

**STORAGE NAME:** h1291a.ca

**DATE:** April 4, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
COMMUNITY AFFAIRS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

**BILL #:** HB 1291

**RELATING TO:** Brevard County (Creating the City of Suntree)

**SPONSOR(S):** Representative Futch

**COMPANION BILL(S):** SB 1808 (i)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) COMMUNITY AFFAIRS YEAS 7 NAYS 0
  - (2) FINANCE & TAXATION
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

This bill authorizes a referendum for the creation of the City of Suntree and provides for its charter (See SECTION-BY-SECTION RESEARCH section for the exact contents of the charter).

According to the attached Economic Impact Statement, there is a projected loss of revenue to Brevard County of about \$1.7 million. This may be partially offset through contract for service agreements between Brevard County and the new City of Suntree. The other cities in Brevard County will also experience a loss of revenue because of the redistribution of revenue sharing funds (See attached table from the Department of Revenue). No increase or decreased revenues from taxpayers are anticipated.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**Chapter 165, Florida Statutes**

Florida law governing the formation and dissolution of municipal governments is found in chapter 165, F.S., the "Formation of Municipalities Act." The stated purpose of the "Formation of Municipalities Act" is to provide standards, direction, and procedures for the incorporation of municipalities, and to achieve the following goals:

- Orderly patterns of growth and land use;
- Adequate public services;
- Financial integrity in government;
- Equity in fiscal capacity; and
- Fair cost distribution for municipal services.

Under Florida law, there is ONLY ONE WAY to establish a city government where no such government existed before: the Legislature must pass a SPECIAL ACT enacting the city's charter. The special act must include a proposed municipal charter that prescribes the form of government and clearly defines the legislative and executive functions of city government, and cannot prohibit tax levies authorized by law.

In addition, section 165.061, F.S., provides that the following standards must be met before incorporation of a municipality:

- (1) The area to be incorporated must be compact and contiguous and amenable to separate municipal government.
- (2) The area must have a total population of at least 1,500 persons in counties with a population of less than 50,000, as determined in the latest official state census, special census, or estimate of population in the area proposed to be incorporated, and of at least 5,000 population in counties with a population of more than 50,000.
- (3) It must have an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.
- (4) It must have a minimum distance of any part of the area proposed for incorporation from the boundaries of an existing municipality within the county of at least 2 miles or have an extraordinary natural boundary which requires separate municipal government.

**Recent Municipal Incorporations**

From 1972 to the present, at least 11 municipalities were either created by special act (Lake Mary, Sanibel, Destin, Jacob City, Midway, DeBary, Ft. Myers Beach, Deltona, Wellington, and Weston) or recreated by special act after previous incorporation under authority of general law in effect prior to 1974 (Seminole). The cities of Key Biscayne, Aventura and Pinecrest were created under the charter provisions of Dade County's

Charter. The following table indicates recent municipal incorporations by year, city, county, enabling law, and any other applicable chapter of the Laws of Florida:

Recent Municipal Incorporations

1970	SEMINOLE	Pinellas County	general law
1972	SEMINOLE	Pinellas County	ch. 72-693
1973	LAKE MARY	Seminole County	ch. 73-522
1974	SANIBEL	Lee County	ch. 74-606
1983	JACOB CITY	Jackson County	ch. 83-434 ch. 84-456
1984	DESTIN	Okaloosa County	ch. 84-422 ch. 85-471
1986	MIDWAY	Gadsden County	ch. 86-471
1991	KEY BISCAYNE	Dade County	by authority of the Dade Charter
1993	DEBARY	Volusia County	ch. 93-351 ch. 93-363
1995	AVENTURA	Dade County	by authority of the Dade Charter
1995	PINECREST	Dade County	by authority of the Dade Charter
1995	FT. MYERS BEACH	Lee County	ch. 95-494
1995	DELTONA	Volusia County	ch. 95-498
1995	WELLINGTON	Palm Beach County	ch. 95-496
1996	WESTON	Broward County	ch. 96-472

Recently Failed Incorporations

Over the years, a number of incorporation attempts have failed. Since 1980, some Floridians have rejected municipal government by voting down the incorporation efforts of:

The City of Deltona (1987/1990)  
(chapter 87-449, and chapter 90-410, Laws of Florida)

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The City of Fort Myers Beach (1982/1986)  
(chapters 82-295, and 86-413, Laws of Florida)

A city in the Halifax area of Volusia County (1985)  
(chapter 85-504, Laws of Florida)

The City of Marco Island (1980/1982/1986/1990/1993)  
(chapters 80-541, 82-330, 86-434, 90-457, and 93-384, Laws of Florida)

The City of Spring Hill (1986)  
(chapter 86-463, Laws of Florida)

The City of Port LaBelle (1994)  
(chapter 94-480, Laws of Florida)

The City of Destiny (1995)  
(by authority of the Dade County Charter)

### Municipal Dissolutions

During the last decade or so, several cities have been dissolved:

- Bayview in Bay County by chapter 77-501, Laws of Florida;
- Munson Island in Monroe County by chapter 81-438, Laws of Florida;
- Painters Hill in Flagler County by chapter 81-453, Laws of Florida;
- Hacienda Village in Broward County by chapter 84-420, Laws of Florida; and
- Pennsuco in Dade County under authority of the Dade County Charter.

### The Suntree Master Homeowners' Association

In July of 1974, the Suntree Development Corporation completed the first phase of a new community named Suntree. The Planned Unit Development (PUD) evolved by 1984 into an upscale golfing community. In 1991, the parent company of Suntree Development Corporation, Fairfield Communities, Inc., went into Chapter 11 bankruptcy. The county club was sold to its members and the remainder of the property was sold to Suntree Partners, who are the current developers. The Suntree community has grown to a population of approximately 7950 with 3,600 homes ranging in value from \$70,000 to several millions of dollars.

The community was managed initially by the developer, but management has gradually been taken over by the residents. In 1992, the Suntree Master Homeowners Association (Association) assumed full responsibility for the affairs of the community. Management is now exercised by the Board of Directors, elected by the members of the Association and assisted by a professionally licensed general manager. A small clerical staff and a grounds maintenance crew are also employed by the Association. Membership in the Association is mandatory for all residential property owners.

In April of 1996, the Association surveyed its membership to determine if incorporation of the community should be pursued. Of the 44 percent of the surveys returned, 1493 persons voted to continue to pursue incorporation and 108 voted against. This grass

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roots support prompted the Board of Directors of the Association to ask the Brevard County Legislative Delegation for a local bill to incorporate the community of Suntree.

**B. EFFECT OF PROPOSED CHANGES:**

Authorizes a referendum for the creation of the City of Suntree and provides for its charter (See SECTION-BY-SECTION RESEARCH section for the exact contents of the charter).

**C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:**

Creates a new special act.

**D. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Creates a new municipal government. As such, there is a new governmental entity that is available to make rules and adjudicate disputes.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Creates a new municipal government. As such, there is a new governmental entity that has responsibilities to provide services and conduct land use planning and regulation for its residents.

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not Applicable (N/A)

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

N/A

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

E. SECTION-BY-SECTION RESEARCH:

**Section 1** creates the City of Suntree Charter as follows:

Article I creates the name and purpose of the charter.

Section 1.01 gives the new municipality the name "City of Suntree."

Section 1.02 states that the purpose of the charter is to promote the general welfare of the community through the exercise of municipal home rule powers.

Article II describes the territorial boundaries of the City of Suntree.

Section 2.01 gives the legal boundaries of the City of Suntree.

Section 2.02 allows for the revision of the corporate limits of the City of Suntree as provided by general law.

Article III provides the general powers of the municipality.

Section 3.01 provides that the City of Suntree may exercise any power for municipal purposes, except as limited by the Constitution, general law, and specific limitations within the charter.

Section 3.02 allows the City of Suntree to participate in contracts, or cooperative efforts with other states, counties, municipalities, agencies or the United States in order to perform or finance any of its functions.

Article IV provides criteria for charter officers.

Section 4.01 provides that there shall be a city council consisting of five elected members; provides that those council members must be registered electors of the city who have resided in the city for a minimum of one year prior to the election; provides that the council may be elected, re-elected, or dismissed by the citizens of the city; provides that policy making is the sole prerogative of the council and that their administrative staff is subordinate to the elected officials; and provides that the legislative and police powers of the city are vested in the council.

Section 4.02 allows the council-elect to select a mayor from their body, and provides that the mayor shall serve as the council chair, as well as the ceremonial head of the city.

Section 4.03 allows the council to elect a vice mayor by majority vote.

Section 4.04 prohibits the council from dictating the employment or removal of anyone other than the city manager; prohibits a present or former elected city official from holding any compensated appointive office within the city for one year after the expiration of their elected term; and allows the council members to direct the city manager to implement their recommendations for improvements in city government operations.



Section 4.05 provides procedures for an ordinance relating to compensation of the council; provides limitations on compensation for the council; and provides for reimbursement of council members for expenses incurred by them in performing their official duties.

Section 4.06 discusses the conditions which will lead to a vacancy on the council.

Section 4.07 provides for conditions which will require a council member to forfeit the office; and provides for procedures which will lead to a declaration of forfeiture.

Section 4.08 provides procedures for the filling of vacancies on the council.

Section 4.09 provides that the council shall be the judge of the election and the qualification of its members; allows the council to subpoena witnesses and conduct hearings in forfeiture proceedings; and provides notice requirements for forfeiture proceedings.

Section 4.10 provides that the council shall provide for an annual independent financial audit of all city accounts; and provides for qualifications for the accountant rendering the audit.

Section 4.11 provides for regular meetings of the council, as well as procedures for special council meetings.

Section 4.12 provides that the council shall keep a journal as a public record of its meetings.

Section 4.13 provides for voting procedures at council meetings.

Article V provides for nomination, elections, and terms of office.

Section 5.01 provides for the timing of council elections.

Section 5.02 provides for the date of commencement of term for the council-elect.

Section 5.03 provides for three year terms of office and term limits.

Section 5.04 defines "qualified electors."

Section 5.05 allows the council to adopt election procedures by ordinance.

Section 5.06 provides of nonpartisan elections.

Section 5.07 provides that those candidates who receive the most votes shall be elected as officers.

Section 5.08 allows the electors of the city to recall and remove any elected official of the city in accordance with general law.

Article VI provides for a city manager.

Section 6.01 provides that the council shall appoint a city manager and fix compensation for the position based on the applicants executive and administrative qualifications.

Section 6.02 provides for the removal of the city manager by the council and for procedures for removal.

Section 6.03 describes the powers and duties of the city manager; and provides the city manager the powers necessary to implement and administer all ordinances, resolutions and policies adopted by the council.

Article VII provides for a city clerk.

Section 7.10 describes the duties of the city clerk; and provides that the city clerk be appointed by the city manager with the consent of the council.

Article VIII provides for a city attorney.

Section 8.01 provides for the duties and removal of the city attorney.

Article IX provides for administrative departments.

Section 9.01 allows the council to establish administrative departments as necessary for the efficient operation of the city; and provides that these administrative departments shall be established by ordinance.

Article X discusses ordinances and resolutions.

Section 10.01 defines "ordinance" and "resolution."

Section 10.02 provides procedures for the adoption of ordinances.

Section 10.03 provides procedures for the adoption of resolutions.

Article XI provides for financial procedures.

Section 11.01 provides that the city's fiscal year shall begin on October 1 and end on September 30.

Section 11.02 provides that the city manager shall submit a budget on or before July 15 of each year; and provides criteria for the budget.

Section 11.03 provides that the council shall adopt a budget by ordinance on or before September 30 of each year; and provides for elector approval for the issuance of revenue bonds

Section 11.04 provides that copies of the budget and capital program are public records.

Section 11.05 provides procedures for making supplemental appropriations, for emergency appropriations, for reducing appropriations, and for transferring appropriations.

Article XII provides for initiative and referendum.

Section 12.01 provides procedures for initiatives and referendums.

Article XIII provides for charter amendments.

Section 13.01 allows the council to amend the charter by ordinance.

Section 13.02 allows the city electors to propose a charter amendments to the council by petition, and provides criteria for the petition.

Section 13.03 provides for periodic charter reviews; and for procedures related to those reviews.

Article XIV discusses severability.

Section 14.01 provides that if any provision in the city charter is held invalid, the other provisions shall not be affected.

Article XV discusses transition.

Section 15.01 provides a date for the required referendum election; and states the question as it will be printed on the ballot.

Section 15.02 provides a date for the initial election of the city council upon adoption of the charter; provides procedures relating to the election; provides for certification of election results; and provides for transitional terms of office.

Section 15.03 creates and establishes the City of Suntree, effective January 1, 1998.

Section 15.04 provides for a transition team who will prepare the new city for regular assumption of duties after the adoption of the city charter; and provides for the disbanding of the transition team following the first regular council meeting.

Section 15.05 provides the initial council the power to do what is appropriate so that the city will be operational on January 1, 1998.

Section 15.06 allows the initial council to borrow money to operate the city until a budget is adopted and revenues are raised.

Section 15.07 provides for stipends for the mayor and council members during the transition period.

Section 15.08 allows the council to adopt the ordinances and resolutions required to effect the transition; provides that these transitional ordinances shall only be effective for 90 days.

Section 15.09 provides that the Brevard County Comprehensive plan shall remain in effect until the city adopts its own comprehensive plan.

Section 15.10 allows the council to adopt ordinances providing for land development regulations within the city; and provides for procedures relation to transitional land development regulations.

Section 15.11 allows the City of Suntree to participate in a II Shared Revenue Programs of the State of Florida, effective January 1, 1998; provides for the waiver of applicable Florida Statutes for the purpose of eligibility to receive revenue sharing funds from the date of incorporation through the balance of the 1997-1998 fiscal year; providing that the University of Florida Bureau of Economic and Business Research will determine initial estimates for calculating eligibility for shared revenue; provides for property values with in the municipal boundaries to be provided by the Brevard County Property Appraiser; and providing that all property taxes shall be included in the calculations of the minimum amount of revenue to be raised by the City of Suntree to qualify for revenue sharing funds.

Section 15.12 provides for the receipt and distribution of local option gas tax revenues beginning in January, 1999.

Section 15.13 allows the council to secure contracts for services such as police and fire until independent services are established by the county; allows the council to rent or lease buildings for municipal operations, until the city can obtain its own facilities.

Section 15.14 provides for elimination of the transitional element from the charter upon completion of the transition phase.

Article XVI provides for revenue sharing.

Section 16.01 allows the City of Suntree to participate in revenue -sharing beyond the minimum entitlement per fiscal year if the city and all special districts combined levy ad valorem taxes in the amounts required by general law.

**Section 2** provides that this act shall take effect on approval by referendum, except that sections 14.01 and 15.10 shall take effect upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes [ ] No [X]

A notice is not required because the bill is subject to a referendum.

IF YES, WHEN? N/A

WHERE? N/A

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B. REFERENDUM(S) REQUIRED? Yes [X] No [ ]

IF YES, WHEN? July 15, 1997

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No [ ]

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No [ ]

IV. COMMENTS:

**Fiscal Comments**

**Fiscal Impact on Brevard County:** Incorporation of Suntree would have fiscal impact on Brevard County and the other cities in Brevard County. The incorporation of Suntree would result in a net shortfall in Brevard County of approximately \$1.7 million in revenues. This may be partially offset through contract for service agreements between Brevard County and the City of Suntree.

**Fiscal Impact on other cities in Brevard County:** There are a variety of ways the incorporation of Suntree could fiscally impact the other cities in Brevard County in regards to state revenue sharing and the local government motor fuel taxes. In each case, the cities of Brevard County would lose such funds if Suntree incorporated. **Attached are tables produced by the Department of Revenue that show the losses to the cities of Brevard County for three different scenarios.**

**Fiscal Capacity:** It is expected the initial year's tax levy to be 2.9971 mills for municipal services. Given this, there is sufficient fiscal capacity for Suntree to incorporate.

**State Shared Revenues:** The bill contains language that requests immediate eligibility for state revenue sharing. By doing so, **this bill grants an exception to section 218.23, F.S., relating to state shared revenues with local governments.** Section 218.23, F.S., states a local government is required, at a minimum, to have reported its finances for the most recently completed fiscal year to the Department of Banking and Finance; made provision for annual post-audits of its financial accounts; levied ad valorem taxes of 3 mills; certified that law enforcement officers and fire fighters meet state qualifications; and certified that any dependent special district has made provision for separate annual post-audits of its financial accounts. Suntree cannot meet these deadlines and receive shared revenues the first year without such an exemption.

**Local Option Gas Tax:** The bill also provides that Suntree shall receive an exception for requirements for the local option gas tax according to section 336.025, F.S. Paragraph 336.025(4)(b), F.S., states a new city is only eligible to receive funds in the first full fiscal year following incorporation if it is eligible to participate in state revenue-sharing programs of chapter 218, F.S.

**Standards for Incorporation**

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The incorporation of Suntree meets all the standards for incorporation of chapter 165, F.S., with the exception of the 2-mile limitation standard. This standard is not met in two specific places. First, Suntree is closer than 2-miles to the City of Palm Shores. Second, the southern-most boundary is closer than 2-miles to a northern part of the City of Melbourne.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Three technical amendments were adopted by the House Community Affairs Committee on April 4, 1997. Two amendments corrected bill drafting errors. The remaining amendment added YES and NO boxes to the ballot language for the incorporation referendum.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

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Jenny Underwood Dietzel

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