

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 88

SPONSOR: Governmental Oversight & Productivity, Comprehensive Planning, Local & Military Affairs
Committees and Senator Casas

SUBJECT: Hialeah County

DATE: April 16, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	<u>Hayes</u>	<u>Hadi</u>	<u>FP</u>	<u>Favorable</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill creates Hialeah County out of the portion of Miami-Dade County that now comprises the City of Hialeah.

This bill creates section 7.275 and amends section 7.13, Florida Statutes.

II. Present Situation:

History of Counties in Florida

While the provisional government and territorial councils provided for county forms of government in Florida, it was not until 1861 that counties were provided some form of constitutional status. The new Constitution of 1885 addressed counties and municipalities in separate articles, with counties recognized as legal subdivisions of the state. In addition, the Legislature was granted the power to create new counties and alter county boundaries. By 1925, county boundaries were fairly fixed and have, with a few minor changes, remained that way today. There are currently 67 counties in Florida.

In 1956, an amendment to the 1885 Florida Constitution provided that Dade County had the authority "to adopt, revise and amend from time to time a home rule charter government for Dade County." The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status as it is the only county with its charter included in the State Constitution.

The authors of the revised Florida Constitution of 1968 amended the provision in the 1885 Constitution relating to county formation and included the following clause:

The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished, or changed by law, with provision for payments or apportionment of the public debt.¹

The Constitution also provided for general “home rule” authority for counties. In addition, ch. 125, F.S., outlines the powers and duties of counties. There is no provision in the statutes addressing the creation and abolishing of counties.

Recent Research on the Creation of New Counties

In March 1995, the Florida Institute of Government published *The Creation of New Counties in Florida: History and Future Prospects*. The author concluded that the Legislature must decide whether the creation of a new county is in the best interest of the state and its residents, weighing the impact of creating an additional county on the state’s governmental structure against the value of the implied right of citizens to reform government.

The paper proposed a set of standards to be applied when evaluating whether to create a new county. These standards are as follows:

- The new county should not significantly affect the “parent” county’s ability to equitably finance and provide county services to their remaining residents.
- The essential demographic characteristics of the new county should be similar to the remaining county. This is necessary to prevent the creation of counties solely on the grounds of income, race, ethnicity and age. Each of these characteristics is likely to be linked to the county’s tax base and the demand for services.
- The general tax base of the new county should not be significantly different from that of the parent county. This standard is necessary to prevent the partitioning of a county into a rich new county and a poorer parent county. Without this standard, the creation of a new county could make it more expensive for the parent county to continue to provide the same level and quality of county services.
- The new county should be an area separate and distinct from the existing county.

The Advisory Council on Intergovernmental Relations (ACIR, which was renamed the Legislative Advisory Council on Intergovernmental Relations, or LCIR, in 1996) contributed to the research by publishing *ACIR Comments on the Formation of Counties* in May 1995. The report offered additional standards to minimize the unanticipated negative consequences of creating new counties, to include:

- setting a minimum population size for the new and parent counties, thereby ensuring each has the financial reserves and tax base necessary to provide the services required under current law;
- establishing a population density requirement;
- requiring proposed counties to become charter counties, thereby establishing how the new county would interact with all affected local governments, including the parent county and school district, and county constitutional officers;

¹Article VIII, s. 1 of the State Constitution.

- requiring a feasibility study, which would provide:
 - background information on the area within the proposed boundaries of the new county;
 - identification of problems or difficulties confronting the area residents who would reside within the boundaries of the new county and an explanation of why the formation of a new county is the only or the best available method to address the identified problems;
 - proposed budget expenditures, and revenue sources for the new county;
 - a five year projection of revenue sources and amounts, and proposed budget expenditures for the new county;
 - a letter of intent or memorandum of understanding from all local governments identified as provider of services to the new county; the local government should verify that it is prepared to provide the identified service for the amount specified in the budget expenditure section of the feasibility study;
 - an analysis of the new county's fiscal impact on municipalities within the "parent" county and within the new county;
 - an analysis of new county's fiscal and legal impact on all affected special districts contained in part or completely within the boundaries of the "parent" county and the new county;
 - an analysis of fiscal impact on new county's formation on all affected state shared revenue programs and affected local option taxes;
 - identification of all pre-existing interlocal agreements affected by the formation of the new county and a brief explanation on how the new county proposes to mitigate those impacts;
 - a time-line schedule that specifies dates of critical events, including the date the Legislature approves the formation of the new county, the date of referendum for the county formation, date of local elections, and the date(s) for transfer of specified responsibilities from the "parent" county to the new county; and
 - identification of the potential costs incurred by the state as a result of the new county's creation.

The last time the Legislature created a new county was in 1925 (Gilchrist County) and the impact on both the new and parent counties was relatively minimal compared to the impact of a similar action today. In 1965, legislation was proposed to create "Kennedy County" out of a portion of Dade County. The bill included a number of notable provisions:

- a referendum approval requirement by the voters of the proposed county;
- designation of the city of Hialeah as the temporary county seat;
- creation of a school district and county constitutional offices, and transfer of associated public records;
- proration of indebtedness of county and school districts; and
- transfer of county convicts whose offenses were committed within the territory included in Kennedy County.

III. Effect of Proposed Changes:

Section 1 creates s. 7.275, F.S., to define the boundary lines of the proposed Hialeah County.

Section 2 amends s. 7.275, F.S., to define the proposed boundary lines for Miami-Dade County, less the land defined as Hialeah County in section 1. It appears that an enclave of Miami-Dade County is left in the proposed Hialeah County boundary.

Section 3 transfers all property owned by Dade County located in Hialeah County to Hialeah County on the effective date of this act.

Personal property owned by Dade County is transferred in an amount equal to the proportion of the value of property in the proposed Hialeah County relative to the value of property in Miami-Dade County as of the previous January 1. Hialeah County must assume responsibility for the obligations of Miami-Dade County, as of the effective date of this bill, to the proportion of the value of property in the proposed Hialeah County bears to the value of property in Miami-Dade County as of the previous January 1.

Section 4 directs the Miami-Dade County Board of County Commissioners to call and hold a special election that coincides with the 2000 primary and general election to select officers for Hialeah County. The costs in excess of the cost that would otherwise be incurred for the election will be reimbursed to Miami-Dade County. Electors in the proposed Hialeah County are declared eligible to vote in this election.

Section 5 incorporates an important state interest declaration to bring the bill into compliance with s. 18, Art. VII, State Constitution, relative to unfunded mandates on counties and cities.

Section 6. provides that the act will take effect only upon the approval by a majority vote of qualified electors of the proposed Hialeah County, in an election to be held on September 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

As discussed below in other sections, there is every reason to believe that the cumulative effect of this proposal will result in a more than ten cents per capita impact on the State of Florida. All per capita distribution of formula-based revenues to counties will be influenced by the creation of a sixty-eighth county.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The County Attorney for Miami-Dade County opined that this proposed legislation creating a new county lying wholly within Miami-Dade County's current boundaries contravenes the

Home Rule Amendment and thus, would be unconstitutional. However, the State Constitution provides the Legislature the authority to create new counties and alter the boundaries of existing counties.²

Additional transition issues with significant legal impact will have to be addressed in at least two areas: *first*, Hialeah County must be substituted as a party in interest in any legal proceeding affecting administrative and judicial matters then in process in which the original venue was Dade County; and, *second*, at least a temporary set of ordinances must be enacted, or existing ordinances preserved for a time certain, to provide for the transition of police power from Dade to Hialeah Counties. Absent that transition set of local laws, there may be no activity of a previous criminal nature in Dade County otherwise prosecuted as an ordinance violation which is available for prosecution in Hialeah County. There will be other more practical effects over time, especially with the fuller funding of Article V judicial branch costs and the establishment of a county-based infrastructure for civil and criminal adjudication.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

While the magnitude of the financial impact is open to future debate and measurement, some indication of its direction is already discernible. Fees for service originally established by Dade County ordinance will have to be addressed in the successor county to provide for an orderly transition of revenues, if, in fact, the local governing authority determines them to be appropriate in kind or in scale.

Since 1972 the State of Florida has shared its revenues with local governments and provided for a variety of formulae through which these funds are distributed. For cities these shared revenues include the cigarette tax (ch. 210, F.S.), motor and special fuel tax (ch. 206, F.S.), and the alternative fuels tax (ch. 206, F.S.). For counties these shared revenues encompass the intangibles tax (ch. 199, F.S.) and the cigarette tax (ch. 210, F.S.). The cigarette tax has been a flat to declining revenue source for several years; motor fuel and intangible tax collections have experienced sustained increases over the same periods. Adding another form of government will provide Hialeah County with a direct and a possibly more advantageous distribution, to the slight detriment of other counties.

Another consequence of this change, but not addressed in the legislation, is the creation of an additional school board. That addition would alter the funding formula in the Florida Education Finance Program for operating dollars and in the Public Educational Capital Outlay program for non-operating dollars. A related consequence would be visited upon the Dade County School Board in the form of providing services for Hialeah County students having to attend schools in locations still outside the boundaries of the new county until a new county infrastructure could be established. All of this could be addressed in the form of time-certain interlocal agreements in which the responsible authorities and funding

²Article VIII, s. 1, State Constitution.

responsibilities are identified. But the establishment of a separate school board is a matter which any Board of County Commissioners cannot itself address.

B. Private Sector Impact:

Individuals and businesses located in the new county will have to establish new “governmental” relationships. Zoning and permitting will have to be integrated within an overall comprehensive planning framework at the same time a separate infrastructure is being created for the county-based apparatus. This could prove disruptive for that portion of the business community which most closely tracks local government permitting matters.

C. Government Sector Impact:

Organization: Hialeah County will incur significant expenses in establishing county constitutional offices and in the recalculation of millage for the support of those offices and related governmental functions. The bill does not appear to permit Hialeah County to be a consolidated form of government, such as that provided in Duval/Jacksonville which permits combination of the separate public offices allocated each to the city of Hialeah and Hialeah County.

Financial Administration: Charter counties are given specific authority in ch. 166, F.S., to levy a municipal utility tax up to 10 percent on purchases of electricity, gas, and water, telephone or telegraph service. The bill does not give charter status to Hialeah County which would then permit this levy to be imposed within its boundaries. Correspondingly, Dade County would lose that pro rata share of its existing levy permitted under current law.

Distributed Revenue Sources: Hialeah County would receive \$446,500 annually in the guaranteed county distribution of pari-mutuel taxes. This extra, sixty-eighth county distribution, would act as a negative offset of a like amount to the state General Revenue Fund. Pari-mutuel taxes have been on a sustained decline for several years and are at one-half of their gross collections from the same fiscal period six years earlier.

Employment and Benefits: County governments are compulsory members of the Florida Retirement System (FRS). The creation of Hialeah County and the development of a personnel infrastructure will cause employees to be participants in this pension system. If a sheriff’s department is created, the uniformed and sworn deputies will be classified as appointees rather than employees. As such they will have limited collective bargaining rights, unless otherwise established by charter or special legislative act.

Local Option Revenue Sources: A variety of local option taxes and surtaxes are available to Hialeah County through ordinary and extraordinary vote. Such levies affect indigent health care, tourism, school capital outlay, convention development, local option fuels, and infrastructure. Dade County would lose the base for the application of its unique food/beverage/hotel-motel taxes in Hialeah County. The Charter County Transit System Surtax will lose its application within the new county only if Dade County chooses to impose the tax. Since these receipts are used in part for the amortization of debt, there may be some untoward effect upon the bond covenants in certain economic circumstances.

The above represent only a sampling of the tax and spending ramifications of this proposal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

At this time, no feasibility studies have been completed to measure the fiscal and service impacts of creating Hialeah County.

The most recent state level experience in the establishment of significant infrastructure has been the creation of Florida Gulf Coast University. The process undertaken by the Board of Regents may be helpful for further exploration of the scope of issues involved in the creation of a self-governing entity.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
