

STORAGE NAME: h1017.er

DATE: April 12, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
ELECTION REFORM
ANALYSIS - LOCAL LEGISLATION**

BILL #: HB 1017

RELATING TO: Bay County/City of Southport Incorporation

SPONSOR(S): Representatives Bense and Kilmer

COMPANION BILL(S): None

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

- (1) COMMUNITY AFFAIRS YEAS 9 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
 - (3) ELECTION REFORM
 - (4)
 - (5)
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I. SUMMARY:

This bill authorizes a referendum for the creation of the City of Southport and provides for its charter.

According to the Department of Revenue, there is a projected loss of revenue to Bay County of \$336,391 annually. The other cities in Bay County will also experience a combined loss of \$125,758 in annual revenue because of the redistribution of state revenue sharing funds.

Note. The Committee on Community Affairs adopted a strike-everything amendment on March 30, 1999. The amendment clarified several technical deficiencies in the City of Southport's proposed charter.

On April 8, 1999, the Committee on Governmental Operations adopted three amendments to the strike-everything amendment, which is traveling with the bill. The first, amended the language of the proposed referendum on incorporation to reference the session law number. The second, corrected a reference to the county commission regarding certain amendments to the county's land development regulations. The third, amended the legal description of the city boundaries to remove certain tracts of land.

II. SUBSTANTIVE ANALYSIS:

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, F.S., 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, F.S.

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 14 municipalities were either created by special act (Lake Mary, Sanibel, Destin, Jacob City, Midway, DeBary, Ft. Myers Beach, Deltona, Wellington, Weston,

Islamorada, Marco Island, and Suntree) 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
1997	ISLAMORADA	Monroe County	Ch. 97-348
1997	MARCO ISLAND	Collier County	Ch. 97-367
1997	SUNTREE	Brevard County	Ch. 97-352

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)
(chapters 87-449 and 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)

The City of Ponte Vedra (1998)
(chapter 98-534, Laws of Florida)

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.

Proposed City of Southport

The unincorporated area known as Southport is located in the mid-section of Bay County in the Florida Panhandle. The community is bordered to the north by unincorporated Bay County, to the east by Deer Point Lake, to the south by North Bay and the City of Lynn Haven, and to the west by a wildlife management area.

During the 1998 Legislative Session the City of Lynn Haven proposed to annex, by special act, the unincorporated community known as Southport, as well as a 640 acre tract owned by the city, north of Southport.

The City of Lynn Haven purchased the 640 acre parcel in June 1988 in an effort to comply with State and Federal requirements to remove effluent disposal from the newly classified Class II water of North Bay. The city was prohibited from utilizing the parcel for which it was purchased as a result of an administrative hearing and subsequent ruling. The complaint was brought by citizens concerned with a raw sewage line crossing the bay.

The property laid idle for 6 years, until 1994, when the City of Lynn Haven began to utilize part of the property as a borrow pit, as a construction-and-debris (C&D) landfill and for managed timber growth. In addition, the city established a full service Commerce Park, which allows light industrial, manufacturing, technology, and research uses to operate on the parcel. The city wants the property to be annexed within its municipal boundaries. This action is not compliant with their comprehensive plan unless the unincorporated area known as Southport is also annexed.

Residents within the community of Southport resisted the efforts by the City of Lynn Haven to annex them and worked with their legislative delegation to ensure that a straw ballot would be held during the 1998 general election. The straw ballot asked the voters in the area identified as Southport if they supported the incorporation of the City of Southport, in an effort to avoid annexation. The support for the incorporation of the City of Southport was overwhelming. Nearly 79 percent voted for the proposed incorporation.

B. EFFECT OF PROPOSED CHANGES:

This bill authorizes a referendum for the creation of the City of Southport and provides for its charter.

According to the Department of Revenue, there is a projected loss of revenue to Bay County of \$336,391 annually. The other cities in Bay County will also experience a combined loss of \$125,758 in annual revenue because of the redistribution of state revenue sharing funds.

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?

Subject to referendum, the bill creates a new municipality which will have all the rights and responsibilities granted to municipalities in chapter 125, F.S., and in the Florida Constitution.

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

Not applicable.

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

Not applicable.

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.

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

Not applicable.

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

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

Subject to referendum, the bill grants the newly incorporated City of Southport the authority to levy any and all taxes provided for in general law and the State of Florida Constitution for municipalities.

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

Subject to referendum, the bill grants the newly incorporated City of Southport the authority to levy any and all fees provided for in general law and the State of Florida Constitution for municipalities.

- 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?

Subject to referendum, the bill grants the newly incorporated City of Southport the authority to levy any and all taxes provided for in general law and the State of Florida Constitution for municipalities.

3. Personal Responsibility:

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

Not applicable.

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

Not applicable.

4. Individual Freedom:

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

Not applicable.

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

Not applicable.

5. Family Empowerment:

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

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides for the charter of the City of Southport, Bay County, Florida, as follows:

Section 1.01 provides for the creation of the City of Southport.

Section 1.02 provides for the municipal powers of the City of Southport.

Section 2.01 provides for the boundaries of the City of Southport.

Section 3.01 provides for the composition of the city commission and the qualifications for office.

Section 3.02 provides the terms of office are 4 years, except for the initial term of office which requires that seats two and four be for 2 years to provide for staggered terms.

Section 3.03 provides for the powers and duties of the commission.

Section 3.04 provides for the powers and duties of the mayor.

Section 3.05 provides for the election and duties of a vice-mayor.

Section 3.06 provides for compensation and expenses.

Section 3.07 provides for vacancies.

Section 3.08 provides for city commission meetings.

Section 4.01 provides that the designated charter officers are the city manager and the city attorney.

Section 4.02 provides for the city manager qualifications, powers, and duties.

Section 4.03 provides for the city attorney qualifications, powers, and duties.

Section 4.04 provides for the city clerk.

Section 5.01 provides for the enactment of ordinances by the commission.

Section 6.01 provides for the qualifications of electors.

Section 6.02 provides for nonpartisan elections.

Section 6.03 provides for the qualifications of candidates.

Section 6.04 provides for how elections will be conducted.

Section 6.05 provides a schedule for regular elections and primaries.

Section 6.06 provides for the recall of city commissioners.

Section 7.01 provides for commission district boundaries.

Section 8.01 provides for Southport area municipal services.

Section 9.01 provides for charter amendments.

Section 9.02 provides the standards for charter review shall be established by ordinance.

Section 9.03 provides the requirements for members of the qualified electorate to propose an initiative or a referendum.

Section 9.04 provides for the standards of conduct for elected officials and employees of the city.

Section 10.01 provides for severability of any section of the charter found to be invalid by a court.

Section 11.01 provides for a transition schedule relating to assessment and collection of ad valorem taxes.

Section 11.02 provides for a referendum for voters to approve the original charter.

Section 11.03 provides for the initial election of commissioners.

Section 11.04 provides for the transition of services and compensation.

Section 11.05 provides for the first year expenses.

Section 11.06 provides for transitional ordinances and resolutions.

Section 11.07 provides for a transitional comprehensive plan and land development regulations.

Section 11.08 provides for the waivers of statutory requirements so the City of Southport may receive state-shared revenues immediately on the date of incorporation.

Section 11.09 provides the City of Southport is entitled to receive gas tax revenues.

Section 2. Provides for an effective date.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

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

IF YES, WHEN? January 12 and 19, 1999.

WHERE? *News Herald*, Panama City, Bay County, Florida.

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

IF YES, WHEN? Not later than September 1, 1999.

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

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

IV. COMMENTS:

Comments by the Committee on Community Affairs

The House Committee on Community Affairs coordinated a review of the feasibility study required by section 165.041, F.S., 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 Office of Economic and Demographic Research.

The reviews of the feasibility study and charter similarly conclude that the community of Southport does not meet some of the statutory requirements for becoming a municipality. The area is compact and contiguous. However, it is unclear if the proposed area for incorporation meets the minimum population requirement of 5,000. The area does not meet the minimum density requirement of 1.5 persons per acre. The area does not meet the minimum 2-mile limit within the proximity of an existing municipality. These unmet standards are automatically waived by virtue of the approval of this special act by the Legislature.

Furthermore, while the available tax base of the community suggests that the proposed City of Southport is financially feasible, the expectations for expenditures by the proposed city appear to be grossly underestimated. In a review of 16 other municipalities of a similar size, all 16 had expenditures significantly higher than those projected by Southport. In fact, 10 of the 16 had expenditures in excess of five times the estimated expenditures of Southport.

The reports also provide insight into some of the flaws of the feasibility study and suggestions for amendments to make necessary changes to the charter. (See amendment section.) The reports and study are available in the committee office for persons desiring to inspect them.

Comments by the Committee on Governmental Operations

In the strike-all amendment, sec. 11.02 of the charter provides for referendum language for the creation of the City of Southport, referencing a blank house bill number. Traditionally, such referendum language references a blank chapter law number, which shall be known after enactment of the law and prior to the referendum.

In the strike-all amendment, sec. 11.06(3) of the charter refers to the Bay County Commission amending the city's land development regulation, which it cannot do, subsequent to the city's corporate existence.

Comments by the Committee on Election Reform

The charter for the City of Southport provides a commission form of government. Each commissioner must be elected "at-large," that is, elected by registered electors from the geographic area represented by the government body as a whole. The charter further provides a durational residency requirement of one year to qualify as a candidate for city commission.

Generally, public offices required to be filled by at-large elections are not unconstitutional unless the purpose of adopting such a system is to invidiously minimize voting potential of racial minorities. McMillan v. Escambia County, Fla., 638 F.2d 1239, *cert. dismissed*, City of Pensacola, Fla. v. Jenkins, 453 U.S. 946, *vacated in part*, 688 F.2d 960, *rehearing denied* 692 F.2d 758.

One year durational residency requirements imposed on candidates for municipal office have been upheld against constitutional challenge if a rational basis for the requirement can be made. [See, Nichols v. State ex rel. Bolon, 177 So.2d 467 (Fla. 1965); holding a provision requiring a candidate qualifying for city commission to be a freeholder for at least one year was not unreasonable; Daves v. City of Longwood, 423 F.Supp. 503 (M.D.Fla., 1976); upholding the constitutionality of a one year residency requirement for city council; and AGO 88-12].

To the extent that either an "at-large" commission or durational residency requirements are challenged, these standards can survive a constitutional test if the rational noted above are met.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Community Affairs adopted a strike-everything amendment on March 30, 1999, which is traveling with the bill. The amendment clarifies several technical deficiencies in the City of Southport's proposed charter and changes the bill in the following manner:

- Deletes duplicative language in section 11.01 of the charter related to sections of the charter taking effect upon becoming law.
- Deletes section 11.04 of the charter related to transition services and compensation.
- Adds a note to section 11.05 of the charter (formerly sec. 11.06) to clarify that general law prohibits the adoption of zoning ordinances as emergency ordinances.
- Clarifies section 11.06 of the charter (formerly sec. 11.07) that only the powers and duties of the Bay County Planning and Land Development Regulations Commission relevant to the jurisdiction within the boundaries of Southport will be vested in the City of Southport.
- Changes the effective date on which the city is eligible for state-shared revenues from immediately upon the date of incorporation, to January 1, 2000, in section 11.07 of the charter (formerly sec. 11.08).
- Deletes section 11.09 of the charter related to entitlement to local option gas tax revenue.

On April 8, 1999, the Committee on Governmental Operations adopted three amendments to the strike-everything amendment, which is traveling with the bill. The first amended the language of the proposed referendum on incorporation to reference the session law number. The second corrected a reference to the county commission regarding certain amendments to the county's land development regulation. The third amended the legal description of the city boundaries to remove certain tracts of land.

VI. SIGNATURES:

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