

STORAGE NAME: h1729a.ca

DATE: April 15, 1997

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

BILL #: HB 1729

RELATING TO: Collier County (City of Marco Island Charter)

SPONSOR(S): Representative Saunders

COMPANION BILL(S): SB 2484 (i)

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

- (1) COMMUNITY AFFAIRS YEAS 4 NAYS 0
 - (2)
 - (3)
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I. SUMMARY:

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

According to the Department of Revenue, there is a projected loss of revenue to Collier County of about \$1.3 million. The other cities in Collier County will also experience a loss of revenue because of the redistribution of revenue sharing funds (See attached table from the Department of Revenue).

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.

The 1996 Legislature revised section 165.041, Florida Statutes, to require completion of a feasibility study for any area requesting incorporation. The purpose of the study is to enable the Legislature to determine whether or not the area: 1) meets the statutory requirements for incorporation, and 2) is financially feasible. Specifically, the study must include:

- Data and analysis to support the conclusions that incorporation is necessary and financially feasible.
- Population projections and population density calculations and an explanation concerning methodologies used for such analysis.
- Evaluation of the alternatives available to the area to address its policy concerns.
- Evidence that the proposed municipality meets the standards for incorporation of section 165.061, Florida Statutes. These standards are:

The area to be incorporated must be compact and contiguous and amenable to separate municipal government.

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.

The area 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.

The area 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 BISCAVNE	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	Lee County	ch. 95-494

BEACH

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)

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.

Marco Island

Marco Island is a 7,600 acre island (as described in the 1990 Census) located in Collier County with a permanent population of between 11,000 and 12,000 residents. This population doubles during its peak tourist season in February. It is located 16 miles south of Naples and 104 miles west of Miami.

Marco Island has attempted to incorporate five times previously (1980, 1982, 1986, 1990, 1993). In each case, the electorate of the Island turned down the proposal for incorporation.

Services for the Island are currently provided by Collier County and several special taxing districts. Fire protection is provided by the Marco Island Fire District, an independent district. Mosquito control is provided by the Collier Mosquito Control District, also an independent taxing district. Street lighting is provided through a special assessment lighting district. Police protection, public works, planning and zoning, building inspection and development review, parks and recreation, and solid waste collection and disposal are provided by Collier County.

B. EFFECT OF PROPOSED CHANGES:

Authorizes a referendum for the creation of the City of Marco Island 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?

This bill 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?

This bill 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 1.01. Grants the City of Marco Island (City) all of the powers a city may have under the constitution and laws of the state of Florida. Lists additional powers granted to the City, including the authority to: raise funds by taxation upon the taxable property in the City; levy special or local assessments for local improvements; hold liens for public improvements; borrow money; and to license and tax privileges, businesses, occupations and professions conducted within the corporate limits of the City.

Section 1.02. Provides that City powers under the charter be construed liberally in favor of the City, and that the charter may be revoked in accordance with the dissolution procedures of chapter 165, Florida Statutes.

Section 1.03. Authorizes the City to exercise any of its powers, functions, and financing, through contract or otherwise, jointly or in cooperation, with one or more municipalities, state or local governments, the United States Government or civil divisions or agencies thereof.

Section 1.04. Adopts Florida Elections laws, except council elections will be nonpartisan. Provides criteria to qualify for candidacy. Provides that elections required under this charter be conducted in accordance with the provisions of Florida's Election Code in its entirety and as it is subsequently amended.

Section 1.05. Requires the city council adopt an administrative code defining departmental organization of the City and appropriate rules and regulations for the conduct of each department. Provides components which must be included in the administrative code.

Section 2.01. Defines the corporate limits of the City.

Section 3.01. Provides criteria for the composition of, and criteria for qualifying for, membership on the city council.

Section 3.02. Provides that the initial election for council members shall be by mail ballot. Provides instructions for obtaining qualifying petitions, states the term of the qualifying period, and provides instructions for voters, and states the rules for determining the winners.

Section 3.03. Provides for the salary of council members.

Section 3.04. Provides rules for the election of officers.

Section 3.05. Provides that the legislative powers of the City be vested in the city council. Provides that the city council may delegate to the city manager the power to execute contracts, deeds and other documents approved by the council.

Section 3.06. Provides that no former city official may hold any compensated appointed city office or city employment until 4 years after the expiration of his or her term on the city council. Provides that members of the city council not interfere with the appointment or hiring decisions of the city manager, and that members of city council deal with administrative services solely through the city manager.

Section 3.07. Provides rules for determining vacancy and forfeiture of council member office, and the filling of vacancies.

Section 3.08. Provides that the city manager serve as city clerk.

Section 3.09. Provides procedures for the timing, conduct, voting, and minutes of council meetings.

Section 3.10. Provides that ordinances be adopted as provided by general law.

Section 3.11. Provides rules for the adoption and repeal of emergency ordinances.

Section 3.12. Provides that the council, by ordinance, adopt a balanced annual budget pursuant to general law.

Section 3.13. Provides procedures for making appropriation amendments during the fiscal year.

Section 3.14. Provides rules for the authentication, recording and disposition of charter amendments, ordinances and resolutions.

Section 3.15. Authorizes the council to adopt any standard code of technical regulations by reference into an adopting ordinance, and such ordinance may amend the code. Provides procedures governing adopting ordinances, and exceptions thereto.

Section 3.16. Provides that a planning commission shall be advisory to the council. Provides for the duties, functions, and membership of the planning commission.

Section 4.01. Provides that the city manager be the chief administrative officer of the City. Provides the manager's areas of responsibility.

Section 4.02. Provides for the appointment, removal, residency and compensation of the city manager.

Section 4.03. Provides procedures for designating an acting city manager.

Section 4.04. Provides the powers and duties of the city manager.

Section 4.05. Provides that the city manager is responsible for the supervision and direction of all departments, agencies, or offices of the city. Provides for duties the city manager may assume with the consent of the council.

Section 4.06. Requires that the city manager develop and keep current an administrative code to implement ordinances passed by the council.

Section 4.07. Provides for the appointment and establishes the duties of a city attorney.

Section 5.01. Provides criteria to qualify as an elector of the City.

Section 5.02. Provides that all nominations and elections for the office of city council member be conducted on a nonpartisan basis.

Section 5.03. Provides rules for the nomination of candidates to fill vacant city council members seats.

Section 5.04. Provides for the form of the ballot, and rules for voting by ballot title.

Section 5.05. Provides that candidates receiving the most votes for the office sought shall be elected.

Section 5.06. Provides for the composition of the canvassing board.

Section 6.01. Grants the qualified voters of the City the power to propose ordinances to the council, and to adopt or reject the ordinance at a City election. Provides that such power does not extend to budget or capital programs, or ordinances relating to the appropriation of money, levy of taxes, or salaries of City officers or employees.

Section 6.02. Grants the qualified voters of the City, through the initiative process, to propose or require repeal by the council of any adopted ordinance. Provides exceptions.

Section 6.03. Provides for recall of elected officials as provided by general law.

Section 6.04. Provides rules for commencing initiatives and referendums.

Section 6.05. Provides for the number of signatures required for initiative and referendum petitions. Provides for the form, content, and timing for filing petitions.

Section 6.06. Provides a process for the commencement of City initiative petitions.

Section 6.07. Provides for suspension of the effect of an ordinance upon receipt of a referendum petition. Provides for length of termination.

Section 6.08. Establishes procedures to be taken by the council, and submission to voters, to determine action to be taken upon petitions.

Section 6.09. Provides standards to determine outcome of initiative and referendum votes.

Section 7.01. Provides the terms under which the charter may be amended.

Section 7.02. Establishes a code of ethics to which public officers, employees, members of licensing or advisory boards, and candidates shall conform. Establishes rules with which public officers must comply.

Section 7.03. Provides that the applicable provisions of the comprehensive plan of Collier County, as it exists at the time the City commences corporate existence, will remain in effect in the City until such time as the City adopts its own comprehensive plan. Provides that the council shall be the local planning agency until the council establishes a separate local planning agency. Provides that all powers and duties of the Collier County Planning Commission, and any Board of Adjustment and Appeals shall be vested in the city council until the city council delegates all or a portion to another entity.

Section 7.04. Provides for legislative review of the city charter, city ordinances, and city resolutions by the city council.

Section 7.05. Provides that violations of ordinances be punishable in accordance with general law.

Section 7.06. Provides a severability clause.

Section 8.01. Provides terms for dissolution of the Marco Island Fire Control District.

Section 8.02. Provides for the transfer of assets, liabilities, contracts, relationships and responsibilities of the Marco Island Fire Control District to the City.

Section 8.03. Provides that all resolutions and policies of the Marco Island Fire Control District shall remain in effect until amended, revised, or repealed by the council.

Section 8.04. Provides for the transfer of fire protection services of the area formerly served by the Marco Island Fire Control District to be the function of the City. Service to the area known as Goodland, will be provided by Collier County through interlocal agreement.

Section 8.05. Provides that personnel of Marco Island Fire Control District shall become employees of the City.

Section 8.06. Provides that those elected Fire Commissioners of the Marco Island Fire Control District currently in office shall continue as an advisory board of the City until the expiration of their terms.

Section 8.07. Provides that further provisions to effect the transition and provide for the operation of the Marco Island Fire Department shall be provided by ordinance.

Section 9.01. Provides that the City shall be entitled to participate in the State of Florida Shared Revenues Programs. Provides methods for determining City population.

Section 10.01. Provides procedures for the referendum election.

Section 10.02. Provides that the timing and schedule for the initial election is described in section 3.02. Provides that the expense of the initial election will be repaid by the City within 12 months.

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Section 10.03. Provides the timing of the first council meeting. Requires the prompt appointment of an acting city attorney. Provides the terms of office of the first council.

Section 10.04. Authorizes the council to borrow money by resolution, upon notes or other obligations of the City. Limits the amount the City may borrow to \$750,000.

Section 10.05. Authorizes the council to adopt the ordinances and resolutions required to effect the transition. Provides procedures for such adoption.

Section 10.06. Provides that the ordinances, rules and regulations of Collier County shall continue to be in effect within the boundaries of the City, except where such rule is in conflict with an ordinance, rule or regulation of the City. Collier County is authorized to continue provisions of all Municipal Service Taxing District (MSTD) and/or Municipal Services Taxing Unit (MSTU) services budgeted to be provided, unless the council votes to terminate any of all such services. If the council terminates any MSTD or MSTU service, the City shall have all of the rights, immunities, powers and privileges possessed by said MSTD and/or MSTU. Provides that the assets, liabilities, contracts, obligations and relationships of the MSTD and/or MSTU will become those of the City.

Section 10.07. Provides that nothing in the act shall affect the obligation of the City, or any property owners therein, for their share of indebtedness incurred through the Collier County Public Park and Recreation MSTD or the Marco Water and Sewer District in existence and legally due as of the date of incorporation.

Section 10.08. Authorizes the council, by resolution, to delete from this Article any section when all events to which the section relates have occurred.

Section 10.09. Provides that the act shall take effect upon the approval of a majority of registered electors residing within the corporate limits of the City, except that sections 10.01 and this section shall take effect upon become a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

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

IF YES, WHEN? N/A

WHERE? N/A

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

IF YES, WHEN? No later than September 1, 1997

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

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

IV. COMMENTS:

Agency Review Comments

The House Committee on Community Affairs coordinates a review of the feasibility study required by section 165.041, Florida Statutes, and the proposed charter with various other legislative committees and appropriate state agencies. Attached are review comments from the Department of Revenue, the Legislative Committee on Intergovernmental Relations, and the Division of Economic and Demographic Research of the Florida Legislature.

Fiscal Comments

Fiscal Impact on Collier County: Incorporation of Marco Island would have fiscal impact on Collier County and the other cities in Collier County. The incorporation of Marco Island would result in a net shortfall in Collier County of approximately \$1.3 million in state revenue sharing funds. This may be partially offset through contract for service agreements between Collier County and the City of Marco Island.

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

Fiscal Capacity: It is expected the initial year's tax levy to be 1.816 mills for municipal services. Given this, there is sufficient fiscal capacity for Marco Island to incorporate.

State Shared Revenues: The bill contains language that **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. Marco Island cannot meet these deadlines and receive shared revenues the first year without such an exemption.

Local Option Gas Tax: The bill also provides that Marco Island 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.

Other Charter Concerns

Ballot Language: Chapter 100, F.S., relating to general, primary, and special elections, contains provisions with regard to referendum elections.

Section 100.342, F.S., provides:

In any special election or referendum not otherwise provided for there shall be at least 30 days' notice of the election or referendum by publication in a newspaper of general circulation in the county, district, or municipality, as the case may be. The publication shall be made at least twice, once in the fifth week and once in the third week prior to the week in which the election or referendum is to be held. If there is no newspaper of general circulation in the county, district, or municipality, the notice shall be posted in no less than five places within the territorial limits of the county, district, or municipality.

Furthermore, subsection 101.161(1), F.S., relating to voting methods and procedures, requires:

(1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

The language for the referendum does not contain a ballot title or the required YES and NO boxes.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 15, 1997, the House Community Affairs Committee adopted the following amendments:

Amendments 1 and 2: Corrects dates for the staggered terms of office of the city council.

Amendment 3: Provides that the existing land development regulations of Collier County will be used by the City of Marco Island until such time as the City adopts new regulations.

Amendment 4: Repeals special acts for the Marco Island Fire Control District.

Amendment 5: Provides language allowing the City of Marco Island to participate in state shared revenue programs and local option gas taxes, notwithstanding provisions of general law to the contrary.

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Amendment 6: Provides a ballot title and YES and NO boxes for the incorporation referendum.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

Jenny Underwood Dietzel

Jenny Underwood Dietzel