

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1490

INTRODUCER: Senator Garcia

SUBJECT: County Constitutional Officers

DATE: April 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1490 prohibits a county from creating or authorizing any office, special district, or governmental unit to exercise any power or authority allocated by the Florida Constitution or general law exclusively to a county officer. A county commissioner who votes in favor of a proposed ordinance for such a creation or expansion of powers commits misfeasance or malfeasance in office.

The bill provides that if a county adopts such an ordinance, the state may withhold all or part of any distribution under local government revenue sharing.

The bill allows a sheriff, tax collector, property appraiser, supervisor of elections, clerk of the court, or any resident of a county to bring an action in circuit court against a county for the adoption of such an ordinance. The bill provides that a court may award declaratory and injunctive relief, damages, and costs, including reasonable attorney fees to a prevailing party other than the county.

The bill also prohibits a county from including within their budget funding for any office, special district, or governmental unit exercising any power or authority allocated exclusively to a county officer by the Florida Constitution or general law.

The bill takes effect July 1, 2023.

II. Present Situation:

County Constitutional Officers

The Florida Constitution requires the Legislature to divide the state into counties.¹ Statutes divide the state into 67 counties, establishing their boundaries by providing the exact legal description of each county.² The Florida Constitution recognizes two types of county governments: those operating under a county charter and those without a charter.³ Non-charter county governments may exercise those powers of self-government that are provided by general or special law.⁴ Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.⁵

The electors of each county elect county constitutional officers (the sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court) to a four-year term.⁶ Before 2018, a county charter could provide an alternative method of selecting county constitutional officers or abolish those offices, as long as the duties of the office prescribed by general law were transferred to another office.⁷ During the 2018 general election, voters approved Amendment 10, requiring all county constitutional officers to be elected to a four-term year and prohibiting the transfer of those duties to another office.⁸ Most counties were required to comply with this requirement by January 5, 2021, while Broward and Miami-Dade Counties were given until January 7, 2025.⁹

Local Government Revenue Sharing Eligibility

Each county and municipality must receive revenue sharing sufficient to meet its obligations as a result of pledges, assignments, or trusts entered into which obligated funds received from revenue sources or proceeds which by terms of the Revenue Sharing Act of 1972 are distributed out of revenue sharing trust funds.¹⁰ In any fiscal year a county or municipality may receive revenue sharing beyond the minimum entitlement amount, if the county or municipality does all of the following:

- Reports its finances for its most recently completed fiscal year to the Department of Financial Services;
- Makes provisions for annual post-audits of its financial accounts in accordance with law;
- Levies an ad valorem tax, exclusive of taxes levied for debt service or other voter-authorized special millages, or a mix of ad valorem taxes, occupational license tax, utility tax, and remittances from the county to produce revenue equivalent to a millage rate of 3 mills based on the taxable values certified by the property appraiser in the latter of 1973 or the year in which the municipality was incorporated;

¹ Art. VIII, s. 1(a), FLA. CONST.

² See ch. 7, F.S.

³ Art. VIII, ss. 1(f), (g), FLA. CONST.

⁴ Art. VIII, s. 1(f), FLA. CONST.

⁵ Art. VIII, s. 1(g), FLA. CONST.

⁶ Art. VIII, s. 1(d), FLA. CONST.

⁷ Art. VIII, s. 1(d), FLA. CONST. (2018).

⁸ See art. VIII, s. 1(d), FLA. CONST.

⁹ Art. VIII, s. 6(g), FLA. CONST.

¹⁰ Section 218.21(7), F.S. This amount is referred as the “minimum entitlement.”

- Certifies certain information relating to its law enforcement officers, firefighters, and dependent special districts.¹¹

County Budget System

The finances of each county in the state are subject to a budget system established by general law.¹² Each county is required to prepare, approve, adopt, and execute a budget for each fiscal year. At a minimum, the budget must show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit which are least as detailed as the categories required for the county's annual financial report to the Department of Financial Services.¹³

Each county's budget must:

- Be prepared, summarized, and approved by the board of county commissioners;
- Be balanced, so that the total of the estimated receipts available from taxation and other sources, including balances brought forward from prior fiscal years, equals the total of appropriations for expenditures and reserves;¹⁴
- Contain a reserve for contingencies which does not exceed 10 percent of the total appropriations and for cash balances to be carried over for the purpose of paying expenses from October 1 of the next fiscal year until the revenues for that year are expected to be available;¹⁵
- Make an appropriation for outstanding indebtedness in order to provide for the payment of vouchers that have been incurred in and charged against the budget for the current year or a prior year, but that are expected to be unpaid at the beginning of the next fiscal year; and
- Provide that any surplus arising from an excess of the estimated cash balance over the estimated amount of unpaid obligations to be carried over in a fund at the end of the current fiscal year may be transferred to any of the other funds of the county, and the amount so transferred shall be budgeted as a receipt to such other funds.¹⁶

III. Effect of Proposed Changes:

Section 1 creates s. 125.691, F.S., to prohibit a county from creating or expanding the powers or authority of any office, special district, or governmental unit if the purpose of such creation or expansion is to exercise any power or authority allocated exclusively to a county officer by the Florida Constitution or general law. The bill provides that a county commissioner who votes in favor of a proposed ordinance for such a creation or expansion of powers commits misfeasance or malfeasance in office.¹⁷

¹¹ 218.23(1)(a)-(f), F.S.

¹² See chapter 129, F.S.

¹³ Section 129.01(1), F.S.

¹⁴ Budgeted receipts must include 95 percent of all receipts reasonably anticipated from all sources, including taxes to be levied and 100 percent of the amount of the balances estimated to be brought forward at the beginning of the fiscal year. Section 129.01 (2)(b), F.S.

¹⁵ The cash balance reserve may not exceed 20 percent of total appropriations. Section 129.01(2)(c)2., F.S.

¹⁶ Section 129.01(2), F.S.

¹⁷ The remedy for which is suspension by the Governor by executive order. Art. IV, s. 7, FLA. CONST.

The bill provides that if a county adopts such an ordinance, the state may withhold all or part of any distribution under local government revenue sharing.

The bill allows a sheriff, tax collector, property appraiser, supervisor of elections, clerk of the court, or any resident of a county to bring an action in circuit court against a county for the adoption of such an ordinance. The bill provides that a court may award declaratory and injunctive relief, damages, and costs. The bill allows courts to award reasonable attorney fees to prevailing party but may not make such an award if the county is the prevailing party.

Section 2 amends s. 129.01, F.S., to prohibit a county from including within their budget funding for any office, special district, or governmental unit exercising any power or authority allocated exclusively to a county officer by the Florida Constitution or general law.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 129.01 and 129.021 of the Florida Statutes.
This bill creates section 125.691 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.