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## LEGISLATION

### CONSTITUTIONAL REVISION: COUNTY HOME RULE IN FLORIDA – THE NEED FOR EXPANSION

The Constitution . . . is given credit for the good which it has helped make possible but it is seldom blamed for the faults which might fairly be laid at its door. . . .<sup>1</sup>

In light of new political, social, and economic conditions our governing documents and institutions must be continually adapted to change. Recognizing this need for periodic reexamination, the Governor in 1965 created the Florida Constitution Revision Commission. A local government committee of this commission was created to study problems of local government, including whether a constitutional amendment should be proposed that establishes a method by which all counties of the state may provide for "home rule."

The purpose of this analysis is three-fold: first, to examine the feasibility of expanding home rule to other Florida counties; second, to examine problem areas in Florida's Constitutional Home Rule Amendment for Dade County; and third, to propose a constitutional amendment to implement adoption of county home rule in Florida.

#### THE NEED FOR COUNTY HOME RULE

Historically, the county was an administrative unit established for the convenience of state government to serve as a district for judicial administration, law enforcement, tax assessment and collection, elections, local road construction, and maintenance and care of the poor.<sup>2</sup> The county was regarded as a "creature" or instrumentality of the state rather than as a governmental subdivision to serve local needs. The pattern of county governmental organization was preserved in the Florida Constitution of 1885.<sup>3</sup> This structure is a reflection of problems and political ideas of what was then a rural state. The constitution requires a fixed set of county officers<sup>4</sup> and empowers the state legislature to determine the scope of the powers and duties of county government.<sup>5</sup> Except as the constitution prohibits, the legislature may alter these powers and duties at will. County government is formed in a "horizontal" manner and, therefore, maintains no administrative chain of command as do the municipalities and

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1. Dishman, *A New Constitution for New Hampshire* 1-2 (U. of N.H., Public Administration Service 1956).

2. Kammerer, *County Home Rule 1* (U. of Fla. Public Administration Clearing Service, Civic Information ser. No. 34 (1959)).

3. FLA. CONST. art. VIII.

4. FLA. CONST. art. VIII, §6.

5. FLA. CONST. art. III, §24.

authorities within their structures.<sup>6</sup> Counties derive their source of power directly through passage of local bills from the state legislature.<sup>7</sup> In 1965 the Florida Legislature passed 1,186 special and local bills and 586 general bills. The overwhelming predominance of local laws is indicative that some county reorganization is needed. Over 275 special service districts have been created to solve county and area-wide problems. This large number of special service districts coupled with the predominance of local laws has resulted in an extremely complex patchwork of laws and constitutional provisions relating to local government in Florida.<sup>8</sup>

When county government was created in 1885, no one could have foreseen the accumulation of nearly two-thirds of the state's population in fifteen urban counties.<sup>9</sup> The rapid increase in population and industrialization has resulted in the demand for more and more services on local governments, particularly county government; and the constant upward spiral in spending and the need for new sources of revenue make more efficient and more economical local government essential. In urban and metropolitan areas, there is extensive duplication, overlapping, and paralleling of efforts by local governments. Closely related activities are often scattered among a number of independent agencies, authorities, commissions, and boards in a hodge-podge fashion.

Patterns of local government, developed to suit the needs of small rural communities of the early 1800's, can hardly be expected to serve the requirements of the urbanized, industrialized society in Florida today. Either new burdens must be thrust upon the state or they must be distributed to both state and local governments. It would seem unwise to burden the state with the full responsibility for problems concerning less than the entire state. Moreover, urbanization and conflict among competing urban municipalities has pushed county government to the forefront among governments and districts capable of solving local problems.

As a result of these growing urban problems there is a definite need for some type of county governmental reorganization.<sup>10</sup> It is

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6. Report of the Local Government Study Commission of Hillsborough County [Fla.] at 10 (1964).

7. FLA. CONST. art. III, §24.

8. Kantor, *Governing Our Metropolitan Communities* 9 (U. of Fla. Public Administration Clearing Service, Civic Information ser. No. 29 (1958)).

9. Florida Development Commission, *Population of Florida* 3 (1965).

10. An alternative approach to county home rule would be municipal rule. Urban growth and problems, however, have not been confined by city limits. The result is that unincorporated areas are now metropolitan yet are called upon to provide municipal type services. Without total restructuring of existing state government into urban districts, county government is better equipped to meet urban problems than municipalities.

proposed that such a reorganization should be effected through the expansion and revision of the county home rule amendment.<sup>11</sup> In order to understand the reason expansion of county home rule is desirable, it is necessary to understand the meaning of home rule. "There is perhaps no term in the literature of political science or law which is more susceptible to misconception."<sup>12</sup> The term has served as both a political symbol and a legal doctrine.<sup>13</sup> As a political symbol, home rule is the freedom of a local unit of government to pursue self-determined goals without interference by the legislature or other agencies of state government. As a legal doctrine, home rule is a particular method for distributing power between state and local governments. Essentially, home rule refers to the right of the electorate in a city or county to determine its own local governmental organization through adoption of a locally framed charter.

Home rule does not refer to any particular internal organization or structure of county government. Under true home rule power, the electorate of the county would determine what particular governmental structure and internal organization is needed. This is desirable because no one correct structure is suitable for all metropolitan areas.<sup>14</sup> Home rule, however, is not synonymous with complete autonomy. It simply means that governmental powers with respect to problems of *local concern* are transferred from the state to the metropolitan areas.<sup>15</sup>

While the early purpose of home rule was the curbing of excessive powers of state legislatures, the purpose today is to give local governments the power to meet their growing local problems.<sup>16</sup> This fundamental purpose can be broken down into five main objectives:

- (1) to better serve the needs of urban areas outside municipal limits without the delay and expense involved in resorting to the legislature every two years for specific grants of legislation on a piecemeal basis;
- (2) to eliminate the present "local bill evil" that exists in our legislature today;
- (3) to provide the mechanics and flexibility for the people to organize and to adjust their local governmental structure to fit rapidly changing local conditions;

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11. FLA. CONST. art. VIII, §11.

12. Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts*, 48 MINN. L. REV. 643, 644 (1963).

13. *Id.* at 645.

14. Kantor, *supra* note 8, at 12.

15. *Id.* at 6.

16. Local Government Study Commission of Duval County, *Home Rule Analysis* 12 (1966).

(4) to provide local governments with sufficient powers to meet increasing demands for local services; and

(5) to give effect to the principle that the closer those who make and execute the laws are to the citizens they represent, the better are those citizens represented and governed in accordance with democratic ideals.<sup>17</sup>

These fundamental objectives of home rule are based on the proposition that a metropolitan area is a cohesive economic, cultural, and social unit with problems that are sufficiently distinct from those of the central state government so as to require local determination. Whether the above objectives will be attained by home rule will depend on the counties. The very essence of home rule is self-initiation. Home rule for Florida counties can be effective only if the recipients of such a grant exert the local leadership that will be necessary to utilize effectively this solution to local problems.

#### THE HOME RULE AMENDMENT IN FLORIDA

##### *Its Development*

Dade County was one of the first counties in Florida to experience rapid growth and urbanization. The rapid increase of population in unincorporated areas forced community leaders, as long ago as 1945, to begin studying methods of revising traditional governmental patterns to meet the needs of the people of the newly created metropolitan-suburban areas. The first attempt at a solution to area-wide problems was the proposal made in 1945 to consolidate Miami and all other cities within Dade County into a single governmental unit. This proposal, however, failed to gain necessary legislative approval for submission to the electorate of Florida.<sup>18</sup> In 1948, a similar attempt at consolidating the governments of Dade County, the City of Miami, and four smaller cities was defeated by the electorate.<sup>19</sup>

A constitutional amendment providing for permissive<sup>20</sup> county home rule on a state-wide basis was rejected in 1952.<sup>21</sup> In 1953, the electorate of Miami narrowly defeated a proposal to consolidate the City of Miami with Dade County.<sup>22</sup> After the defeat of this proposal, the City of Miami established the Metropolitan-Municipal

17. 51 NATIONAL CIVIC REV. 497 (1962).

18. Kammerer, *The Changing Urban County* 10 (U. of Fla. Public Administration Clearing Service, Civic Information ser. No. 41 (1963)).

19. Fla. Laws 1947, H.R.J. Res. 407.

20. See discussion of permissive county home rule, which follows subheading PROPOSED CONSTITUTIONAL AMENDMENT in text of this note.

21. Fla. Laws 1951, S.J. Res. 1046.

22. Fla. Spec. Acts 1953, chs. 29280, 29281.

Board to study all governments in Dade County and to recommend possible solutions to area-wide problems. The board made a recommendation that resulted in the legislature's approval<sup>23</sup> of a constitutional amendment that would grant home rule to Dade County. The home rule amendment for Dade County was approved by the voters of Florida in November 1956,<sup>24</sup> and the home rule charter provided for in the amendment was approved by the electorate of Dade County on May 21, 1957. The amendment not only provides local self-government to the people of Dade County, but also preserves the supremacy of the legislature in all matters of state interest.<sup>25</sup> This necessarily results in a division of powers between state and county. This division, or federalism, is further implemented by the internal organization of Dade County. While it has been stated that a "federation" was not intended,<sup>26</sup> authorities are in agreement that Dade County's governmental structure is a device based on the idea of federalism.<sup>27</sup> By the home rule amendment the county government is granted power over local affairs within Dade County. In addition, the amendment grants to municipalities within Dade County the power to make, amend, or repeal their own municipal charters.<sup>28</sup> State supremacy in matters of "state interest" and the further division of powers between the county and municipalities has resulted in three levels of government. This section is an analysis of the problems that have resulted from this "three-level federation."

#### *Division and Limitations of Power — The Three-Level Federation*

At the top of Dade County's "three-level federation" is the state in which all legislative authority and power is vested. The declared intent of the legislature and the electors of the State of Florida, in the adoption of the home rule amendment, is for the provisions of the constitution and general laws to be the supreme law in Dade County<sup>29</sup> unless otherwise provided in the amendment.<sup>30</sup> Express authorization must be found within the amendment in order for the county charter or ordinance enacted pursuant to it to depart from

23. Fla. Laws 1955, S.J. Res. 1046. Proposed constitutional amendment held not in violation of FLA. CONST. art. 17, §1 in *Gray v. Golden*, 89 So. 2d 785 (Fla. 1956).

24. FLA. CONST. art. VIII, §11. The amendment is quoted in APPENDIX I.

25. See FLA. CONST. art. VIII, §11 (1) (a) and art. VIII, §11 (9). See APPENDIX I.

26. Address by Dan Paul, President of the Government Research Council, Miami-Dade County Chamber of Commerce, 1965.

27. See Kammerer, note 18 *supra*.

28. FLA. CONST. art. VIII, §11 (1) (g). See APPENDIX I.

29. FLA. CONST. art. VIII, §11 (9). See APPENDIX I.

30. FLA. CONST. art. VIII, §11 (5). See APPENDIX I.

the constitution or general law. In order to maintain state supremacy the amendment further provides that, if the county charter or ordinance is in conflict with a constitutional provision or general law, the express authority under which the charter provision or ordinance was enacted is to be strictly construed.<sup>31</sup> An example of this strict construction can be found in *Board of County Commissioners of Dade County v. Boswell*.<sup>32</sup> The county had passed an ordinance prohibiting fortunetelling and similar occupations within the county. The express authorization relied on by the county to enact such ordinance was section 11 (1) (b), which grants the county power to enact ordinances relating to the "affairs, property and government of Dade County."<sup>33</sup> The Dade County Board of County Commissioners had construed the regulation of such occupations as a local concern. This ordinance, however, conflicted with existing general law already regulating such occupations. In following the mandate of strict construction of section 11 (9), the court maintained the supremacy of the existing state regulation in holding the "express authorization" insufficient to depart from general law.<sup>34</sup> Applying this principle, the court in *Kaulakis v. Boyd*<sup>35</sup> held invalid a charter provision providing that Dade County shall be liable in tort actions to the same extent as municipalities. Because the county failed to show *express* authorization in the home rule amendment for such charter provision, the court held that article III, section 22, which provides that all counties are immune from tort liability, superseded the charter provision. Thus, valid general laws<sup>36</sup> and constitutional provisions are the supreme law in Dade County and supersede any charter provision<sup>37</sup> or ordinance<sup>38</sup> to the contrary and are entitled, *by implication*, to liberal construction.<sup>39</sup>

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31. FLA. CONST. art. VIII, §11 (9). See APPENDIX I.

32. 167 So. 2d 866 (Fla. 1964).

33. FLA. CONST. art. VIII, §11 (1) (b). See APPENDIX I.

34. Board of County Comm'rs of Dade County v. Boswell, 167 So. 2d 866, 867 (Fla. 1964).

35. 138 So. 2d 505 (Fla. 1962).

36. A valid general law is one that under art. VIII, §11 (5) "relate[s] to Dade County and any other one or more counties in the state of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida . . ."

37. Seminole Rock Prods., Inc. v. Town of Medley, 180 So. 2d 457 (Fla. 1965). See *Kaulakis v. Boyd*, 138 So. 2d 505 (Fla. 1962). *Contra*, *City of Miami Beach v. Cowart*, 116 So. 2d 432 (Fla. 1959); *County of Dade v. Saffan*, 173 So. 2d 138 (Fla. 1965), *reversing* 159 So. 2d 102 (3d D.C.A. Fla. 1963).

38. See *Board of County Comm'rs of Dade County v. Boswell*, 167 So. 2d 866 (Fla. 1964).

39. *But see County of Dade v. Saffan*, 173 So. 2d 138 (Fla. 1965), *reversing* 159 So. 2d 102 (3d D.C.A. Fla. 1963).

In section 11 (7), the home rule amendment preserves the power and jurisdiction of all state agencies, bureaus, and commissions now or hereafter created by the constitution or general law.<sup>40</sup> These agencies have the same powers in Dade County as in other counties in Florida.<sup>41</sup> This provision insures the uniform regulation of problems arising under the jurisdiction of such agencies as the Florida State Board of Health and the office of the Commissioner of Agriculture. Because problems arising under these agencies are usually statewide in nature and are not limited to any one local area, their jurisdiction should not be impaired by a grant of county home rule. Moreover, to guarantee uniform state regulation of problems such as transportation, communications, and water and sewage, the legislature specifically preserved the jurisdiction of the Florida Public Service Commission within Dade County.<sup>42</sup>

It appears that the "liberal construction" approach, used to maintain the supremacy of general laws and constitutional provisions, should also be applied in the area of public utilities regulation. Two recent judicial interpretations of section 11 (7), however, indicate a contrary approach to solution of conflicts within this area. In *State v. Dade County*,<sup>43</sup> the court upheld the county's power to purchase and operate a uniform transit system. In this case, the court's rationale is that the obvious purpose of the constitutional amendment and the home rule charter is the development of public services and utilities having county-wide application and uniform operation. In a later case, private companies holding certificates of public convenience and necessity challenged the extension of this transit system. The court held that the Florida Public Utilities Commission<sup>44</sup> has *no* jurisdiction over the transit system operated by Dade County.<sup>45</sup> The court indicated that the county could extend this transit system, even though it infringed upon private competitors operating under state certificates of public convenience and even if it resulted in the loss of their businesses.<sup>46</sup>

In upholding the county's authority to operate and extend a uniform transit system these two cases are consistent with the objective of home rule. Under the home rule amendment, Dade County should have the power to provide an efficient low cost transportation system. To what extent these two cases limit and restrict the intent and ap-

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40. FLA. CONST. art. VIII, §11 (7). See APPENDIX I.

41. *Ibid.*

42. *Ibid.*

43. 142 So. 2d 79 (Fla. 1962).

44. FLA. STAT. §350.011 (1965). Florida Public Utilities Commission name changed to Florida Public Service Commission.

45. *Coast Cities Coaches, Inc. v. Dade County*, 178 So. 2d 703 (Fla. 1965).

46. *Id.* at 703-04.



plication of section 11 (7), however, is not clear. The court's reasoning that the Florida Public Service Commission has no jurisdiction over the transit system in Dade County does not appear to be consistent with this provision. Even assuming that the authorization to operate a transit system was express, it is difficult to reconcile these cases with the specific language of section 11 (7) providing that "nothing in this section shall limit or restrict the power of the Railroad and Public Utilities Commission."<sup>47</sup> Nevertheless, the court has taken a liberal approach in expanding the county's power of regulation in the public utilities area. It is interesting to note that the Florida Supreme Court held a Dade County ordinance regulating taxi cabs in unincorporated areas to be unconstitutional under section 11 (7).<sup>48</sup> The court applied a literal reading of section 11 (7) in departing from the liberal approach used in the former cases.

The home rule amendment prohibits the board of county commissioners from abolishing the office of county superintendent of public instruction.<sup>49</sup> By specifically exempting this office from the county's power to abolish offices created under article VIII, section 6, it appears that the state intended to retain some legislative control over the educational system in Dade County. In response to a question concerning whether Dade County had authority to regulate in the area of public instruction the Attorney General of Florida advised that the exemption of county superintendent of public instruction from abolishment is not a prohibition against county regulation.<sup>50</sup> Under this interpretation the state has apparently not retained the control that it may have intended.

Prior to the adoption of home rule, Dade County derived its power directly through the passage of local bills by the state legislature. An objective of home rule was to transfer this power to pass local and special laws applicable only to Dade County from the state to the Dade County Board of Commissioners. The limitation on state power to enact local or special legislation for Dade County was designed to implement this objective of home rule.<sup>51</sup> To determine the scope of this limitation, it is necessary to understand the accepted judicial definitions of special, local, and general laws. A "local law" is one limited in its operation to certain districts of the territorial jurisdiction of the lawmaking power, or a law that pertains to a

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47. FLA. CONST. art. VIII, §11 (7). See APPENDIX I.

48. *Dade County v. Mercury Radio Service, Inc.*, 134 So. 2d 791 (Fla. 1961). This ordinance applied to holders of master permits under the Florida Railroad and Public Utilities Commission.

49. FLA. CONST. art. VIII, §11 (1) (f). See APPENDIX I.

50. 1961-1962 FLA. ATT'Y GEN. BIENNIAL REP. 81.

51. FLA. CONST. art. VIII, §11 (6). See APPENDIX I.

particular place or to a definite region.<sup>52</sup> A "special law" is one relating to particular persons or things; one made for individual cases or for particular places or districts; one operating upon a selected class rather than upon the public in general.<sup>53</sup> These two definitions are similar in scope and both seem to be applicable to territorial or regional legislation—the type of legislative power home rule intends to vest in the county. On the other hand, a "general law" is defined as a law that embraces a class of subjects or places and does not omit any subject or place belonging to such a class.<sup>54</sup>

The home rule amendment provides that the legislature shall have the power to enact:<sup>55</sup>

[G]eneral laws which shall relate to Dade County and any other one or more counties in the state of Florida or to any municipality in Dade County and any other one or more municipalities of the state of Florida. . . .

This implied definition of a general law does not seem to coincide with its accepted definition. Under this provision, a general law can be one that embraces only two counties, or municipalities, one of which is Dade or a municipality within Dade, yet omits from its purview other counties or municipalities naturally belonging to the same class. Therefore, the legislature could include within the application of a "general law" one other county and thereby retain significant legislative control within Dade County. This would be in violation of one basic objective of home rule—local freedom from legislative interference. This "general law" would also meet the accepted judicial definitions of both a local and special law. Thus, such "general law" would be general in form, but clearly special in effect.

In enacting general laws, the legislature will frequently classify legislation in terms of population to denote its scope. The Florida Supreme Court has held that there must be a reasonable basis for a classification of counties by population. Otherwise, the act affecting counties within a certain range in population will be declared a "local act."<sup>56</sup> In *S. & J. Transportation, Inc. v. Gordon*<sup>57</sup> the Florida Supreme Court held that a "general law," which permitted county commissioners in any county with a population of more than

52. State *ex rel.* Buford v. Daniel, 87 Fla. 270, 99 So. 804, 809 (1924).

53. *Ibid.*

54. Mathis v. Jones, 84 Ga. 804, 11 S.E. 1018 (1890); see also State *ex rel.* Gray v. Stoutamire, 131 Fla. 698, 179 So. 730 (1938).

55. FLA. CONST. art. VIII, §11 (5). See APPENDIX I.

56. Waybright v. Duval County, 142 Fla. 875, 196 So. 430, *on rehearing* 142 Fla. 895, 900-01, 196 So. 439, 441 (1940).

57. 176 So. 2d 69, 70 (Fla. 1965).

900,000, owning and operating airports, to contract for ground transportation of passengers between airports and all points within the county contravened section 11 (5) prohibiting the adoption of any act relating only to Dade County. Consistent with home rule, the court recognized that this act, while general in form, was clearly special in effect.

The power to make, amend, and repeal municipal charters is vested solely in the legislature.<sup>58</sup> This exclusive power of the legislature has been limited by the adoption of the home rule amendment. The amendment provides that, within Dade County, this power shall now be vested in the municipalities.<sup>59</sup> Even though this power is not vested in the county, without this limitation on state legislative power, home rule for Dade County would have little or no meaning. The legislature could nullify, or at least restrict, the power of the board of county commissioners by amending municipal charters to enable the state legislature to exercise local legislative control denied it in the area of county "affairs, property and government."<sup>60</sup> This removal of state control over purely local affairs is consistent with home rule.

Dade County, representing the second level of the "three-level federation," is expressly granted certain powers under the home rule amendment. The purpose of these specific grants of power is to give Dade County the authority to regulate its own local affairs and to provide a limitation on the powers of the state legislature within Dade County.<sup>61</sup>

The board of county commissioners has been granted "full power and authority" to pass ordinances relating to the "affairs, property and government" of Dade County,<sup>62</sup> and to do everything necessary to carry on a central metropolitan government.<sup>63</sup> The county has frequently relied on section 11 (1) (b) as authorization to justify local regulation of matters already regulated by the state. Thus, the important and basic inquiry is to determine what matters come within the phrase "affairs, property and government." The scope of this authorization has been judicially interpreted on a case-by-case basis when county regulation has been challenged. In an action for declaratory relief with respect to a Dade County ordinance<sup>64</sup> prohibiting fortunetelling and similiar occupations, the court strictly construed section 11 (1) (b) as not being sufficient to authorize the county

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58. FLA. CONST. art. VIII, §8. See APPENDIX I.

59. FLA. CONST. art. VIII, §11 (1) (g). See APPENDIX I.

60. FLA. CONST. art. VIII, §11 (1) (b). See APPENDIX I.

61. *Ibid.*

62. *Ibid.*

63. *Ibid.*

64. DADE COUNTY, FLA., METROPOLITAN CODE §§30-161 to 33-179 (1957).

regulation.<sup>65</sup> The concept used when state and local regulations are in conflict is an expression of what is known as the "strict construction rule."<sup>66</sup> This restrictive rule for construing home rule powers is based on the proposition that local governments derive all their powers from the state and that such powers should be narrowly construed against local units. Thus, when there is a conflict between state and county regulation the courts have resolved this conflict against the local government.<sup>67</sup>

Despite this seemingly narrow and strict approach, the Florida Supreme Court has found "express authority" within the meaning of section 5 even though such authorization is not absolutely clear. While no such express authority existed for the county to develop a uniform transit system, the court held that one of the obvious purposes of home rule and a principle *inherently* embodied in the amendment is the development of services and utilities having county-wide application and uniform operation.<sup>68</sup> Thus, the court has fluctuated between a strict<sup>69</sup> and liberal<sup>70</sup> construction in allowing county regulation under "affairs, property and government." While this provision is broad enough to provide a large portion of Dade County's legislative authorization, such judicial interpretation has created doubt as to the power Dade County possesses under the amendment.<sup>71</sup>

A question that appears to be unanswered by the amendment is the extent of county power to regulate in both unincorporated and incorporated areas. The power of the county to govern in incorporated areas is restricted by the power and authority to regulate reserved to the municipalities by the amendment. This restriction on the county involves the question of what problems are purely local as opposed to those best suited for solution on a county-wide basis. This question was presented with the adoption of the metropolitan traffic code, which was to be effective in both incorporated and unincorporated areas of Dade County. The code expressly nullified and superseded the traffic ordinances of all municipalities within the county.<sup>72</sup> In an action brought by a municipality challenging the validity of

65. Board of County Comm'rs of Dade County v. Boswell, 167 So. 2d 866 (Fla. 1964).

66. 2 McQUILLAN, MUNICIPAL CORPORATIONS §10.18 (a) (1966).

67. City of Clearwater v. Caldwell, 75 So. 2d 765 (Fla. 1954); City of Daytona Beach v. Dygert, 146 Fla. 352, 1 So. 2d 170, 172 (1941).

68. State v. Dade County, 142 So. 2d 79, 85 (Fla. 1962).

69. Board of County Comm'rs of Dade County v. Boswell, 167 So. 2d 866 (Fla. 1964).

70. See City of Coral Gables v. Burgin, 143 So. 2d 859 (Fla. 1962); City of Coral Gables v. Dade County, 189 So. 2d 530 (3d D.C.A. Fla. 1966).

71. See 1961-1962 FLA. ATT'Y GEN. BIENNIAL REP. 81, 379.

72. DADE COUNTY, FLA., METROPOLITAN CODE §30-2 (a) (1957).

the traffic code, the Florida Supreme Court interpreted the provision of the home rule amendment providing for municipal autonomy<sup>73</sup> as guaranteeing to the municipalities freedom from interference by the legislature and the board in "purely local municipal functions."<sup>74</sup> The court also stated, however, that the amendment authorized regulation by the county of the municipal functions that are susceptible to and could be most effectively carried on under a uniform plan of regulation applicable to the entire county. Thus, to be valid, challenged county regulation must satisfy two requirements. First, it must meet the requirement of being within the "affairs, property and government" of Dade County. Second, the particular problem the county is seeking to regulate must be susceptible to uniform regulation by the county rather than a purely local problem that is better suited to regulation by the municipality. Therefore, it is not clear how, when, or under what conditions county regulation will be sustained.

The question of what problems are best suited to county or municipal regulation was clarified by the "fundamental purpose test" established in *City of Coral Gables v. Burgin*.<sup>75</sup> In that case the city refused to recognize as controlling a county certificate of competency for plumbing contractors because the city had higher standards of qualification. The county charter provides that the city can require higher standards than those provided by the county in order for the city to preserve its individual character.<sup>76</sup> In resolving the conflict between the county and city regulation, the court asked whether the regulation of plumbing is a problem peculiar to the cities. The court stated that the answer must be determined from the *fundamental purpose* of the regulation.<sup>77</sup> The court found that the "fundamental purpose" of regulating plumbing is the promotion of public health. The court considered this problem to be of "universal concern" and not so peculiar to cities as to justify denominating it as purely local. Thus, in this instance, the "fundamental purpose test" resolved the conflict in favor of the county. Even though municipal authority is found to be controlling, under the home rule charter the county is granted the power to set reasonable minimum standards for the performance of any service or function by all governmental units within the county.<sup>78</sup> The county should not be entirely excluded from control in what is determined to be a "purely local" concern; otherwise, each municipality could independently regulate functions and services for which a minimum county standard should exist.

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73. FLA. CONST. art. VIII, §11 (1) (g). See APPENDIX I.

74. *Miami Shores Village v. Cowart*, 108 So. 2d 468, 471 (Fla. 1958).

75. 143 So. 2d 859 (Fla. 1962).

76. DADE COUNTY, FLA., HOME RULE CHARTER art V, §5.02 (1957).

77. *City of Coral Gables v. Burgin*, 143 So. 2d 859, 861 (Fla. 1962).

78. DADE COUNTY, FLA., HOME RULE CHARTER art. 1, §1.01 (18) (1957).

The county has permissive power to transfer all functions or powers of any municipal corporation or other governmental unit to the board of county commissioners.<sup>79</sup> Although it appears that the county has considerable latitude in the transfer of municipal functions, the Florida Supreme Court has considerably restricted the effect of this provision. In *Dade County v. Kelly*,<sup>80</sup> the court held that *complete* abolishment of a county office is a condition precedent to the transfer of any of its functions. The charter provision<sup>81</sup> granting the board of county commissioners authority to transfer all or any part of the functions of a county office was held to be invalid.<sup>82</sup> The dissenting view was that the amendment should be construed to allow the people of Dade County and their elected governing board more flexibility and a broader opportunity for experimentation. The dissent maintained that if the board deemed it advisable to retain for a time an existing office, but felt that *some* of the functions of that office should be transferred to a newly created agency, then the letter and spirit of the home rule amendment contemplates that they should be able to do so.<sup>83</sup> The dissenting view seems more consonant with the purpose and directive in the amendment that it be liberally construed to provide home rule for the people of Dade County in local affairs.<sup>84</sup> In addition to the power to transfer, the county is granted permissive power to "abolish" governmental units, including both county and state offices.<sup>85</sup> This power, however, is limited by the amendment which provides that Dade County may not "abolish" a governmental unit without providing adequate provision for performing any functions imposed on such unit by general act or constitutional provision.<sup>86</sup> Thus, the scope of this power is determined by the meaning of the word "abolish" within these provisions. The Florida Supreme Court has interpreted the word "abolish" to mean only a change in the *structure* and *form* of the government.<sup>87</sup>

Included within the county's power to abolish governmental units is the power to abolish all municipal corporations.<sup>88</sup> This seemingly broad power has been severely restricted by the home rule charter. The charter provides that municipalities shall remain in existence for

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79. FLA. CONST. art. VIII, §11 (1) (d). See APPENDIX I.

80. 99 So. 2d 856 (Fla. 1957).

81. DADE COUNTY, FLA., HOME RULE CHARTER art. I, §1.01 (19) (a) (1957).

82. *Dade County v. Kelly*, 99 So. 2d 856 (Fla. 1957).

83. *Id.* at 860 (dissenting opinion).

84. FLA. CONST. art. VIII, §11 (9). See APPENDIX I.

85. FLA. CONST. art. VIII, §11 (1) (c). See APPENDIX I.

86. FLA. CONST. art. VIII, §11 (1) (f). See APPENDIX I.

87. *Chase v. Cowart*, 102 So. 2d 147 (Fla. 1958).

88. FLA. CONST. art. VIII, §11 (1) (c). See APPENDIX I.

as long as their electors desire.<sup>89</sup> This provision is apparently intended to preserve the municipality's authority to make, amend, or repeal its own charter<sup>90</sup> and to prevent the arbitrary exercise of the county's power to abolish municipalities. In addition to the amendment provision granting municipal home rule<sup>91</sup> this charter provision further preserves Dade County's "three-level federation." The county also has the power to establish new municipal corporations.<sup>92</sup> If exercised this power would further implement the preservation of the "three-level federation." It is questionable, however, whether the maintaining or creation of new municipalities by the county is consonant with the general concept of county home rule.

Under the home rule amendment, the county is authorized to levy and collect only taxes that are authorized by general law.<sup>93</sup> The Dade County charter provides, however, that the board is authorized to levy all taxes in unincorporated areas that are authorized to be levied by municipalities.<sup>94</sup> This charter provision appears to be in direct conflict with the express language of the amendment. In construing the charter provision, which attempts to expand the county's taxing power, the attorney general advised that the state comptroller is not required to pay over to the county cigarette taxes collected in unincorporated areas since the county is not authorized by general law to levy such taxes.<sup>95</sup> Thus, under the home rule amendment the taxing power of Dade County is the same as any other Florida county while the taxing powers of its municipalities remain unimpaired.

#### *Existing Problem Areas*

The above analysis is not meant to be a criticism of the form of government created by Dade County under the home rule amendment. Such form of government is an apparent improvement over that which existed prior to its creation. The purpose of this analysis is instead to examine the problems that have arisen under the present amendment and its resulting "three-level federation." These problems can be summarized as:

- (1) the difficulty in defining the area of state legislative control;
- (2) the extent to which judicial interpretation has restricted the authority and jurisdiction of state agencies and commissions;

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89. DADE COUNTY, FLA., HOME RULE CHARTER art. V, §5.01 (1957).

90. FLA. CONST. art. VIII, §11 (1) (g). See APPENDIX I.

91. *Ibid.*

92. FLA. CONST. art. VIII, §11 (1) (e). See APPENDIX I.

93. FLA. CONST. art. VIII, §11 (1) (b). See APPENDIX I.

94. DADE COUNTY, FLA., HOME RULE CHARTER art. 1, §1.01 (24) (d) (1957).

95. 1957-1958 FLA. ATT'Y GEN. BIENNIAL REP. 368.

- (3) the difficulty of defining the scope of county power within the meaning of "affairs, property and government";
- (4) the difficulty in defining the relationship between the county and its municipalities; and
- (5) the inequity of county and municipal taxing powers under the amendment.

These problems must be considered in evaluating the desirability of expanding the present home rule amendment to other Florida counties.

#### OTHER FLORIDA COUNTIES — WHAT IS BEING DONE

No justification can be offered for forcing Florida counties to remain under a nineteenth century framework of government, particularly since Florida is one of the more highly urbanized states in the nation.<sup>96</sup> When local pressure has demanded, the constitution has been amended to provide for reorganization of county government by constitutional consolidation of certain counties with their largest city either in whole or with respect to a particular function of government. Amendments have been adopted authorizing the legislature to abolish Duval<sup>97</sup> and Monroe<sup>98</sup> counties by extending the city limits of Jacksonville and Key West to the county boundary lines. In 1946, a new article was added to the constitution authorizing the legislature to consolidate, abolish, or create any county offices in Orange County.<sup>99</sup> From time to time, the constitution has also been amended to provide for the consolidation, within certain counties, of the assessment and collection of state, county, municipal, and other taxes.<sup>100</sup> These amendments, however, are piecemeal attempts at solutions for individual county problems and for the most part have not been utilized even when authority to do so has been granted.

Realizing that these piecemeal attempts have been ineffective six Florida counties, pursuant to legislative authority, have created local government study commissions to examine the structures and functions of all governmental units within their counties. The counties that have received legislative authorization to conduct local studies

96. Kammerer, *County Home Rule 18* (U. of Fla. Public Administration Clearing Service, Civic Information ser. No. 34 (1959)).

97. FLA. CONST. art. VIII, §9.

98. FLA. CONST. art. VIII, §10.

99. FLA. CONST. art. XX.

100. FLA. CONST. art. VIII, §§10, 10(a) (Monroe); §§12, 13 (Hillsborough); §§14, 15 (St. Lucie); §§16, 17 (Volusia); §§18, 19 (Broward); §§20, 21 (Pinellas).



are Duval,<sup>101</sup> Escambia,<sup>102</sup> Hillsborough,<sup>103</sup> Orange,<sup>104</sup> Palm Beach,<sup>105</sup> and Sarasota.<sup>106</sup> Pinellas County is independently conducting a local study through its county commission.<sup>107</sup>

All Florida counties have three basic problems: the fragmentation and diffusion of control of local government, the duplication and overlapping of county and municipal services, and the tax imbalance between the county and municipalities. Moreover, each county is also beset with its unique local problems, such as the growth and location of its population and the number and location of its municipalities. Each county also has environmental problems such as erosion control and air and water pollution that result from its geographical location.

While there are many types of county internal organization, no one form of governmental structure is completely suited for solving all local problems. Each county must adopt a governmental structure that is flexible enough to satisfy local needs and problems.

#### PROPOSED CONSTITUTIONAL AMENDMENT

Home rule has traditionally been granted in three ways: by constitutional provision requiring a legislative act, by legislative enactment alone, or by a self-executing constitutional provision. Constitutional home rule provisions requiring legislative implementation may be designed as either mandatory or permissive. When mandatory, the legislative action implementing the constitutional provision of home rule is required. When permissive, the enactment of enabling legislation is completely within the discretion of the legislature. Legislative or statutory home rule is provided exclusively by the legislature. In addition to the grant of home rule being discretionary, the powers of the county under this grant are also completely within the discretion of the legislature. The legislature may take away these powers either by repeal of the grant or by subsequent restrictive legislation. The most desirable type of home rule is that which is constitutional and self-executing. This type neither requires legislative implementation nor legislative determination of the substantive powers that a home rule county should have. The authors have proposed a county home rule constitutional amendment, which is set out in Appendix II. The proposed amendment is self-executing. It provides that the

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101. Fla. Laws Spec. Acts 1965, ch. 65-1502.

102. Fla. Laws Spec. Acts 1965, ch. 65-1516.

103. Fla. Laws Spec. Acts 1963, ch. 63-1404.

104. Fla. Laws Spec. Acts 1965, ch. 65-2018.

105. Fla. Laws Spec. Acts 1965, ch. 65-718.

106. Fla. Laws Spec. Acts 1965, ch. 65-1179.

107. PINELLAS COUNTY, FLA., BOARD OF COMM'RS RES., Aug. 24, 1965.

board of county commissioners or a charter commission of any county may prepare and propose a home rule charter to be submitted to the electorate of the county.<sup>108</sup> In order to insure the maximum use of a grant of county home rule, this charter commission may be elected pursuant to a petition from at least ten per cent of the qualified electors.<sup>109</sup> Thus, under the proposed amendment all Florida counties may adopt home rule even when the county governing body has not acted. To the extent possible, the proposed amendment also attempts to alleviate the problem areas that exist under the Dade County amendment.

### *State Legislative Control*

A major problem within the existing home rule amendment is the difficulty of determining the area of state regulation and control retained within Dade County. State regulation and control may presently be maintained by the mere enactment of general laws relating to Dade County and one or more counties. Thus, the legislature can enact legislation that is drawn in general terms but that is clearly special in its effect. In order to guarantee true freedom from state legislative interference in areas of local concern the proposed amendment provides for state legislative control only through the enactment of laws that are general in both their *terms* and in their *effect*.<sup>110</sup> Under the existing amendment, if the county wishes to carry on activities that are in conflict with applicable general law it is necessary for the county to find express authorization within the amendment. Under the mandate of the present amendment, this authorization is strictly construed in favor of the state. In order to abrogate this concept of strict construction and to give the term "property, affairs and government" significant meaning the proposed amendment provides that when a conflict exists between county regulation and applicable general laws the express authorization is to be liberally construed in favor of the county.<sup>111</sup> To further clarify the area of state legislative control the proposed amendment also provides that any law that is special or local either in its terms *or* in its effect is to have no application within any home rule county.<sup>112</sup>

The proposed amendment makes explicit the prohibition against legislative enactment of general laws that are special in effect and more accurately defines the area of state legislative control. Therefore, it

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108. See APPENDIX II, §1. (APPENDIX II is a complete text of the proposed constitutional amendment.)

109. *Ibid.*

110. See APPENDIX II, §4.

111. *Ibid.*

112. *Ibid.*

limits legislative interference within county affairs to only those problems that are truly of statewide concern.

### *State Agencies and Commissions*

Under the Dade County home rule amendment, the courts have severely restricted what would appear to be a clear mandate that the power and jurisdiction of state agencies and commissions are to remain unimpaired. Recognizing that the problems under the jurisdiction of state agencies are generally of statewide concern and not limited to any one local area, the proposed amendment retains the same provisions as the existing amendment. The proposed amendment provides, however, that the jurisdiction of state agencies is *expressly limited* to problems of statewide concern.<sup>113</sup> In interpreting the Dade County amendment the court recognized there are problems that are within the jurisdiction of state agencies, however, the court has restricted the power of such agencies when the problems appeared to be of a local nature.<sup>114</sup> By limiting the jurisdiction of state agencies the proposed amendment gives recognition to such judicial interpretations. Moreover, to clarify this limiting clause the proposed amendment includes control over *local* health, safety, and welfare within the specific enumerated powers of county regulation.<sup>115</sup> The proposed amendment recognizes that even with existing state agencies a county must have some control over problems affecting the health, safety, and welfare of its inhabitants. The proposed amendment does not remove the power and authority of state agencies from home rule counties; it merely defines more precisely the area within which state agencies should operate.

### *State-County Relationship*

Another problem under the existing amendment has been the difficulty of defining separate areas of state and local concern. There are three ways in which states have sought to achieve a division of powers between the state legislature and a home rule county. The first approach in defining this "division of powers" is to state in general terms the home rule powers granted to the county, that is, to state that the county has the power to enact ordinances relating to its property, affairs, and government. The use of this approach alone is often criticized as leaving the division of powers in so much doubt as

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113. See APPENDIX II, §3.

114. See *Coast Cities Coaches, Inc. v. Dade County*, 178 So. 2d 703 (Fla. 1965); *State v. Dade County*, 142 So. 2d 79 (Fla. 1962); discussion in text following sub-heading *Division and Limitations of Power — The Three-Level Federation*.

115. See APPENDIX II, §1 (a).

to require extensive litigation to determine what is a local concern within this broad grant of power. The second approach is the enumeration of specific areas over which the county has the power to regulate. The objection to the use of enumerating specific areas of regulation is that such enumeration can neither be definitive nor exhaustive. Specific enumeration of powers and rights frequently become outdated in a short period of time and result in onerous restriction on future growth and development of the county. A third solution that has been suggested to the problem of defining county regulation is the proposition that the counties may exercise *any* powers not specifically denied them by general law or their charters.<sup>116</sup> Because all powers except those specifically reserved to the legislature would be vested in local governments, future action by the legislature could be in the form of restrictions upon the powers of local governments rather than affirmative grants of power. Therefore, this negative approach to the solution of the problem of division of powers was not used in the proposed amendment.

To define more accurately the area of county regulation the proposed amendment combines the first two approaches to the problem of division of powers. It provides a broad grant of power to the county and also includes an enumeration of certain subject matters. Because specific areas are enumerated in the proposed amendment, the county's power is not to be interpreted as limited or restricted to such areas.<sup>117</sup> In addition to these provisions, the proposed amendment also provides that a home rule charter county is to have all the powers conferred by general law upon all other counties.<sup>118</sup> Thus, while the line of demarcation between matters of statewide concern and local affairs has not been explicitly drawn, this division of powers will be clarified by the proposed amendment.

### *County-City Relationship*

The relationship between the county and municipalities is a significant problem under the existing home rule amendment. Under the present amendment it is *mandatory* that the county charter establish a method whereby the municipalities have complete control over their own charters. This grant of municipal home rule effectively preserves Dade County's "three-level federation." Under the proposed amendment the county charter *may* provide a method for each municipality within the county to make, amend, or repeal its

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116. Kresky, *Local Government, Salient Issues of Constitutional Revision*, 57 NATIONAL MUNICIPAL LEAGUE 157 (1961).

117. See APPENDIX II, §1 (a).

118. *Ibid.*

own charter.<sup>119</sup> Because this provision is permissive the proposed amendment allows the electorate to determine whether municipal autonomy should be included within its form of government.

If the county does grant autonomy to the municipalities, the proposed amendment provides that the exercise of power by the county shall prevail when city and county regulation conflict.<sup>120</sup> While there are problems that are of purely local concern to municipalities, under county home rule the county should have the power to regulate the problems that are susceptible to uniform regulation on an area-wide basis.

### *County Taxing Powers*

The most serious limitation under the Dade County amendment is the inequity between the taxing powers of the county in unincorporated areas and the taxing powers of existing municipalities. Dade County is called upon to provide more and more municipal type services in unincorporated areas, yet has no more taxing power than small rural counties. In recognition of such inequities within the present tax structure, the proposed amendment provides that any home rule county shall have the same power to levy and collect taxes as do municipalities.<sup>121</sup> It also provides that any charter county is to have the same taxing powers that may be conferred by general law upon all other counties.<sup>122</sup> These provisions attempt to remove the existing inequity and also give the county the revenue necessary to meet increasing demands for services.

### *County Governmental Structure*

A major objective of home rule is to allow the county to adopt the form of government that is sufficiently flexible to meet rapidly changing local needs. Thus, a home rule amendment should not contain specific provisions that require the election of certain county officials, that set the boundaries of commission districts, or that specify the number of such districts. By "freezing-in" such provisions in the basic law, the county is initially restricted as to the form of government it might wish to adopt.

The proposed amendment eliminates this problem by allowing a home rule county to provide for the form and organization of its government. Only the superintendent and board of public instruction are required to be retained by the proposed amendment. With

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119. See APPENDIX II, §1 (e).

120. *Ibid.*

121. See APPENDIX II, §1 (a).

122. *Ibid.*

this exception, a county may provide for the officers it deems necessary.<sup>123</sup> This provision allows the electorate of the county to create the form of government that is best suited for its local needs. This is consistent with the over-all objective of the proposed amendment—to expand local autonomy to the extent necessary for the solution of increasing local problems and to afford an opportunity for charter counties to do away with their present antiquated governmental structure.

#### CONCLUSION

A definite need exists in Florida to reorganize and modernize the present county governmental structure. Through the existing home rule amendment, the traditional rigid structure of county government in Dade County has been modernized in an attempt to provide that county with adequate power to solve its local problems. Several other Florida counties are exploring the desirability of expanding this existing home rule amendment. The creation of the Constitutional Revision Commission is a clear indication that the time is appropriate for enactment of a self-executing constitutional home rule amendment that will recognize the reality of urban growth by providing for county reorganization determined by the county itself according to its own local needs. The proposed amendment is designed to accomplish this purpose.

C. WAYNE ALFORD

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#### APPENDIX I

##### DADE COUNTY HOME RULE AMENDMENT

Article VIII, Section 11:

(1) The electors of Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida, under which the Board of County Commissioners of Dade County shall be the governing body. This charter:

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123. See APPENDIX II, §1 (b).

(a) Shall fix the boundaries of each county commission district, provide a method for changing them from time to time, and fix the number, terms and compensation of the commissioners, and their method of election.

(b) May grant full power and authority to the Board of County Commissioners of Dade County to pass ordinances relating to the affairs, property and government of Dade County and provide suitable penalties for the violation thereof; to levy and collect such taxes as may be authorized by general law and no other taxes, and to do everything necessary to carry on a central metropolitan government in Dade County.

(c) May change the boundaries of, merge, consolidate, and abolish and may provide a method for changing the boundaries of, merging, consolidating and abolishing from time to time all municipal corporations, county or district governments, special taxing districts, authorities, boards, or other governmental units whose jurisdiction lies wholly within Dade County, whether such governmental units are created by the Constitution or the Legislature or otherwise, except the Dade County Board of County Commissioners as it may be provided for from time to time by this home rule charter and the Board of Public Instruction of Dade County.

(d) May provide a method by which any and all of the functions or powers of any municipal corporation or other governmental unit in Dade County may be transferred to the Board of County Commissioners of Dade County.

(e) May provide a method for establishing new municipal corporations, special taxing districts, and other governmental units in Dade County from time to time and provide for their government and prescribe their jurisdiction and powers.

(f) May abolish and may provide a method for abolishing from time to time all offices provided for by Article VIII, Section 6, of the Constitution or by the Legislature, except the Superintendent of Public Instruction and may provide for the consolidation and transfer of the functions of such offices, provided, however, that there shall be no power to abolish or impair the jurisdiction of the Circuit Court or to abolish any other court provided for by this Constitution or by general law, or the judges or clerks thereof although such charter may create new courts and judges and clerks thereof with jurisdiction to try all offenses against ordinances passed by the Board of County Commissioners of Dade County and none of the other courts provided for by this Constitution or by general law shall have original jurisdiction to try such offenses, although the charter may confer appellate jurisdiction on such courts, and provided further that if said home rule charter shall abolish any county office or offices as authorized herein, that said charter shall contain adequate provision for the carrying on of all functions of said office or offices as are now or may hereafter be prescribed by general law.

(g) Shall provide a method by which each municipal corporation in Dade County shall have the power to make, amend, or repeal its own charter. Upon adoption of this home rule charter by the electors this method shall be exclusive and the Legislature shall have no power to amend or repeal the charter of any municipal corporation in Dade County.

(h) May change the name of Dade County.

(i) Shall provide a method for the recall of any commissioner and a method for initiative and referendum, including the initiation of and referendum on ordinances and the amendment or revision of the home rule charter, provided, however, that the power of the Governor and Senate relating to the suspension and removal of officers provided for in this Constitution shall not be impaired, but shall extend to all officers provided for in said home rule charter.

(2) Provision shall be made for the protection of the creditors of any governmental unit which is merged, consolidated, or abolished or whose boundaries are changed or functions or powers transferred.

(3) This home rule charter shall be prepared by a Metropolitan Charter Board created by the Legislature and shall be presented to the electors of Dade County for ratification or rejection in the manner provided by the Legislature. Until a home rule charter is adopted the Legislature may from time to time create additional Charter Boards to prepare charters to be presented to the electors of Dade County for ratification or rejection in the manner provided by the Legislature. Such Charter, once adopted by the electors, may be amended only by the electors of Dade County and this charter shall provide a method for submitting future charter revisions and amendments to the electors of Dade County.

(4) The County Commission shall continue to receive its pro rata share of all revenues payable by the state from whatever source to the several counties and the state of Florida shall pay to the Commission all revenues which would have been paid to any municipality in Dade County which may be abolished by or in the method provided by this home rule charter; provided, however, the Commission shall reimburse the comptroller of Florida for the expense incurred if any, in the keeping of separate records to determine the amounts of money which would have been payable to any such municipality.

(5) Nothing in this section shall limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties in the state of Florida or to any municipality in Dade County and any other one or more municipalities of the state of Florida, and the home rule charter provided for herein shall not conflict with any provision of this Constitution nor of any applicable general laws now applying to Dade County and any other one or more counties of the state of Florida except as expressly authorized in this section nor shall any ordinance enacted in pursuance to said home rule charter conflict with this Constitution or any such applicable general law except as expressly authorized herein, nor shall the charter of any municipality in Dade County conflict with this Constitution or any such applicable general law except as expressly authorized herein, provided however that said charter and said ordinances enacted in pursuance thereof may conflict with, modify or nullify any existing local, special or general law applicable only to Dade County.

(6) Nothing in this section shall be construed to limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties of the state of Florida or to any municipality in Dade County and any other one or more municipalities of the state of Florida relating to county or municipal affairs and all such general laws shall apply to Dade County and to all municipalities therein to the same extent as if this section had not been adopted and such general laws shall supersede any part or portion of the home rule charter provided for herein in conflict therewith and shall supersede any provision of any ordinance enacted pursuant to said charter and in conflict therewith, and shall supersede any provision of any charter of any municipality in Dade County in conflict therewith.

(7) Nothing in this section shall be construed to limit or restrict the power and jurisdiction of the Railroad and Public Utilities Commission or of any other state agency, bureau or commission now or hereafter provided for in this constitution or by general law and said state agencies, bureaus and commissions shall have the same powers in Dade County as shall be conferred upon them in regard to other counties.

(8) If any section, subsection, sentence, clause or provisions of this section is held invalid as violative of the provisions of Section 1 Article XVII of this Constitution the remainder of this section shall not be affected by such invalidity.



(9) It is declared to be the intent of the Legislature and of the electors of the state of Florida to provide by this section home rule for the people of Dade County in local affairs and this section shall be liberally construed to carry out such purpose, and it is further declared to be the intent of the Legislature and of the electors of the state of Florida that the provisions of this Constitution and general laws which shall relate to Dade County and any other one or more counties of the state of Florida or to any municipality in Dade County and any other one or more municipalities of the state of Florida enacted pursuant thereto by the Legislature shall be the supreme law in Dade County, Florida, except as expressly provided herein and this section shall be strictly construed to maintain such supremacy of this Constitution and of the Legislature in the enactment of general laws pursuant to this Constitution.

## APPENDIX II

### PROPOSED COUNTY HOME RULE AMENDMENT

1. The electors of any county are granted the power to adopt, amend, and repeal a home rule charter of government for such county. The adoption, amendment, or repeal of a charter shall be proposed either by a resolution of the Board of County Commissioners or by the legislative body of the county, or by a charter commission of not less than seven members elected by the qualified electors of the county from their members at large, pursuant to a petition for such election bearing the signature of at least ten (10) per centum of the qualified electors of the county and filed with the clerk of the circuit court of the county. The proposed adoption, amendment, or repeal of a charter shall be submitted to the electors of said county and if a majority of such electors voting thereon ratify the same, it shall become the charter of said county, and shall become the organic law thereof. This charter:

(a) Shall provide for an elective legislative body in which shall be vested full power and authority to pass ordinances relating to the affairs, property, and government of the county, including, without limitation or restriction because of enumeration, the subject matter of water, sewers, streets and highways, transportation, parks and playgrounds, forms of local government, eminent domain, zoning, local health, safety and welfare, and to carry out these powers throughout the county and for such purposes to levy and collect all taxes authorized to be levied by municipalities or by general law and no other, and to receive from the state any revenues collected in unincorporated areas on the same basis as municipalities, and to do everything necessary to carry on a central county government. A home rule charter county shall, in addition to these powers and except as otherwise provided in this section, have all powers conferred by general laws upon all counties.

(b) Shall provide for the form and organization of the county government and shall provide directly, or by its authority, for the number, election, or appointment, qualifications, tenure, compensation, powers and duties of such officers as the county deems necessary.

(c) May provide for the abolishment, consolidation and transfer, in whole or any part thereof, of the function of all offices provided for by article VIII, section 6, of this constitution and any other governmental units whose jurisdiction lies wholly within the county, whether such governmental units are created by the constitution or the legislature or otherwise, except the Superintendent and Board of Public Instruction.

(d) May provide a method for establishing new municipal corporations and other governmental units within the county; for consolidating or abolishing all municipal corporations within the county; by which any and all of the functions or powers of any municipal corporation within the county may be transferred to the legislative body of the county.

(e) May provide a method of each municipal corporation within the county to make, amend, or repeal its own charter. Upon adoption of this home rule charter by the electors, the state legislature shall have no power to amend or repeal the charter of any municipal corporation within the county. In case of conflict between the exercise of powers granted to the county by this county charter and the exercise of powers granted to the municipalities by the power to make, amend, and/or repeal their own charters, the exercise of power by the county shall prevail.

(f) May create new courts and judges and clerks thereof with original jurisdiction to try all offenses against ordinances passed by the legislative body of the county, provided however that there shall be no power to abolish or impair the jurisdiction of the circuit court or any other court provided by this constitution or by general law, although the charter may confer appellate jurisdiction on such courts.

2. Nothing in this section shall be construed to limit or restrict the power of the Governor and Senate relating to the suspension and removal of officers provided for in this constitution and shall extend to all officers provided for in said home rule charter.

3. Nothing in this section shall be construed to limit or restrict the power and jurisdiction of the Public Service Commission or any other state agency, bureau or commission now or hereafter provided for in this constitution or by general law and said state agencies, bureaus and commissions shall have the same powers in the home rule county as shall be conferred upon them in regard to other counties in matters relating to state-wide concern.

4. Nothing in this section shall limit or restrict the power of the legislature to enact general laws which shall in their terms and in their effect apply to other counties and counties governed by this section, and such general laws shall supersede any home rule charter provision or ordinance enacted pursuant thereto, and shall be the supreme law in such charter county or municipality. Any home rule charter provision or ordinance enacted pursuant thereto shall not conflict with any provision of this constitution nor with any applicable laws which are general in terms and effect except as expressly authorized herein, and in case of conflict between express authorization and applicable constitutional provisions or such general laws, such express authorization shall be liberally construed; the legislature shall not pass any law relating to county or municipal affairs which will be special or local in its terms or in its effect, nor shall any existing special or local law applicable to the charter county or municipality have any application or effect within such county or municipality.

5. If any section, subsection, sentence, clause or provision of this section is held invalid as violative of the provisions of section 1, article XVII of this constitution the remainder of this section shall not be affected by such invalidity.

6. It is declared to be the intent of the legislature and the electors of the State of Florida to provide by this section the largest measure of self-government in accordance with the spirit of home rule and it is hereby declared that this section shall be liberally construed in favor of the rights, powers, and privileges of counties, to promote the general welfare, peace, good order, and propriety of such counties and the inhabitants thereof.