

STORAGE NAME: h1635s1a.ft

DATE: April 13, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS - LOCAL LEGISLATION**

BILL #: HB 1635

RELATING TO: Lee County/City of Bonita Springs

SPONSOR(S): Representative C. Green

COMPANION BILL(S): SB 2626 (s)

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

- (1) COMMUNITY AFFAIRS (PRC) YEAS 9 NAYS 0
 - (2) FINANCE AND TAXATION YEAS 12 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

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

According to the Department of Revenue, there is a projected loss of revenue to Lee County of \$1,541,015 annually. The other cities in Lee County will also experience a combined loss of \$419,404 in annual revenue because of the redistribution of state revenue sharing funds. However, the newly formed City of Bonita Springs is projected to receive \$1,994,181.

The Committee on Community Affairs adopted a strike-everything amendment on March 30, 1999 which amends and clarifies the charter. On April 9, 1999, the Committee on Finance and Taxation adopted the strike-everything amendment and made the bill a Committee Substitute.

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, Florida Statutes, 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 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)
(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)

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 Bonita Springs

Bonita Springs is located in southeast Florida between Fort Myers and Naples, and stretches from the Gulf of Mexico to the eastern border of Lee County. It is a large geographical area (33+ square miles), with the developed community existing between ecologically sensitive land to the East, and the Gulf to the West. The estimated resident population is approximately 23,000 and during the tourist season the population reaches approximately 43,000. The economic development structure is comprised of primarily agriculture, construction and tourism industries.

The incorporation effort has been spearheaded by the Bonita Springs Incorporation Committee. This organization is a grass-roots community group which has held numerous public workshops to inform the public of the pros and cons of incorporation.

B. EFFECT OF PROPOSED CHANGES:

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

According to the Department of Revenue, there is a projected loss of revenue to Lee County of \$1,541,015 annually. The other cities in Lee County will also experience a combined loss of \$419,404 in annual revenue because of the redistribution of state revenue sharing funds. However, the newly formed City of Bonita Springs is projected to receive \$1,994,181.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

This bill 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, Florida Statutes, and in the Florida Constitution.

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

N/A

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

N/A

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?

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?

Subject to referendum, the bill grants the newly incorporated City of Bonita Springs 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 Bonita Springs 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?

See 2a.

3. Personal Responsibility:

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

N/A

- 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?

N/A

5. Family Empowerment:

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

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

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

- 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:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

E. SECTION-BY-SECTION ANALYSIS

Section 1 of the Committee Substitute for House Bill 1635 contains the charter for the City of Bonita Springs, which has 77 sections, provides for the charter of the City of Bonita Springs

Section 1: Provides a short title.

Section 2: Provides legislative intent.

Section 3: Provides for the creation of the City of Bonita Springs in Lee County and that the city is a council-manager form of government.

Section 4: Provides for a preamble.

Section 5: Provides for the purpose clause of the charter.

Section 6: Provides Boundaries.

Section 7: Provides for a period of 5 years, from the date the city is created, no area currently within the Estero Fire and Rescue District may be annexed into the corporate limits of Bonita Springs.

Section 8: Provides for the form of government.

Section 9: Provides for the powers of the city.

Section 10: Provides for liberal construction of municipal powers.

Section 11: Provides the city may consummate intergovernmental relations.

Section 12: Provides for the powers vested in the city council.

Section 13: Provides for the composition of the city council, eligibility, terms and term limits.

Section 14: Provides for nonpartisan elections.

Section 15: Provides for referendum and campaign spending limits.

Section 16: Provides for the adoption of election procedures.

Section 17: Provides for multiple candidates.

Section 18: Provides for a Mayor.

Section 19: Provides for compensation and expenses of the mayor and the city council.

Section 20: Provides for prohibitions.

Section 21: Provides for vacancies, forfeitures of office; filling vacancies.

Section 22: Provides that the council is the judge of the election and qualifications of its members.

Section 23: Provides for investigations.

Section 24: Provides for Council meetings.

Section 25: Provides for rules and a journal.

Section 26: Provides for voting by the city council.

Section 27: Provides for actions requiring an ordinance.

Section 28: Provides for ordinances and resolutions.

Section 29: Provides for ordinances in general.

Section 30: Provides for emergency ordinances.

Section 31: Provides for codes of technical regulations.

Section 32: Provides for authentication and recording; codification; and printing.

Section 33: Provides for appointment; qualifications; compensation; of the city manager.

Section 34: Provides for removal of the city manager.

Section 35: Provides for the designation of an acting city manager.

Section 36: Provides for the powers and duties of the city manager.

Section 37: Provides for the city clerk/treasurer.

Section 38: Provides general provisions.

Section 39: Provides for personnel.

Section 40: Provides for planning functions.

Section 41: Provides for the city attorney.

Section 42: Provides for the fiscal year.

Section 43: Provides for the submission of budget and budget message.

Section 44: Provides for city council action on the budget.

Section 45: Provides for appropriations; revenue; surety bond ordinances.

Section 46: Provides for budget amendments

Section 47: Provides for appropriations.

Section 48: Provides for administration of the budget.

Section 49: Provides a prohibition against overspending.

Section 50: Provides for a capital program.

Section 51: Provides for city council action on the capital program.

Section 52: Provides for public records.

Section 53: Provides for council district boundaries.

Section 54: Provides for initiative and referendum.

Section 55: Provides for recall of elected officials.

Section 56: Provides for a code of ethics.

Section 57: Provides for amendments to the city charter.

Section 58: Provides for elections.

Section 59: Provides for adoption of amendments to the charter.

Section 60: Provides for a referendum.

Section 61: Provides for the initial election of the council.

Section 62: Provides for officers and employees.

Section 63: Provides for departments, offices, and agencies.

Section 64: Provides for pending matters.

Section 65: Provides for compliance with state and county laws.

Section 66: Provides for severability of any section of the charter.

Section 67: Provides that the city may levy taxes.

Section 68: Provides early assumption of duties by the city council.

Section 69: Provides for first year expenses.

Section 70: Provides for transitional ordinances and resolutions.

Section 71: Provides for a transitional comprehensive plans.

Section 72: Provides for transitional land development regulations.

Section 73: Provides for a waiver from requirements to receive state-shared revenues.

Section 74: Provides for local option gas taxes.

Section 75: Provides for contractual services and facilities.

Section 76: Provides for the elimination of transition elements from the charter.

Section 77: Provides for special districts.

Section 2 of the Committee Substitute for House Bill 1635 provides for severability for any section of the charter.

Section 3 of the Committee Substitute for House Bill 1635 provides for an effective date, subject to a referendum.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

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

IF YES, WHEN? January 29, 1999

WHERE? Fort Myers News Press

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

IF YES, WHEN? November 2, 1999.

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

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

IV. 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 Office of Economic and Demographic Research.

The reviews of the feasibility study and charter similarly conclude that the community of Bonita Springs does not meet some of the statutory requirements for becoming a municipality. The area is compact and contiguous and meets the minimum population requirement of 5,000 persons. However it does not meet the minimum density requirement of 1.5 persons per acre. Nor does the area meet the minimum 2 mile limit within the proximity of an existing municipality. Any 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 Bonita Springs is financially feasible, the expectations for expenditures by the proposed city appears to be somewhat underestimated. In a review of 12 other municipalities of a similar size 9 of the 12 had expenditures higher than those projected by Bonita Springs.

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.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Community Affairs adopted a strike-everything amendment at its meeting on March 30, 1999. The amendment differs from the bill as originally filed in the following manner:

- Deletes Section 3, which specified that a feasibility study was prepared.
- Deletes unnecessary language from Section 22(B) of the charter.
- Deletes section 25 of the bill because the requirement is provided for in general law.
- Clarifies that the council may adopt emergency ordinances, except where prohibited by general law.
- Clarifies no emergency ordinance shall be adopted which establishes or amends the zoning map designation.
- Replaces Section 48(D) of the charter to provide that the city council may transfer unrestricted appropriations.
- Deletes unnecessary language from Section 48(E) of the charter.
- Provides that Section 63(B) of the charter also applies to the mayor.
- Deletes unnecessary language from Section 67 of the charter.

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- Deletes Section 75 and 76 of the charter and replaces it with new language regarding the city's receipt of state-shared revenues.
- Deletes Section 77 of the charter and replaces it with new language regarding the city's receipt of gas tax revenues.
- Clarifies that any special district which the city desires to dissolve must lie wholly within the city's municipal boundaries.
- Deletes section 81 of the charter.

On April 9, 1999, the Committee on Finance and Taxation adopted the strike-everything amendment and made the bill a Committee Substitute.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Lisa C. Cervenka

Staff Director:

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

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