

STORAGE NAME: h0565b.ca

DATE: February 8, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS - LOCAL LEGISLATION**

BILL #: HB 565

RELATING TO: Monroe County/Lower Keys Village

SPONSOR(S): Representative Sorensen

TIED BILL(S): None

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

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

I. SUMMARY:

This bill authorizes a referendum for the creation of a municipality named the Village of the Lower Keys. This bill also provides for its charter.

According to the Department of Revenue, there is a projected loss of revenue to Monroe County of \$454,227 annually. The other cities in Monroe County will also experience a combined loss of \$136,821 in annual revenue because of the redistribution of state revenue-sharing funds.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Subject to a referendum, this 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.

Subject to a referendum, this bill grants the newly incorporated Village of Paradise Islands the authority to levy any and all taxes and fees provided for in general law and the Florida Constitution for municipalities.

B. PRESENT SITUATION:

Florida Constitution

Section 2, Art. VIII of the State Constitution provides that municipalities may be established or abolished and their charters amended pursuant to general or special law. When any municipality is abolished, the Constitution requires that provision be made for the protection of its creditors.

Municipalities are constitutionally granted all governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services. Municipalities may exercise any power for municipal purposes except as otherwise provided by law. The only specific constitutional requirement concerning municipal government is that its legislative body must be elected.

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 Act is to provide standards, direction, and procedures for the incorporation, merger and dissolution 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.

Requirements for Municipal Incorporation

Under chapter 165, Florida Statutes, there is only one way to establish a city government where no such government existed before: the Legislature must pass a special act creating the city's charter.

For incorporation purposes, 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. It cannot prohibit tax levies authorized by law.

Special acts must meet requirements of section 10, Art. III of the State Constitution, which requires that notice of an intent to file a special act be either published in a local newspaper or conditioned to become effective only on approval by area electors. If notice by publication is the preferred method, section 11.02, Florida Statutes, specifies that the publication of notice occur one time, at least 30 days prior to bill introduction.

The 1999 Legislature revised section 165.041, Florida Statutes, by adding new, more detailed requirements for the preparation of the required 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:

- The general location of territory subject to boundary change and a map of the area which identifies the proposed change.
- The major reasons for proposing the boundary change.
- The following characteristics of the area:
 - A list of the current land use designations applied to the subject area in the county comprehensive plan.
 - A list of the current county zoning designations applied to the subject area.
 - A general statement of present land use characteristics of the area.
 - A description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.
- A list of all public agencies, such as local governments, school districts, and special districts, whose current boundary falls within the boundary of the territory proposed for the change or reorganization.
 - Evidence, through signed petitions, letters or some other method, that a minimum of 25 percent of the landowners or residents consent or otherwise support the proposed change or reorganization.
 - A list of current service providers and estimate of the cost of services.
 - A list of proposed service providers and estimate of the cost of the proposed services.
 - The names and addresses of three officers or persons submitting the proposal.
 - Evidence of fiscal capacity and an organizational plan that, at a minimum, includes:
 - Existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate.

- A 5-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, budgets.
- 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, contiguous, and amenable to separate municipal government.
 - The area proposed to be incorporated must have a total population, as determined in the latest official state census, special census, or estimate of population, of at least 1,500 persons in counties with a population of less than 50,000, 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.
 - Any part of the area proposed for incorporation must have a minimum distance of at least 2 miles from the boundaries of an existing municipality within the county. Alternately, an extraordinary natural boundary that requires separate municipal government must be present.

In addition, a feasibility study must be completed and submitted to the Legislature **at least 90** days prior to the first day of the regular Legislative Session during which the municipal charter would be enacted. For those proposed incorporations for the 2000 Legislative Session, feasibility studies were required to be submitted to the Committee on Community Affairs prior to December 8, 1999.

A municipal charter should contain matters which are of such importance that they should not be subject to change by simple ordinance. For example, chapter 166, Florida Statutes, requires that each municipality provide procedures for filling a vacancy in an elected office caused by death, resignation, or removal from office. While this requirement may be satisfied through the passage of an ordinance, the issue is fundamental enough to the governance of a municipality to be included in its charter.

The National Municipal League has recommended that a charter include an article on each of the following topics:

Powers of the City
City Council
Chief Administrative Officers (City Manager and Attorney)
Administrative Departments
Financial Procedures
Planning
Nominations and Elections
Initiative and Referendums
General Provisions
Transitional Provisions

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Formation Activity in Florida

Municipal Incorporation

From 1972 to the present, 15 municipalities were created by special act (Bonita Springs, DeBary, Deltona, Destin, Ft. Myers Beach, Islamorada, Jacob City, Lake Mary, Marathon, Marco Island, Midway, Palm Coast, Sanibel, Wellington, Weston). During this time, one was recreated by special act after previous incorporation under authority of general law in effect prior to 1974 (Seminole). The cities of Key Biscayne, Pinecrest, Aventura, and Sunny Isles Beach were created under the charter provisions of Dade County's Charter. The following table indicates recent municipal incorporations by year, county, and enabling law.

Municipal Incorporations Since 1970

<u>Year</u>	<u>Municipality</u>	<u>County</u>	<u>Enabling Law</u>
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 BISCAZYNE	Dade County	by authority of the Dade County Charter
1993	DEBARY	Volusia County	ch. 93-351 ch. 93-363
1995	AVENTURA	Dade County	by authority of the Dade County Charter
1995	PINECREST	Dade County	by authority of the Dade County 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	ILSAMORADA	Monroe County	ch. 97-348
1997	MARCO ISLAND	Collier County	ch. 97-367
1997	SUNNY ISLES BEACH	Dade County	by authority of the Dade County charter

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1999	MARATHON	Monroe County	ch. 99-427
1999	BONITA SPRINGS	Lee County	ch. 99-428
1999	PALM COAST	Flagler County	ch. 99-448

Failed Attempts at Municipal Incorporation

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

The City of Deltona Lakes (1987)
(chapter 87-449, Laws of Florida)

The City of Deltona (1990)
(chapter 90-410, Laws of Florida)

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

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

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

The Village of Key Largo (1999)
(chapter 99-430, Laws of Florida)

The City of Southport (1999)
(chapter 99-444, Laws of Florida)

Municipal Mergers

A few previously existing cities have been incorporated through merger with other cities. Examples include:

- In Brevard County, the merger of Eau Gallie with Melbourne (chapters 67-1156, 69-879, and 70-807, Laws of Florida) and the merger of the Town of Whispering Hills Golf Estates with the City of Titusville (chapters 59-1991 and 63-2001, Laws of Florida).
- In Pinellas County, the merger of Pass-A-Grille Beach with the City of St. Petersburg Beach (chapter 57-1814, Laws of Florida).
- In Bay County, the merger of Longbeach Resort and Edgewater Gulf Beach with the City of Panama City Beach (chapters 67-2174 and 70-874, Laws of Florida).

Municipal Dissolutions

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

- Bithlo in Orange County by authority of the Secretary of State in January 1977;
- 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;
- Pennsuco in Dade County under authority of the Dade County Charter; and
- Golfview in Palm Beach County by chapter 97-329, Laws of Florida.

The Proposed Village of the Lower Keys

The proposed Village of the Lower Keys with an estimated population of 4,649 in 1999, consists of eight keys. Those keys include Little Torch Key, Middle Torch Key, Big Torch Key, Ramrod Key, Summerland Key, and Cudjoe Key. These keys are collectively referred to as "the Real Keys" because of its small town atmosphere. In addition, according to the feasibility study, there are abundant remnants of how the Keys environment appeared prior to the large population increases and business development. This area is largely residential but there is a mix of businesses to serve the local community.

Section 380.0552, Florida Statutes, designates the Florida Keys as an area of state critical concern. The legislative intent of the "Florida Keys Area Protection Act" is:

- To establish a land use management system that protects the natural environment of the Florida Keys;
- To establish a land use management system that conserves and promotes the community character of the Florida Keys;
- To establish a land use management system that promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services;
- To provide for affordable housing in close proximity to places of employment in the Florida Keys;
- To establish a land use management system that promotes and supports a diverse and sound economic base;
- To protect the constitutional rights of property owners to own, use, and dispose of their real property; and
- To promote coordination and efficiency among governmental agencies with permitting jurisdiction over land use activities in the Florida Keys.

The Department of Community Affairs closely regulates all planning activities that occur in the Florida Keys. In addition, due to the designation, the Village would have to adopt a comprehensive plan in the type and manner set out in Chapter 163, Part II, Florida Statutes, Rule 9J-5, F.A.C., and the requirements of Chapter 380.05, Florida Statutes, within 3 years after the date of incorporation.

The Village of the Lower Keys, Inc., is a non-profit grass-roots community group which have spearheaded the effort for incorporation. This group stated the primary desire for incorporation is due to dissatisfaction with Monroe County. The feasibility study lists the following reasons:

- Lack of control over vision and destiny of the community;
- Lack of responsiveness of the elected County Commissioners to local issues;
- Inadequate recreational land and programs provided by Monroe County; and
- Delayed responsiveness by Monroe County to natural disasters.

C. EFFECT OF PROPOSED CHANGES:

This bill authorizes a referendum for the creation of a municipality named the Village of the Lower Keys. This bill also provides for its charter.

According to the Department of Revenue, there is a projected loss of revenue to Monroe County of \$454,227 annually. The other cities in Monroe County will also experience a combined loss of \$136,821 in annual revenue because of the redistribution of state revenue-sharing funds.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides short title of act.

Section 2: Provides legislative findings and intent.

Section 3: Provides for the creation of the Village of the Lower Keys in Monroe County.

Section 4: Provides for the Village powers.

Section 5: Provides for Village commission; provides that the Village is a mayor-commission-manager form of government; provides for candidate qualifications; provides for the terms of office; provides for term limits; provides additional qualifications for mayor; provides for the powers and duties of the mayor; provides for the mayor's forfeiture of office; provides for the election and duties of the vice-mayor; provides for the selection of an acting mayor in specific circumstances; provides for compensation of commissioners and the mayor; provides general powers and duties of the commission; provides for noninterference by the commission or its members; provides for vacancies; provides for forfeiture of office by commission member; provides for suspension from office; provides for filling of vacancies; provides for commission meetings; provides quorum; provides that a majority affirmative vote is needed to transact business; provides that minutes and ordinances are public records; requires the commission to maintain a current codification of all ordinances; provides for availability of all public records; provides that all meetings are open to the public; authorizes the adoption of codes and provides procedures and requirements; prohibits the employment of commissioners or the mayor by the village during the terms of their office or for one year following expiration of their terms; prohibits the conveyance of Village-owned real property without referendum approval; provides exceptions to referendum approval of transfer; and grants the right to be heard at commission meetings to all residents.

Section 6: Provides that the Village fiscal year runs from October 1 through September 30; provides for the adoption of a budget; provides for supplemental appropriations; provides for reduction of appropriations if there is a deficit; and provides limitations on appropriations.

Section 7: Designates that the Village manager and Village attorney are charter officers; provides that the position of Village attorney may be contracted to an attorney employed by a law firm; provides that the charter officers are appointed by the commission and serve at its pleasure; requires a majority vote to remove a

charter officer; provides for compensation of charter officers; provides for filling of vacancies; provides for acting charter officers; prohibits charter officers from being candidates for the commission while holding their position; provides that the Village manager is the Village's chief administrative officer; provides qualifications for the Village manager; grants powers and duties to the Village manager; provides that the Village attorney is the chief legal officer of the Village; provides qualifications for the Village attorney; and grants powers and duties to the Village attorney.

Section 8: Provides qualifications for electors; provides for nonpartisan elections; provides how candidates qualify with the Village clerk for office; provides an election schedule; provides schedule for other elections; provides for determination of election to office; provides for certification of elections; provides for the recall of any Village council member; provides for elector initiatives; provides for referendums; provides procedures for elector initiatives and referendums; provides for usage of petitions; provides procedures for filing petitions; provides for action on petitions; and provides for results of elections.

Section 9: Provides transition schedule; provides referendum language for act and charter; provides for initial election of mayor and council members; provides for first commission meeting; provides creation and operational schedule; provides for first-year expenses; provides for transitional ordinances and resolutions; provides for transitional comprehensive land use plan and land development regulations; provides for solid waste disposal; waives the requirements to receive state-shared revenues immediately upon incorporation; waives the requirements to receive gas tax revenues beginning December 1, 2000; and provides that the Village is entitled to receive surtax revenues beginning December 1, 2000.

Section 10: Describes the Village's corporate boundaries.

Section 11: Requires the Village commission to propose a resolution to annex Upper and Lower Sugarloaf Keys and Saddlebunch Key within 90 days of incorporation; and requires the commission to hold a referendum on such resolution as soon as possible.

Section 12: Provides for charter amendments; and provides for standards of conduct and ethical standards.

Section 13: Provides severability clause.

Section 14: Provides for an effective date, subject to referendum approval, by a majority vote of qualified voters residing in the area.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

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

IF YES, WHEN?

WHERE?

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

IF YES, WHEN? November 2, 2000

- C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []
- D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The House Committee on Community Affairs coordinates a review of the feasibility study required by section 165.041, Florida Statutes, as well as the proposed charter, with other legislative committees and appropriate state agencies. Reviews are performed by the Department of Revenue, the Legislative Committee on Intergovernmental Relations, the Office of Economic and Demographic Research, and the Department on Community Affairs. The submission of the Village's feasibility study was received prior to the 90-day statutory deadline.

The reviews of the feasibility study and charter similarly conclude that the community of the Lower Keys does not meet one of the statutory requirements for becoming a municipality, and may not meet another requirement. The area is compact and contiguous, and meets the minimum 2-mile limit within the proximity of an existing municipality (Note: The proposed Village of Paradise Islands, HB 563, is adjacent to the proposed Village of the Lower Keys). However, the area does not meet the minimum density requirement of 1.5 persons per acre. One reason for the low population density may be attributed to the fact that a portion of land is owned either by the Federal or State government (for example, the Florida Key Deer Refuge and the Great White Heron National Wildlife Refuge). In addition, there is currently a building moratorium. In addition, the Village may not meet the population minimum of at least 5,000 persons. It appears that the accurate current population (performed by the Office of Economic and Demographic Research) of this area is 4,649. However, the Office of Economic and Demographic Research points out that given the limitations of their ability to project populations at the sub-county level, there could be a population of 5,000 in the area. On the other hand, the population may be under 4,649. **These unmet standards are automatically waived by virtue of the approval of this special act by the Legislature.**

In addition, the Office of Economic and Demographic Research performed a review of the feasibility's proposed budget. It appears as though once the budget was separated into operating and capital outlay, the operating portion of the budget is not balanced given the proposed millage. The Office of Economic and Demographic Research determined that the proposed Village would be operating at losses of \$296,953 (FY2001), \$303,833 (FY2002), and \$261,389 (FY2003). In order to bring the operating budget into balance, the proposed millage would need to be raised by an additional six tenths of a mill. This does not appear to be a problem since they are only proposing a millage rate of 2.3454 mills.

Upon reviewing the Office of Economic and Demographic Research's assessment of its proposed budget, the Village of the Lower Keys, Inc. determined that a revised budget was needed in order to clarify the intent of the budget, include previously overlooked revenues, and to differentiate between restricted and unrestricted revenues and expenditures. Under the revised budget, the Village would be operating at surpluses of \$458,448 (FY2001), \$509,516 (FY2002), and \$568,226 (FY2003), and would have capital surpluses of \$39,390 (FY2001), \$10,846 (FY2002), and \$11,063 (FY2003). This revised budget was submitted to the Office of Economic and Demographic Research for comments. At the time of publication of this analysis, no comments regarding the revised budget were available.

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The review comments 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 review comments and feasibility study are available in the committee office for persons desiring to inspect them.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 8, 2000, the House Committee on Community Affairs adopted two amendments. Amendment #1 is a strike-everything amendment, offered by Representative Sorensen, that addresses the issues raised by the review comments, makes other additional technical corrections, and makes formatting changes. The second amendment is an amendment to amendment #1, offered by Representative Sorensen, that makes a technical correction to require the annexation referendum to be held *within* 30 days of the adoption of the annexation resolution. The amendment to the amendment is engrossed into the strike-everything amendment.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Laura L. Jacobs, Esq.

Joan Highsmith-Smith