

**The Constitution Revision Commission**  
**COMMITTEE MEETING EXPANDED AGENDA**

**LOCAL GOVERNMENT**  
**Commissioner Donalds, Chair**  
**Commissioner Nocco, Vice Chair**

**MEETING DATE:** Wednesday, November 29, 2017  
**TIME:** 8:30 a.m.—12:00 noon  
**PLACE:** 401 Senate Office Building, Tallahassee, Florida

**MEMBERS:** Commissioner Donalds, Chair; Commissioner Nocco, Vice Chair; Commissioners Gainey, Solari, Stemberger, Timmann, and Washington

TAB	PROPOSAL NO. and INTRODUCER	PROPOSAL DESCRIPTION and COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>P 61</b> Smith	LOCAL GOVERNMENT, Municipalities; Section 2 of Article VIII of the State Constitution to provide that any law enacted by the Legislature that restricts the home rule powers granted to municipalities must meet certain criteria.  LO LE	Temporarily Postponed  11/29/2017 Temporarily Postponed



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.<sup>3</sup>

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.<sup>4</sup>

## **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.

---

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

<sup>4</sup> 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.

By Commissioner Smith

smithc-00071-17

201761\_\_

1                   A proposal to amend  
2           Section 2 of Article VIII of the State Constitution to  
3           provide that any law enacted by the Legislature that  
4           restricts the home rule powers granted to  
5           municipalities must meet certain criteria.

6  
7 Be It Proposed by the Constitution Revision Commission of  
8 Florida:

9  
10           Section 2 of Article VII of the State Constitution is  
11 amended to read:

12                                   ARTICLE VII  
13                                   LOCAL GOVERNMENT

14           SECTION 2. Municipalities.—

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

19           (b) POWERS. Municipalities shall have governmental,  
20 corporate and proprietary powers to enable them to conduct  
21 municipal government, perform municipal functions and render  
22 municipal services, and may exercise any power for municipal  
23 purposes except as otherwise provided by law. A law enacted by  
24 the legislature which restricts power granted to a municipality  
25 under this subsection must:

26                   (1) Pass by a two-thirds vote of each house of the  
27 legislature;

28                   (2) State with specificity the statewide necessity  
29 justifying the restriction;

30                   (3) Be no broader than necessary to accomplish the  
31 statewide necessity expressed;

32                   (4) Contain only one restriction of a power granted herein;

smithc-00071-17

201761\_\_

33       (5) Relate to one subject; and  
34       (6) Be considered by at least one committee of each house,  
35 each of which must publicly notice the legislation for at least  
36 forty-eight hours before its consideration.

37  
38 Each municipal legislative body shall be elective. This  
39 subsection is self-executing.

40       (c) ANNEXATION. Municipal annexation of unincorporated  
41 territory, merger of municipalities, and exercise of extra-  
42 territorial powers by municipalities shall be as provided by  
43 general or special law.



Ì4085085Î408508

CRC ACTION

Commissioner

- .
- .
- .
- .
- .
- .

---

The Committee on Local Government (Solari) recommended the following:

**CRC Amendment (with title amendment)**

Delete lines 10 - 13

and insert:

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

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 1. Counties.-

(a) POLITICAL SUBDIVISIONS. The state shall be divided by

Ì4085085Î408508

11 law into political subdivisions called counties. Counties may be  
12 created, abolished or changed by law, with provision for payment  
13 or apportionment of the public debt.

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

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

20 (d) COUNTY OFFICERS. There shall be elected by the electors  
21 of each county, for terms of four years, a sheriff, a tax  
22 collector, a property appraiser, a supervisor of elections, and  
23 a clerk of the circuit court; except, when provided by county  
24 charter or special law approved by vote of the electors of the  
25 county, any county officer may be chosen in another manner  
26 therein specified, or any county office may be abolished when  
27 all the duties of the office prescribed by general law are  
28 transferred to another office. When not otherwise provided by  
29 county charter or special law approved by vote of the electors,  
30 the clerk of the circuit court shall be ex officio clerk of the  
31 board of county commissioners, auditor, recorder and custodian  
32 of all county funds.

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

Ì4085085Î408508

40 be elected as provided by law.

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

51 (1) Pass by a two-thirds vote of each house of the  
52 legislature;

53 (2) State with specificity the statewide necessity  
54 justifying the restriction;

55 (3) Be no broader than necessary to accomplish the  
56 statewide necessity expressed;

57 (4) Contain only one restriction of a power granted herein;

58 (5) Relate to one subject; and

59 (6) Be considered by at least one committee of each house,  
60 each of which must publicly notice the legislation for at least  
61 forty-eight hours before its consideration.

62 (g) CHARTER GOVERNMENT. Counties operating under county  
63 charters shall have all powers of local self-government not  
64 inconsistent with general law, or with special law approved by  
65 vote of the electors. The governing body of a county operating  
66 under a charter may enact county ordinances not inconsistent  
67 with general law. The charter shall provide which shall prevail  
68 in the event of conflict between county and municipal

Ì4085085Î408508

69 ordinances. A law enacted by the Legislature which restricts  
70 power granted to a charter county under this subsection must:

71 (1) Pass by a two-thirds vote of each house of the  
72 legislature;

73 (2) State with specificity the statewide necessity  
74 justifying the restriction;

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

77 (4) Contain only one restriction of a power granted herein;

78 (5) Relate to one subject; and

79 (6) Be considered by at least one committee of each house,  
80 each of which must publicly notice the legislation for at least  
81 forty-eight hours before its consideration.

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

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

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

91 (k) COUNTY SEAT. In every county there shall be a county  
92 seat at which shall be located the principal offices and  
93 permanent records of all county officers. The county seat may  
94 not be moved except as provided by general law. Branch offices  
95 for the conduct of county business may be established elsewhere  
96 in the county by resolution of the governing body of the county  
97 in the manner prescribed by law. No instrument shall be deemed

Ì4085085Î408508

98 recorded until filed at the county seat, or a branch office  
99 designated by the governing body of the county for the recording  
100 of instruments, according to law.

101  
102 ===== T I T L E A M E N D M E N T =====

103 And the title is amended as follows:

104 Delete lines 2 - 4

105 and insert:

106 Sections 1 and 2 of Article VIII of the State Constitution  
107 to provide that any law enacted by the Legislature that  
108 restricts the home rule powers granted to counties and



P0061

PROPOSAL by Smith;

LOCAL GOVERNMENT, Municipalities.

10/31/17 Filed

11/10/17 Referred to Local Government; Legislative

11/16/17 On Committee agenda-- Local Government, 11/29/17, 8:30 am, 401 Senate Office Building,  
Tallahassee, Florida --Temporarily Postponed