

**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 61

Relating to: LOCAL GOVERNMENT, Municipalities

Introducer(s): Commissioner Smith

Article/Section affected: Art. VIII, Sec. 2

Date: November 20, 2017

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

I. SUMMARY:

The Proposal amends Section 2 of Article VIII of the Florida Constitution to provide that any law enacted by the Legislature that restricts the home rule powers granted to municipalities must meet certain criteria. Any law which restricts power granted to a municipality must:

- 1) Pass by 2/3 vote of each house of the Legislature;
- 2) State with specificity the statewide necessity that justifies the restriction;
- 3) Be no broader than necessary to accomplish the statewide necessity expressed;
- 4) Contain only a single restriction of a granted power;
- 5) Relate to only one subject; and
- 6) Be considered by at least one committee of each house, who must notice consideration of the legislation at least 48 hours before consideration.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

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.¹ 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.² However, municipal ordinances

¹ F.S. §166.021(3)

² F.S. §166.021(1)

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.³

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.⁴

B. EFFECT OF PROPOSED CHANGES:

The proposal establishes a process that the Legislature must follow when enacting restrictions on the powers granted to municipalities in Article VIII, Section 2(b). The proposal follows similar processes established in the Florida 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 municipal home rule authority by filing a standalone bill that only contains one preemption of the powers granted in Article VIII, Section 2(b). The law must relate to only one subject. The law must be tailored to be no broader than necessary to accomplish the state-wide necessity for the preemption. The law must be considered in at least one committee of each house, and each house must publicly notice the consideration of the law no less than forty-eight hours prior to its consideration. Lastly, the law must pass each house by a two-thirds vote.

³ Lake Worth Utils. Auth. v. Lake Worth, 468 So. 2d 215 (Fla. 1985)

⁴ Fla. Const. Art VII, §18(a)

C. FISCAL IMPACT:

The proposal has an indeterminate fiscal impact. The proposal could require indirect costs because of litigation by the Legislature and municipalities to determine the scope of the constitutional amendment.

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:

Possible issue regarding “restricts power granted to a municipality” where courts may be needed to determine the scope of this language. The courts could interpret this to mean that any bill which touches on municipal government or powers in any way must pass with the heightened procedures set forth in the proposal.

May require clarification regarding what “This subsection is self-executing” means. May consider amending to language in conformity to other amendments such as “This amendment becomes effective upon approval by the electors” or simply omitted altogether.