority to assign duties to the Lieutenant Governor in 23 states.⁶ In 25 states, the Lieutenant Governor presides over the Senate.⁷ The Lieutenant Governor is a member of the Governor's Cabinet or advisory body in 24 states.⁸ Other duties, such as serving as the head of one or more departments, boards, or commissions, are designated to the Lieutenant Governor in 24 states.⁹

History of the Lieutenant Governor

The 1865 Florida Constitution was the first to provide for a Lieutenant Governor.¹⁰ The 1865 Constitution provided that the Lieutenant Governor was ex-officio President of the Senate and could vote only in cases of a tie.¹¹ The Lieutenant Governor exercised the powers of the Governor in cases of impeachment, death, resignation, or absence of the Governor from the state until the Governor's return.¹² The Lieutenant Governor continued in a similar capacity in the 1868 Constitution, but was later abolished by the 1885 Constitution.¹³ The Lieutenant Governor was not reinstated in Florida until 1968.¹⁴

B. EFFECT OF PROPOSED CHANGES:

The proposal requires the Lieutenant Governor, as assigned by the Governor, to serve as the head of any department whose head is a Secretary appointed by the Governor. The

⁴ *Id.*

⁵ See National Association of Secretaries of State, *Roster of Secretaries of State/Lieutenant Governors*, <http://www.nass.org/index.php/membership> (last visited 1/23/2018).

⁶ The Council of State Governments, *Book of the States*, Table 4.14 Lieutenant Governors: Powers and Duties, <http://knowledgecenter.csg.org/kc/system/files/4.14.2017.pdf> (last visited 1/15/2018).

⁷ *Id.* Data includes Nebraska's Lieutenant Governor, who presides over a unicameral Legislature.

⁸ *Id.*

⁹ *Id.*

¹⁰ Article III, s. 4, FLA. CONST. (1865). The 1865 Constitution was rejected by the United States Congress.

¹¹ *Id.*

¹² Article III, s. 19, FLA. CONST. (1865).

¹³ See Article V, ss. 14 and 15, FLA. CONST. (1868).

¹⁴ Article IV, s. 2, FLA. CONST. (1968).

Lieutenant Governor is not subject to qualifications or Senate confirmation requirements pertaining to the Secretary of the department.

C. FISCAL IMPACT:

There may be a minimal reduction in state expenditures as a result of the Lieutenant Governor filling the role of a Secretary of a department, through a reduction in associated salary and benefits.¹⁵

III. Additional Information:

A. Statement of Changes:

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

Executive Committee on January 19, 2018:

The amended proposal requires the Lieutenant Governor to serve as the head of any department whose head is a Secretary appointed by the Governor. The Lieutenant Governor is not subject to qualifications or Senate confirmation requirements pertaining to the head of the department.

The amendment removed provisions specifying that the Lieutenant Governor serves as the Secretary of State and has the authority to cast the tiebreaking vote on final passage of any measure on which the Senate is equally divided. The amendment removed the new section in Article XII, revising the effective date of the proposal to January 8, 2019.¹⁶

B. Amendments:

None.

C. Technical Deficiencies:

D. Related Issues:

None.

¹⁵ The Lieutenant Governor currently receives a salary of \$124,851 (Chapter 2017-70, L.O.F.). Salaries for current Secretaries of departments who are appointed by the Governor range from approximately \$141,000 to approximately \$161,000. Florida Has a Right to Know, *State of Florida Employee Salaries*, <http://salaries.myflorida.com/> (last visited 1/23/2018).

¹⁶ See Art. XI, s. 5(e), FLA. CONST.

By the Committee on Executive; and Commissioner Lee

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A proposal to amend

Section 2 of Article IV of the State Constitution to require the Lieutenant Governor to serve as the head of a department as assigned by the Governor.

Be It Proposed by the Constitution Revision Commission of Florida:

Section 2 of Article IV of the State Constitution is amended to read:

ARTICLE IV
EXECUTIVE

SECTION 2. Lieutenant governor.—

There shall be a lieutenant governor, who shall:

(a) As assigned by the governor, serve as the head of any department of which the head is a secretary appointed by the governor, without senate confirmation and notwithstanding any qualifications for appointment as secretary of the department;
and

(b) Perform such duties pertaining to the office of governor as shall be assigned by the governor, except when otherwise provided by law, and such other duties as may be prescribed by law.

Lieutenant Governor's Additional Duties

Alaska

The lieutenant governor bears these additional responsibilities:

- Alaska Historical Commission Chair;
- Alaska Workforce Investment Board;
- Supervise the Division of Elections;
- Supervise the certification process for citizen ballot initiative and referenda;
- Provide constituent care and communications;
- Lend support to governor's legislative and administrative initiatives;
- Review, sign and file regulations;
- Publish the Alaska Administrative Code and the Online Public Notice System;
- Commission notaries public;
- Regulate use of State Seal,
- Co-chair Alaska Criminal Justice Working Group;
- Member of Clemency Advisory Cmte.;
- Represent Alaska on the Aerospace States Association (ASA), the National Association of Secretaries of State and the National Lieutenant Governors' Association.
- Arctic Winter Games; Experimental Program to Stimulate Competitive Research (EPSCoR), Chair; Project GRAD.

California

- Lieutenant governor sits on the UC Board of Regents and the CSU Board of Trustees,
- Serves as the chair of the Commission for Economic Development,
- Chair of the State Lands Commission,
- Member of the Ocean Protection Council,
- Member of the California Emergency Council.

Colorado

Additional responsibilities include: Chair of the Colorado Commission of Indian Affairs (by statute); member of the Homeland Security and All-Hazards Senior Advisory Committee (Cabinet duty).

Delaware

Serves as President of the Board of Pardons.

Georgia

The lieutenant governor, by statute, is responsible for board, commission and committee appointments. In addition the lieutenant governor appoints conference committees, rules on germaneness, and must sign all acts of the General Assembly.

Kentucky

In addition to the duties set forth by the Kentucky Constitution, state law also gives the lieutenant governor the responsibility to act as chair, or serve as a member, on various boards and commissions, such as:

- the State Property and Buildings Commission,
- Kentucky Turnpike Authority,
- Kentucky Council on Agriculture,
- Board of the Kentucky Housing Corporation and
- Appalachian Development Council.

The governor also has the power to give the lieutenant governor other specific job duties.

Massachusetts

The lieutenant governor is a member of, and presides over, the Governor's Council, an elected body of 8 members which approves all judicial nominations.

Michigan

The lieutenant governor serves as a member of the State Administrative Board; and represents the governor and the state at selected local, state, and national meetings. In addition the governor may delegate additional responsibilities.

Minnesota

Serves as the Chair of the Capitol Area Architectural and Planning Board Committee.

Mississippi

The lieutenant governor also appoints chairs of standing committees, appoints conferees to committees and is a member of the Legislative Budget Committee, chair of this committee every other year.

Missouri

Other duties of the lieutenant governor include:

- Official Senior Advocate for State of Missouri,
- Advisor to Department of Elementary and Secondary Education on early childhood education and Parents-as-Teachers program.
- Board of Fund Commissioners;
- Board of Public Buildings;
- Governor's Advisory Council for Veteran's (chair);
- Missouri Community Service Commission;
- Missouri Development Finance Board;
- Missouri Housing Development Commission;
- Missouri Rural Economic Development Council;
- Missouri Senior Rx Program (chair);
- Missouri Tourism Commission (vice-chair);
- Personal Independence Commission (co-chair);
- Second State Capitol Commission;
- Statewide Safety Steering Committee;
- Veteran's Benefits Awareness Task Force (chair);
- Special Health, Psychological, and Social Needs of Minority Older Individuals Commission;
- Mental Health Task Force (chair), and
- Missouri Energy Task Force.

Oklahoma

Lieutenant governor also serves on 10 boards and commissions including Tourism and School Land Commission.

Rhode Island

Serves as Chair of a number of Advisory Councils including issues related to Emergency Management, Long Term Care and Small Business. Each year submits a legislative package to the General Assembly.

South Carolina

The lieutenant governor heads the State Office on Aging; appoints members and chairs the South Carolina Affordable Housing Commission.

South Dakota

Member of Governor's Executive Committee, a group of 6 advisors reporting directly to the Governor. Currently has responsibilities for the Department of the Military, Department of Veterans' Affairs, and the Department of Tribal Relations. Serves as the interim Secretary of the Department of Veterans' Affairs.

Utah

The lieutenant governor serves as:

- Secretary of State (Constitution);
- Chair of the Lieutenant Governor's Commission on Volunteers (statutory);
- Chair of the Lieutenant Governor's Commission on Civic and Character Education (statutory);
- Chair of the Utah Capitol Preservation Board (statutory);
- Chair (Governor's Cabinet).
- Direct cabinet oversight of following departments:
 - Utah Department of Public Safety and Homeland Security,
 - Utah Department of Transportation,
 - Utah Division of Water Rights, and
 - Utah Division of Rural Affairs.

West Virginia

The President of the Senate and the Lieutenant Governor are one in the same. The legislature provided in statute the title of Lieutenant Governor upon the Senate President. The Senate President serves 2 year terms, elected by the Senate on the first day of the first session of each two year legislative term.

LIEUTENANT GOVERNORS: POWERS AND DUTIES

| <i>State or other Jurisdiction</i> | <i>Presides over Senate</i> | <i>Committee</i> | <i>Breaks Ties</i> | <i>Assigns Bills</i> | <i>for Gov. to assign duties</i> | <i>Member of Cabinet or Advisory Body</i> | <i>acting Governor while Governor is out of state</i> | <i>Other duties</i> |
|--|---|------------------|--------------------|--------------------------|--|---|---|---------------------|
| Alabama | ★ | ★ | ★ | ★ | | | ★ | |
| Alaska | | | | | ★ | ★ | | (a) |
| Arizona |None (Sec. of State is next in line)..... | | | | | | | |
| Arkansas | ★ | | ★ | | | | ★ | |
| California | ★ | | ★ | | ★ | | ★ | (a) |
| Colorado | | | | | ★ | ★ | ★ | (a) |
| Connecticut | ★ | | ★ | | ★ | ★ | ★ | |
| Delaware | ★ | | ★ | | | | ★ | (a) |
| Florida | | | | | ★ | | ★ | |
| Georgia | ★ | ★ | | ★ | ★ | | | (a) |
| Hawaii | | | | | ★ | | ★ | Sec. of State |
| Idaho | ★ | | ★ | | ★ | | ★ | |
| Illinois | | | | | ★ | ★ | | |
| Indiana | ★ | | ★ | | | | ★ | |
| Iowa | | ★ | | | ★ | ★ | ★ | |
| Kansas | | | | | | ★ | | |
| Kentucky | | | | | ★ | | ★ | (a) |
| Louisiana | | | | | ★ | ★ | ★ | |
| Maine |None (Senate President is next in line)..... | | | | | | | |
| Maryland | | | | | | ★ | ★ | |
| Massachusetts | | ★ | | | ★ | ★ | ★ | (a) |
| Michigan | ★ | | ★ | | ★ | ★ | ★ | (a) |
| Minnesota | | | | | ★ | | ★ | (a) |
| Mississippi | ★ | ★ | ★ | ★ | | | ★ | (a) |
| Missouri | ★ | | ★ | | ★ | | ★ | (a) |
| Montana | | | | | ★ | ★ | ★ | |
| Nebraska | ★ | | | | ★ | ★ | ★ | |
| Nevada | ★ | | ★ | | | | ★ | |
| New Hampshire |None (Senate President is next in line)..... | | | | | | | |
| New Jersey | | | | | ★ | ★ | ★ | Sec. of State |
| New Mexico | ★ | | ★ | | | ★ | ★ | |
| New York | ★ | | ★ | | ★ | ★ | ★ | |
| North Carolina | ★ | | ★ | | ★ | ★ | ★ | |
| North Dakota | ★ | | | | | ★ | ★ | |
| Ohio | | | | | ★ | ★ | | |
| Oklahoma | ★ | | ★ | | | | ★ | (a) |
| Oregon |None (Sec. of State is next in line)..... | | | | | | | |
| Pennsylvania | ★ | | ★ | | | | | |
| Rhode Island | | | | | | | | (a) |
| South Carolina | ★ | ★ | ★ | ★ | | ★ | ★ | (a) |
| South Dakota | ★ | | ★ | | ★ | ★ | | (a) |
| Tennessee | ★ | ★ | ★ | ★ | | | | Senate Pres. |
| Texas | ★ | ★ | ★ | ★ | | | ★ | |
| Utah | | | | | ★ | ★ | ★ | (a) |
| Vermont | ★ | ★ | ★ | ★ | | ★ | ★ | |
| Virginia | ★ | | ★ | | | ★ | | |
| Washington | ★ | | ★ | | | | ★ | |
| West Virginia | ★ | ★ | ★ | ★ | | | | (a) |
| Wisconsin | | | | | ★ | | | |
| Wyoming |None (Sec. of State is next in line)..... | | | | | | | |
| Total | 27 | 11 | 23 | 8 | 25 | 23 | 33 | |

**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.

By the Committee on Local Government; and Commissioner Smith

330-00237-17

201761c1

A proposal to amend

Sections 1 and 2 of Article VIII of the State Constitution to provide that any law enacted by the Legislature that restricts the home rule powers granted to counties and municipalities must meet certain criteria.

Be It Proposed by the Constitution Revision Commission of Florida:

Sections 1 and 2 of Article VIII of the State Constitution are amended to read:

ARTICLE VIII
LOCAL GOVERNMENT

SECTION 1. Counties.—

(a) POLITICAL SUBDIVISIONS. The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

(b) COUNTY FUNDS. The care, custody and method of disbursing county funds shall be provided by general law.

(c) GOVERNMENT. Pursuant to general or special law, a county government may be established by charter which shall be adopted, amended or repealed only upon vote of the electors of the county in a special election called for that purpose.

(d) COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

(e) COMMISSIONERS. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

(f) NON-CHARTER GOVERNMENT. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict. A law enacted by the Legislature which restricts power granted to a non-charter county 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;

Page 2 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

330-00237-17

201761c1

62 and63 (4) Relate to one subject.

64 (g) CHARTER GOVERNMENT. Counties operating under county
65 charters shall have all powers of local self-government not
66 inconsistent with general law, or with special law approved by
67 vote of the electors. The governing body of a county operating
68 under a charter may enact county ordinances not inconsistent
69 with general law. The charter shall provide which shall prevail
70 in the event of conflict between county and municipal
71 ordinances. A law enacted by the Legislature which restricts
72 power granted to a charter county under this subsection must:

73 (1) State with specificity the statewide necessity
74 justifying the preemption;

75 (2) Be no broader than necessary to accomplish the
76 statewide necessity expressed;

77 (3) Contain only one preemption of a power granted herein;
78 and

79 (4) Relate to one subject.

80 (h) TAXES; LIMITATION. Property situate within
81 municipalities shall not be subject to taxation for services
82 rendered by the county exclusively for the benefit of the
83 property or residents in unincorporated areas.

84 (i) COUNTY ORDINANCES. Each county ordinance shall be filed
85 with the custodian of state records and shall become effective
86 at such time thereafter as is provided by general law.

87 (j) VIOLATION OF ORDINANCES. Persons violating county
88 ordinances shall be prosecuted and punished as provided by law.

89 (k) COUNTY SEAT. In every county there shall be a county
90 seat at which shall be located the principal offices and

330-00237-17

201761c1

91 permanent records of all county officers. The county seat may
92 not be moved except as provided by general law. Branch offices
93 for the conduct of county business may be established elsewhere
94 in the county by resolution of the governing body of the county
95 in the manner prescribed by law. No instrument shall be deemed
96 recorded until filed at the county seat, or a branch office
97 designated by the governing body of the county for the recording
98 of instruments, according to law.

99 SECTION 2. Municipalities.—

100 (a) ESTABLISHMENT. Municipalities may be established or
101 abolished and their charters amended pursuant to general or
102 special law. When any municipality is abolished, provision shall
103 be made for the protection of its creditors.

104 (b) POWERS. Municipalities shall have governmental,
105 corporate and proprietary powers to enable them to conduct
106 municipal government, perform municipal functions and render
107 municipal services, and may exercise any power for municipal
108 purposes except as otherwise provided by law. A law enacted by
109 the legislature which preempts power granted to a municipality
110 under this subsection must:

111 (1) State with specificity the statewide necessity
112 justifying the preemption;

113 (2) Be no broader than necessary to accomplish the
114 statewide necessity expressed;

115 (3) Contain only one preemption of a power granted herein;
116 and

117 (4) Relate to one subject.

118
119 Each municipal legislative body shall be elective.

330-00237-17

201761c1

120 (c) ANNEXATION. Municipal annexation of unincorporated
121 territory, merger of municipalities, and exercise of extra-
122 territorial powers by municipalities shall be as provided by
123 general or special law.

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD
(Deliver completed form to Commission staff)

✓ ~~W/Subject~~

2/2/18

Meeting Date

D-61

Proposal Number (if applicable)

*Topic D-61

Amendment Barcode (if applicable)

*Name GIL ZIFFERL ZIFFER

Address 735 Beard St

Phone 550-509-7888

Street
TALL FL 32303
City State Zip

Email g.zifferl@floridaleague.com

*Speaking: For Against Information Only

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? Yes No

If yes, who? Florida League of Cities
FLORIDA LEAGUE OF CITIES

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD
(Deliver completed form to Commission staff)

2/2/18

Meeting Date

61

Proposal Number (if applicable)

*Topic LOCAL GOV.

Amendment Barcode (if applicable)

*Name David Cruz

Address P.O. Box 1757

Phone 701-3676

Street

Tallahassee FL 32302

Email _____

City

State

Zip

*Speaking: For Against Information Only

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? Yes No

If yes, who? Florida League of cities

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

2/2/18

Meeting Date

P61

Proposal Number (if applicable)

*Topic P61

Amendment Barcode (if applicable)

*Name Brian Sullivan

Address 100 S. Monroe St.

Phone 810-335-0150

Tallahassee FL 32301
City State Zip

Email bsullivan@flcounties.com

*Speaking: For Against Information Only

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? Yes No

If yes, who? Florida Association of Counties

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

2/2/18

Meeting Date

61

Proposal Number (if applicable)

*Topic Local Government

Amendment Barcode (if applicable)

*Name Carolyn Johnson

Address 130 S Bronough St

Phone 521-1200

Street

Tallahassee

FL

32301

Email johnson@achamber.com

City

State

Zip

*Speaking: For Against Information Only

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? Yes No

If yes, who? Florida Chamber of Commerce

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

**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 #: 46

Relating to: The manner of the distribution of funds that are deposited into the Land Acquisition Trust Fund.

Introducer(s): Commissioner Thurlow-Lippisch

Article/Section affected: Article X s. 28

Date: December 11, 2017

| | REFERENCE | ACTION |
|----|-----------|--------|
| 1. | LE | _____ |
| 2. | GP | _____ |

I. SUMMARY:

Requires one-third of the Land Acquisition Trust Fund (LATF) funding to be transferred to the Florida Forever Trust Fund (FFTF) for land acquisition and other land management programs.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Land Acquisition Trust Fund

In 2014, Florida voters approved Amendment One, a constitutional amendment to provide a dedicated funding source for water and land conservation and restoration. The amendment required that starting on July 1, 2015, and for 20 years thereafter, 33 percent of net revenues derived from documentary stamp taxes be deposited into the Land Acquisition Trust Fund (LATF). Article X, s. 28 of the State Constitution requires that funds in the LATF be expended only for the following purposes:

As provided by law, to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge

for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.

To implement Art. X, s. 28 of the State Constitution, the Legislature passed ch. 2015-229 Laws of Florida. This act, in part, amended the following sections of law:

- Section 201.15, F.S., to conform to the constitutional requirement that the LATF receive at least 33 percent of net revenues derived from documentary stamp taxes.
- Section 375.041, F.S., to designate the LATF within the Department of Environmental Protection (DEP) as the trust fund to serve as the constitutionally mandated depository for the required percentage of documentary stamp tax revenues.⁴⁸

Under s. 375.041, F.S., funds deposited into the LATF must be distributed in the following order and amounts:

- First, obligations relating to debt service, specifically:
 - First to payments relating to debt service on Florida Forever Bonds and Everglades restoration bonds; and
 - Then, to payments relating to debt service on bonds issued before February 1, 2009, by the South Florida Water Management District and the St. Johns River Water Management District.
- Then, before funds are authorized to be appropriated for other uses:
 - A minimum of the lesser of 25 percent of the funds remaining after the payment of debt service or \$200 million annually for Everglades projects that implement the Comprehensive Everglades Restoration Plan (CERP), the Long-Term Plan,⁴⁹ or the Northern Everglades and Estuaries Protection Program (NEEPP), with priority given to Everglades projects that reduce harmful discharges of water from Lake Okeechobee to the St. Lucie or Caloosahatchee estuaries in a timely manner. From these funds, the following specified distributions are required:
 - \$32 million annually through the 2023-2024 Fiscal Year for the Long-Term Plan;
 - After deducting the \$32 million, the minimum of the lesser of 76.5 percent of the remainder or \$100 million annually through the 2025-2026 Fiscal Year for the CERP; and
 - Any remaining funds for Everglades projects under the CERP, the Long-Term Plan, or the NEEPP.
 - A minimum of the lesser of 7.6 percent of the funds remaining after the payment of debt service or \$50 million annually for spring restoration, protection, and management projects; and
 - Five million annually through the 2025-2026 Fiscal Year to the St. Johns River Water Management District for projects dedicated to the restoration of Lake Apopka.⁵⁰
 - Sixty-four million to the Everglades Trust Fund in the 2018-2019 Fiscal Year and each fiscal year thereafter, for the Everglades Agricultural Area reservoir project.
- Then, any remaining moneys are authorized to be appropriated for the purposes set forth in Art. X, s. 28 of the State Constitution.

The General Revenue Estimating Conference, in August of 2017, estimated that for the 2018-2019 Fiscal Year a total of \$2.62 billion would be collected in documentary stamp taxes. Thirty-three percent of the net revenues collected or approximately \$862.2 million must be deposited into the LATF in accordance with Art. X, s. 28 of the State Constitution.

Florida Forever

As a successor to Preservation 2000, the Legislature created the Florida Forever program in 1999 as the blueprint for conserving Florida's natural resources. The Florida Forever Act reinforced the state's commitment to conserve its natural and cultural heritage, provide urban open space, and better manage the land acquired by the state. Florida Forever encompasses a wide range of goals including: land acquisition; environmental restoration; water resource development and supply; increased public access; public lands management and maintenance; and increased protection of land through the purchase of conservation easements. The state has acquired more than 2.4 million acres since 1991 under the Preservation 2000 and the Florida Forever programs.

Under Florida Forever, the issuance of up to \$5.3 billion in Florida Forever bonds is authorized to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources, in urban and rural settings, for the purposes of restoration, conservation, recreation, water resource development, or historical preservation, and for capital improvements to lands and water areas which accomplish environmental restoration, enhance public access and recreational enjoyment, promote long-term management goals, and facilitate water resource development.

The Florida Forever Trust Fund was created to serve as the repository for Florida Forever bond proceeds to fund the Florida Forever program. The Florida Forever Trust Fund is administered by the Department of Environmental Protection (DEP) who is required to distribute revenues from the Florida Forever Trust Fund in accordance with section 259.105(3), F.S. That subsection sets forth the allocation of the proceeds of cash payments or bonds deposited into the Florida Forever Trust Fund

B. EFFECT OF PROPOSED CHANGES:

Proposal 46 would:

- Require one-third of Land Acquisition Trust Fund (LATF) funding to be transferred to the Florida Forever Trust Fund (FFTF) for land acquisition and other land management programs.
- Require the remaining two-thirds in LATF to be used solely for the acquisition of land.
- Add "as may be required" to Article X section 28, subsection 3, which may create inconclusive results regarding the requirement to pay debt service.

C. FISCAL IMPACT:

The proposal removes “and improvement” from funding eligibility through the LATF. The requirement for funds to be expended solely for land acquisition may require the state to identify alternative funding sources for programs not related to the acquisition of land that are currently funded through LATF. This may include the funding distributions established in section 375.041(3)(b), F.S. The potential distribution of funds deposited into the LATF are depicted on the graph below. The 1/3 allotment from the LATF to the FFTF may reduce the available funding for ongoing environmental programs.

| This assumes current statutory provisions are unchanged and would be as follows:¹ | (In Millions) |
|---|----------------------|
| Estimated Doc. Stamp taxes in FY 19/20 per the General Revenue Estimating Conference (August 2017) | 2,719.63 |
| DOR Admin Cost | 9.80 |
| Remainder available for distribution | 2,709.83 |
| 33% to be deposited into LATF | 894.24 |
| 33% of the LATF funds transferred to Florida Forever | 295.10 |
| Available for distribution pursuant to 375.041(3)(b) | 599.14 |
| (1) Debt Service | |
| Florida Forever | 142.77 |
| Everglades | 23.66 |
| (2) Land Acquisition TF Distributions | |
| 1. Everglades Projects | 181.95 |
| 2. Spring Restoration | 50.00 |
| 3. Lake Apopka | 5.00 |
| 4. Debt Service/Bonds other | 0 |
| 5. Everglades TF | 64.00 |
| 6. Uncommitted Cash per statutory provisions | 131.76 |
| | |
| <i>Agencies that currently utilize the uncommitted cash to support their environmental programs (using appropriations for FY 17/18)</i> | |
| DEP | 190.10 |
| DACS | 94.40 |
| FWC | 102.20 |
| DOS | 9.40 |
| Potential Fiscal Impact of Proposed Revision: | (264.32) |

¹ <http://edr.state.fl.us/Content/conferences/docstamp/docstampresults.pdf>

III. Additional Information:

A. Statement of Changes:

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

None

B. Amendments:

None

C. Technical Deficiencies:

None

D. Related Issues:

None



114936

CRC ACTION

Commissioner .
Comm: RS .
01/29/2018 .
. .
. .
. .

The Committee on Legislative (Keiser) recommended the following:

CRC Amendment

Delete lines 27 - 48
and insert:

(1) No less than one-third of the revenue, not to exceed \$300 million annually, must be deposited into the Florida Forever Trust Fund for the acquisition of environmentally sensitive land, as defined by the statutes in effect on January 1, 2017.

(2) The remainder must be expended as provided by law, to finance or refinance: the acquisition, management and



114936

12 improvement of land, water areas, and related property
13 interests, including conservation easements, and natural
14 resources for conservation lands including wetlands, forests,
15 and fish and wildlife habitat; wildlife management areas; lands
16 that protect water resources and drinking water sources,
17 including lands protecting the water quality and quantity of
18 rivers, lakes, streams, springsheds, and lands providing
19 recharge for groundwater and aquifer systems; lands in the
20 Everglades Agricultural Area and the Everglades Protection Area,
21 as defined in Article II, Section 7(b); beaches and shores;
22 outdoor recreation lands, including recreational trails, parks,
23 and urban open space; rural landscapes; working farms and
24 ranches; historic or geologic sites; together with management,
25 restoration of natural systems, and the enhancement of public
26 access or recreational enjoyment of conservation lands.

27 (3)~~(2)~~ To pay the debt service on bonds issued pursuant to
28 Article VII, Section 11(e).



883626

CRC ACTION

Commissioner .
Comm: FAV .
01/29/2018 .
. .
. .
. .

The Committee on Legislative (Carlton) recommended the following:

- 1 **CRC Amendment to Amendment (114936)**
- 2
- 3 Delete line 13
- 4 and insert:
- 5 interests, including conservation easements, and



301192

CRC ACTION

Commissioner .
Comm: FAV .
01/29/2018 .
. .
. .
. .

The Committee on Legislative (Lee) recommended the following:

CRC Substitute for Amendment (114936)

Delete lines 27 - 48
and insert:

(1) The lesser of \$300 million or the amount in excess of the amount deposited into the Land Acquisition Trust Fund in Fiscal Year 2018-2019 must be transferred annually into the Florida Forever Trust Fund.

(2) The remainder may only be expended as provided by law, to finance or refinance: the acquisition, management, and improvement of land, water areas, and related property



301192

12 interests, including conservation easements, and resources for
13 conservation lands including wetlands, forests, and fish and
14 wildlife habitat; wildlife management areas; lands that protect
15 water resources and drinking water sources, including lands
16 protecting the water quality and quantity of rivers, lakes,
17 streams, springsheds, and lands providing recharge for
18 groundwater and aquifer systems; lands in the Everglades
19 Agricultural Area and the Everglades Protection Area, as defined
20 in Article II, Section 7(b); beaches and shores; outdoor
21 recreation lands, including recreational trails, parks, and
22 urban open space; rural landscapes; working farms and ranches;
23 historic or geologic sites; together with management,
24 restoration of natural systems, and the enhancement of public
25 access or recreational enjoyment of conservation lands.

26 (3)~~(2)~~ To pay the debt service on bonds issued pursuant to
27 Article VII, Section 11(e).

By Commissioner Thurlow-Lippisch

thurlowlj-00052-17

201746__

A proposal to amend

Section 28 of Article X of the State Constitution to revise the manner of the distribution of funds that are deposited into the Land Acquisition Trust Fund from a portion of the net revenues derived from the excise tax on documents.

Be It Proposed by the Constitution Revision Commission of Florida:

Section 28 of Article X of the State Constitution is amended to read:

ARTICLE X
MISCELLANEOUS

SECTION 28. Land Acquisition Trust Fund.—

(a) Effective on July 1 of the year following passage of this amendment by the voters, and for a period of 20 years after that effective date, the Land Acquisition Trust Fund shall receive no less than 33 percent of net revenues derived from the existing excise tax on documents, as defined in the statutes in effect on January 1, 2012, as amended from time to time, or any successor or replacement tax, after the Department of Revenue first deducts a service charge to pay the costs of the collection and enforcement of the excise tax on documents.

(b) Funds in the Land Acquisition Trust Fund shall be expended only for the following purposes:

(1) No less than one-third of the revenue must be deposited into the Florida Forever Trust Fund, as defined by the statutes in effect on January 1, 2017.

(2) The remainder must be expended as provided by law, to finance or refinance: the acquisition ~~and improvement~~ of land, water areas, and related property interests, including

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

thurlowlj-00052-17

201746__

conservation easements, and natural resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands.

~~(3)(2)~~ To pay the debt service on bonds issued pursuant to Article VII, Section 11(e) as may be required.

(c) The moneys deposited into the Land Acquisition Trust Fund, as defined by the statutes in effect on January 1, 2012, shall not be or become commingled with the general revenue fund of the state.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

**Constitution Revision Commission
Local Government Committee
Proposal Analysis**

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

Proposal #: P 95

Relating to: LOCAL GOVERNMENT, creates s. 6

Introducer(s): Commissioner Lee

Article/Section affected: Article VIII, new section

Date: January 18, 2018

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

I. SUMMARY:

Proposal 95 creates a constitutional prohibition against any county, municipality, or special district’s regulation of any type of commerce, trade, or labor, unless such regulation operated exclusively within the respective entity’s own boundaries in a manner not prohibited by law. Additionally, the Proposal prohibits any regulation enacted by a county, municipality, or special district from intruding upon, or impeding, commerce, trade, or labor across the respective entity’s boundaries.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The 1968 Florida Constitution introduced the concept of “Home Rule” whereby local governments “may exercise any power for municipal purposes except as otherwise provided by law.”¹

Florida law provides four fundamental limitations on the exercise of municipal home rule authority:

1. The state legislature;
2. The citizens of the municipality;
3. The state constitution; and
4. A county’s charter.²

Municipalities are granted broad home rule authority to pass ordinances to govern the local community in areas that are not specifically addressed or reserved by state legislation or the state constitution.³ However, municipal ordinances must yield to state law to the extent the ordinance conflicts with existing

¹ Fla. Const. Art VIII, §2(b)

² F.S. §166.021(1)

³ F.S. §166.021(1)

state law and a municipality's power to act or regulate in a particular area may be preempted by general law.⁴

Pursuant to Article XIII and Chapter 125 of the Florida Statutes, local governments have broad authority to legislate on matters not inconsistent with federal or state law. A local government regulation may be inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. Florida law recognizes two types of preemption: express and implied. An express preemption is created when the Legislature specifically declares a local government is prohibited from regulating a certain field.⁵

Noncharter Counties

A county without a charter has such power of self-government as provided by general⁶ or special law, and may enact county ordinances not inconsistent with general law.⁷ General law authorizes counties "the power to carry on county government"⁸ and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."⁹

Charter Counties

Pursuant either to general¹⁰ or special law, a county government may be adopted by charter approved by the county voters. A county with a charter has all powers of self-government *not inconsistent* with general law or special law approved by the county voters. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. In the event of a conflict between a county and municipal ordinance, the charter must provide which ordinance prevails.¹¹

Municipalities¹²

A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."

Special Districts¹³

Special districts are separate governmental entities existing for specific purposes and having substantial fiscal and administrative independence from general purpose governments

In Florida, special districts perform a wide variety of functions, such as providing fire protection services, delivering urban community development services, and managing water resources. Special districts typically are funded through ad valorem taxes, special assessments, user fees, or impact fees. The Uniform Special District Accountability Act, ch. 189, F. S., generally governs the creation and operations of special districts; however, other general laws may more specifically govern the operations of certain types of special districts.

⁴ *Lake Worth Utils. Auth. v. Lake Worth*, 468 So. 2d 215 (Fla. 1985).

⁵ *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006).

⁶ Chapter 125, Part I, F.S.

⁷ FLA. CONST. art. VIII, s. 1(f).

⁸ Section 125.01(1), F.S.

⁹ Section 125.01(1)(w), F.S.

¹⁰ Section 125.60, F.S.

¹¹ FLA. CONST. art. VIII, s. 1(g).

¹² See generally Florida House of Representatives, *Local Government Formation Manual 2017-2018*, Chapter 2.

¹³ See generally *Local Government Formation Manual 2017-2018*, Chapter 5.

Businesses, Professions and Occupations

General law directs a number of state agencies and licensing boards to regulate many professions and occupations and preempts the regulation of many businesses.

Whether or not, and to what degree, current law authorizes or preempts the local regulation of professions and occupations is typically done specifically and individually by subject matter, business type, or profession. Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.

Defining “Commerce,” “Trade” and “Labor”

The terms “Commerce,” “Trade” and “Labor” are not defined by the Florida Constitution, but are defined under limited circumstances in statute and in case law. For the purposes of construing an undefined constitutional provision, the Florida Supreme Court will first begin with an examination of the provision’s explicit language. If that language is clear and unambiguous, and addresses the matter at issue, it is enforced as written. If, however, the provision’s language is ambiguous or does not address the exact issue, a court must endeavor to construe the constitutional provision in a manner consistent with the intent of the framers and the voters.¹⁴

Taken at its plain meaning, “Regulate” potentially includes any sort of local government oversight. “Commerce, trade, and labor” potentially includes any activity or transaction performed by any person, business, or entity for compensation, and possibly includes activities or transactions not performed for compensation.¹⁵ “Intrude or impede” potentially includes any interference – notwithstanding the degree or magnitude of such interference.¹⁶

Florida Statutes defined “trade and commerce” as the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. “Trade or commerce” shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity.¹⁷ Merriam-Webster Dictionary defines labor as “an act or process requiring labor.”¹⁸

B. EFFECT OF PROPOSED CHANGES:

Proposal 95 creates a constitutional prohibition against any county, municipality, or special district’s regulation of any type of commerce, trade, or labor, unless such regulation operated exclusively within the respective entity’s own boundaries in a manner not prohibited by law. Additionally, the Proposal

¹⁴ *West Florida Regional Medical Center v. See*, 79 So. 3d 1, 9 (Fla. 2012).

¹⁵ Florida Association of Counties, Analysis of P 95, 12/22/2018 (on file with CRC staff).

¹⁶ Florida Association of Counties, Analysis of P 95, 12/22/2018 (on file with CRC staff).

¹⁷ Section 501.203(8), F.S.

¹⁸ Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/labor> (last visited 1/16/2018)

prohibits any regulation enacted by a county, municipality, or special district from intruding upon, or impeding, commerce, trade, or labor across the respective entity's boundaries.

The Proposal may inhibit the Legislature's ability to direct or authorize local governments to regulate or oversee any commerce, trade, or labor function unless such regulation was confined exclusively within the jurisdictional boundaries of the local government.

The scope of the proposal may be dependent on the interpretation of "may only regulate commerce, trade or labor occurring exclusively within the respective entity's own boundaries..." Courts may be required to determine the scope and reach of this language in its current form.

Under the proposal language, a county or municipality may be prohibited from overseeing persons, businesses, or other entities based outside of their jurisdiction, even though such persons, businesses, or entities conduct business inside of the county or municipality and enjoy property interests inside of the jurisdiction.

C. FISCAL IMPACT:

Indeterminate

III. Additional Information:

A. Statement of Changes:

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

None.

B. Amendments:

None.

C. Technical Deficiencies:

D. Related Issues:

None.

By Commissioner Lee

leet-00104-17

201795__

1 A proposal to create
 2 a new Section 6 of Article VIII of the State
 3 Constitution and to renumber present section 6 of that
 4 article to limit the power of a county, municipality,
 5 or special district to regulate commerce, trade, or
 6 labor unless the regulation applies exclusively within
 7 the respective entity's own boundaries in a manner not
 8 prohibited by law, and to specify that such regulation
 9 may not intrude upon or impede commerce, trade, or
 10 labor across the respective entity's boundaries.

12 Be It Proposed by the Constitution Revision Commission of
13 Florida:

15 Present section 6 of Article VIII of the State Constitution
16 is renumbered as section 7, and a new section 6 is added to that
17 article, to read:

18 ARTICLE VIII
19 LOCAL GOVERNMENT

20 SECTION 6. Regulation of commerce, trade, or labor.-A
 21 county, municipality, or special district may only regulate
 22 commerce, trade, or labor occurring exclusively within the
 23 respective entity's own boundaries in a manner not prohibited by
 24 law. A regulation enacted by a county, municipality, or special
 25 district may not intrude upon or impede commerce, trade, or
 26 labor across the respective entity's boundaries.