

**STORAGE NAME:** h0955.lgva.doc

**DATE:** February 12, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
LOCAL GOVERNMENT & VETERANS AFFAIRS  
ANALYSIS – LOCAL LEGISLATION**

**BILL #:** HB 955

**RELATING TO:** City of Lake Helen Charter

**SPONSOR(S):** Representative Cusack

**TIED BILL(S):** None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
  - (2) COUNCIL FOR SMARTER GOVERNMENT
  - (3)
  - (4)
  - (5)
- 

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill codifies all prior special acts relating to the City of Lake Helen in Volusia County into a single act and repeals all prior special acts relating to the City of Lake Helen's charter.

This bill removes obsolete language which was preempted by applicable general law chapters and inserts applicable chapter language. The bill does not change current municipal boundaries.

No fiscal impacts are anticipated for either fiscal year 2002-03 or 2003-04 according to the Economic Impact Statement.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

B. PRESENT SITUATION:

The City of Lake Helen, Florida (City) was incorporated in 1888, the city charter of the City of Lake Helen, Florida, which currently governs the city, is set forth, in large part, in chapter 22364 (1943), Laws of Florida, as amended. The population of Lake Helen is approximately 2,515 (1997).

**CHAPTER 165, THE "FORMATION OF MUNICIPALITIES ACT" & RELATED CONSTITUTIONAL PROVISIONS:**

What Is A Municipality And What Are Its Powers?

A municipality is a local government entity that is located within a county that is created to perform additional functions and provide additional services for the particular benefit of the population within the municipality. The term "municipality" can be used interchangeably with the terms "city", "town" and "village".

A municipality is constitutionally and statutorily granted all governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services. A municipality may exercise any power for municipal purposes except as otherwise provided by law. Although a municipality may enact local ordinances to govern municipal affairs, the power to tax can only be granted by the Legislature.

**Constitutional/Statutory Provisions**

Constitutional Provisions

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. However, Section 6, Art. VIII of the State Constitution authorizes the Board of County Commissioners for Miami-Dade County to provide a method for establishing new municipalities and prescribe their jurisdiction and powers. When any municipality is abolished, the State 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 (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.

### Special Acts and 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. The exception to this is creating a city in Miami-Dade County. It appears as though Miami-Dade County has the exclusive power to create cities through its home rule powers.

### Requirements and Standards for Municipal Incorporation

Submittal of a feasibility study and a local bill that proposes the local government charter is required. In addition, the statutes provide standards for incorporation. 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 75,000, and of at least 5,000 population in counties with a population of more than 75,000.
- 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.
- A proposed municipal charter that clearly prescribes and defines the form of government and its functions and does not prohibit or restrict the levy of authorized tax.

The standards for incorporation may be clouded by the adoption of chapter 00-304, Laws of Florida. It is not clear if section 165.061(2)(d), Florida Statutes, an incorporation standard for incorporations resulting from mergers also applies to incorporation standards for unincorporated areas provided in section 165.061(1), Florida Statutes. If the provision is applicable, then a municipal incorporation must honor existing solid waste contracts in the affected geographic subject area. However, the city may provide that the existing contracts be honored only for 5 years or the remainder of the contract term, whichever is shorter. In addition, if the city requests written evidence of the contract

duration, excluding any automatic renewals or “evergreen provisions,” such evidence must be provided within a reasonable time.

### Feasibility Study

A feasibility study is a study of the proposed area to be incorporated. 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. 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.

In 1999, the 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. Specifically, the study must include:

- The general location of territory subject to a boundary change and a map of the area that identifies the proposed change.
- The major reasons for proposing the boundary change.
- The following characteristics of the area:
  - o A list of the current land use designations applied to the subject area in the county comprehensive plan.
  - o A list of the current county zoning designations applied to the subject area.
  - o A general statement of present land use characteristics of the area.
  - o 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.
- 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.
- 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.

### Charter

Section 165.061(1)(e), Florida Statutes requires a proposed municipal charter that clearly prescribes and defines the form of government and its functions and does not prohibit or restrict the levy of authorized tax. However, several practical matters are important to consider when proposing a special act for the creation of a new city that are not addressed in chapter 165, Florida Statutes. First, is the content of the charter. A charter should contain matters that 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.

### Amending a Municipal Charter

After a charter is enacted, a municipality may amend its charter in accordance with chapter 166, Florida Statutes, notwithstanding any charter provisions to the contrary. The Act provides that the governing body of a municipality may, by ordinance, submit to the electors a proposed charter amendment.

Alternatively, the electors of a municipality may, by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, submit to the electors of a municipality a proposed amendment to its charter. Such an amendment may be to any part or to all of the charter except the part describing the boundaries of the municipality (such changes must be accomplished through annexation or deannexation as described in Chapter 3 of this manual). The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election or at a special election called for such purpose.

Upon adoption of an amendment to the municipal charter by a majority of the electors voting in a referendum, the governing body of the municipality is required to incorporate the amendment into the charter and file the revised charter with the Department of State. All amendments are effective on the date specified, or as otherwise provided in the charter.

A municipality may, without referendum and by unanimous vote of the governing body, abolish municipal departments provided for in the municipal charter. It may amend provisions or language out of the charter if judicially construed, either by judgment or by binding legal precedent from a decision of a court of last resort, to be contrary to either the State Constitution or Federal Constitution.

In addition, a municipality may, by ordinance and without referendum, redefine its boundaries to include those lands previously annexed. Such redefinitions must be filed with the Department of State. For additional information on municipal annexation, see Chapter 3.

### Merging Municipalities

The municipal incorporation by merger process is described in section 165.041(2), Florida Statutes. To merge two or more municipalities and associated unincorporated areas, the governing bodies of the municipalities involved must pass concurrent ordinances setting forth the proposed new charter. The merger of one or more cities or counties with one or more special districts may often be accomplished in a similar manner. The special acts relating to any special district subject to merger must be appropriately modified or repealed by the Legislature.

Municipal incorporation accomplished by merger may be initiated in one of two ways: 1) the governing body of an area to be affected adopts a resolution for merger, or 2) ten percent of the qualified voters in the affected area petition for a merger. If a petition containing the signatures of 10 percent of the qualified voters in the area is filed with the clerks of the governing bodies concerned, a feasibility study must be undertaken by those governing bodies. Within 6 months of receipt of the petition, the governing bodies must either adopt the concurrent formation ordinances or formally reject the petition. If the petition is rejected, the governing bodies must state the factual basis for such rejection

The concurrent formation ordinances must provide for the charter and its effective date, financial or other adjustments, and a referendum to be passed by a majority of voters in each unit or area to be affected. The ordinance must also provide for the date of the referendum, if approved by a majority of the members of the governing body of each governmental unit affected, no sooner than 30 days after passage of the ordinance. If the ordinance does not provide for a date of the referendum, then the referendum is held at the next regularly scheduled election. Notice of the referendum must be published at least once each week for 2 consecutive weeks immediately prior to the election, in a newspaper of general circulation in the affected area. The notice must include the time and places for the referendum. A general description in the form of a map, which clearly shows the area to be covered by the municipality, must also be included in the notice.

If two or more cities are pursuing a merger, somewhat different general standards apply than those of regular municipal incorporation. Like a municipal incorporation, the total area of the proposed merger must be compact and contiguous and open to accepting urban services. The plan for the merger must include provisions for the handling of bonded indebtedness and the status and pension rights of employees of the merging units of government. However, other standards for incorporation do not apply.

In addition, a municipal incorporation through merger must honor existing solid waste contracts in the affected geographic subject area. However, the newly created city may provide that the existing contracts be honored only for 5 years or the remainder of the contract term, whichever is shorter. In addition, if the newly created city requests written evidence of the contract duration, excluding any automatic renewals or "evergreen provisions," such evidence must be provided within a reasonable time.

### Dissolving Municipalities

Section 2, Art. VIII of the State Constitution provides that municipalities may be 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.

There are three general provisions that must be met for a municipality to dissolve its charter: 1) the municipality must not be surrounded by other cities -- this is to prevent the creation of an enclave; 2) the county or another city must be able to provide the necessary municipal services; and 3) the municipality to be dissolved must make arrangements to resolve its bonded indebtedness and

vested rights of employees. In addition, the Legislature must be notified regarding obsolete special laws so that they may be repealed.

Sections 165.051 and 165.052, Florida Statutes, provide that a municipal charter may be revoked to dissolve a municipality in the following ways:

- The Legislature can pass a special act repealing the enabling act and any later amendatory acts. This method is subject to all requirements of law or rule applicable to the consideration and enactment of any special act.
- The governing body of the city seeking dissolution can pass an ordinance dissolving the municipality, subject to the approval of the qualified voters in the area affected.
  - o The governing body of the municipality, or the governing body or bodies in which the municipality is located, if the municipal governing body does not act within 30 days, shall set the date of the referendum.
  - o The referendum is to be held at the next regularly scheduled election or may be held at a special election prior to the next scheduled election, if the special election is approved by a majority of the members of each governmental unit affected. The date of the referendum cannot be sooner than 30 days after the passage of the ordinance.
  - o The date of the referendum must be published at least once each week for two weeks prior to the date in a newspaper of general circulation in the municipality.
- Inactive municipalities may be dissolved by proclamation of the Secretary of State. For this to occur, the Department of Community Affairs must first file a report with the Secretary of State establishing the inactivity of the city, based upon findings that:
  - o No election for membership in the governing body has been conducted within the past 4 years (or within the time frame otherwise provided by law, if less frequent elections are called for by the enabling act).
  - o Notice of the proposed proclamation has been published at least once each week for 2 consecutive weeks in a newspaper of general circulation within the area affected. This notice must identify the city to be dissolved. It must also inform the public that, for 60 days following the final publication of notice, parties may file objections to the proposed proclamation, or to any debts of the city to be dissolved, with the Department of Community Affairs.
- The sixty days have elapsed from the publication of the last notice and, in that time period, no sustained objections have been filed.

#### Formation Activity in Florida

##### Municipal Incorporation and Mergers:

From 1972 to the present, 16 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, Southwest Ranches, 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 Miami-Dade County's Charter.

C. EFFECT OF PROPOSED CHANGES:

This bill codifies all prior special acts relating to the City of Lake Helen in Volusia County into a single act and repeals all prior special acts relating to the City of Lake Helen's charter.

This bill removes obsolete language which was preempted by applicable general law chapters and inserts applicable chapter language. All outdated references to the municipal court, the City Marshall, Deputy Marshall, City Librarian, etc. are removed from the new charter.

The bill does not change the city limits in effect at the present time.

The provision that each City Commissioner be a fee owner of real property located within the City is deleted.

The charter eliminates a number of committees that are not currently used and which are outdated in terms of municipal operations (municipal plant, street, park and cemetery, etc.)

The powers and duties of the Mayor and Vice Mayor are not changed in the charter. The process of selecting the Vice Mayor is clarified and more fully detailed to address possible contingencies.

The Mayor and City Commissioners continue to receive the salary in effect on the date that the new charter becomes effective and salaries may be changed.

The charter contains a specific provision stating that all City public records be maintained in accordance with State law.

The prohibition against the Mayor or City Commissioners being in the employ of the City while in office and for a one year from the time of leaving office is added.

The new charter provides that the City Administrator and the City Attorney shall be Charter Officers who are appointed by a majority vote of the full City Commission. The City Administrator is a city employee. The City Attorney serves at the pleasure of the City Commission. The City Commission is the head of City government and has all managerial, executive, legislative, and police powers of the City.

The City Administrator does not have delegated powers from the City Commission such as employee hiring and termination, setting compensation rates and awarding pay increases, and is not given powers assigned to the City Commission in the enabling charter. The City Administrator is a regular city employee in the same respect as any other city employee. All of the prescribed duties of the City Administrator recognize the subordinate nature of the City Administrator to the City Commission. The City Administrator's function is to act as chief coordinator and administrative officer of the City Commission as it relates to coordinating day-to-day staff and program activities. The City Administrator's duties and responsibilities are those that have historically been performed by the City Clerk. The City Administrator acts as the City Planner consistent with growth management laws. The provisions of the charter relating to the City Administrator are consistent with the job description for the position currently in effect in the City as adopted by the City Commission.

The charter states that the City Commission adopt a budget and set tax rates in accordance with State law. The charter provides that the City Commission adopt a financial policy at such times as it deems appropriate to provide for financial management policies of the city. The charter provides that the City Commission enact a purchasing code to regulate the procurement of goods and services.



The charter provides the charter may be amended in accordance with the provisions of the Municipal Home Rules Powers Act, chapter 166, F.S., and provides for the convening of a Charter Review Commission on a periodic basis in order to address changes in the law.

The charter provides that all elected officials, appointed officials and employees of the City be subject to the standards of conduct for public officers and employees established in State law and that the City Commission may, by ordinance, establish a supplemental code of ethics for the City, which may in no case diminish the provision of State law.

The charter provides that all ordinances in effect upon the adoption of this the new charter remain in force.

The charter provides that it shall not affect or impair the rights or privileges of persons who are officers or employees of the City of Lake Helen at the time of adoption and that all officers elected or appointed and holding office in the City of Lake Helen continue to hold their respective offices and to discharge the duties until their successors are elected and qualified.

The charter provides that all rights, title, claims, actions, orders, contracts, ownership of property, uncollected taxes, dues, judgments, decrees, legal or administrative proceedings involving the City of Lake Helen, and all property and property rights of every nature whatever held or owned by the City of Lake Helen continue and that no obligation or contract of the City be impaired or avoided by the act.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1.** Provides that this act is the codification required under section chapter 97-255, Laws of Florida. States Legislative intent for the act. Preserves all municipal authority.

**Section 2.** Amends, codifies, reenacts, and repeals special acts relating to the City of Lake Helen's, (Volusia County) charter.

**Section 3.** Provides for the re-creation of the City of Lake Helen and the re-creation and reenactment of the charter for the City of Lake Helen and the following provisions.

Section 1. Provides a Short title; provides the Charter of the City of Lake Helen (charter).

Section 2. Provides for the body corporate; provides for continuous existence.

Section 3. Provides the boundaries of the City.

Section 4. Provides for the City powers.

Section 5. Provides for a five-member City Commission consisting of the Mayor and four City Commissioners representing zones within the city; provides for the composition of the Commission; provides the Mayor and Commission run for office at large and be elected at large; provides for the qualifications of office; provides for elections.

Section 6. Provides for staggered terms of office; provides for term limits.

Section 7. Provides for the powers and duties of the Commission; provides exceptions.

Section 8. Provides for the powers and duties of the Mayor and Vice Mayor.

Section 9. Provides for compensation of Commissioners and the Mayor; provides for expenses.

- Section 10. Provides for vacancies; provides for the mayor's or a city commissioner forfeiture of office; provides for mayor's or city commissioner's suspension from office; provides for removal of mayor or a city commissioner; provides for filling of vacancies.
- Section 11. Provides for monthly City Commission meetings; provides for the organizational meeting; provides for a quorum; provides for special meetings.
- Section 12. Provides for all city public records.
- Section 13. Provides limit of employment of mayor and commission members.
- Section 14. Provides for charter officers.
- Section 15. Provides for the City Administrator; provides qualifications; provides for the powers and duties of the City Administrator.
- Section 16. Provides for the City Attorney; provides qualifications; provides for the powers and duties of the City Attorney.
- Section 17. Provides for the adoption of a budget and setting of tax rates in accordance with state law; provides the City Commission have all powers of local government vested in it by state law relative to fiscal processes and procedures; provides for the adoption of a financial policy appropriate to provide for financial management policies of the city.
- Section 18. Provides for the electors of the city; provides elections of city elective offices be conducted on a nonpartisan basis; provides for qualification of candidates with the city clerk no sooner than 45 calendar days nor later than 35 calendar days prior to the second Tuesday in September of each odd-numbered year; provides for regular and special elections.
- Section 19. Provides for charter amendments; provides for the appointment of a Charter Review Committee.
- Section 20. Provides for the standards of conduct by all elected officials, appointed officials, and employees of the city; provides the City Commission may, by ordinance, establish a supplemental code of ethics for the city.
- Section 21. Provides for the preservation of the ordinances in effect upon the adoption of this Charter.
- Section 22. Provides for the rights of officers and employees who are officers or employees of the City of Lake Helen at the time of the adoption of this Charter.
- Section 23. Provides all pending matters shall continue except as modified pursuant to the provisions of this Charter; provides for a savings clause.
- Section 4.** Provides for the severability of any invalid provision.
- Section 5.** Repeals chapters 5510 (1905), 9006 (1921), 9811 (1923), 11584 (1925), 11585 (1925), 14169 (1929), 14611 (1929), 15296 (1931), 18639 (1937), 22364 (1943), 29223 (1953), 30915 (1955), 59-1473, 59-1474, and 63-1511, Laws of Florida.
- Section 6.** Provides effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? December 1, 2001

WHERE? The News-Journal in Daytona Beach, Volusia County, Florida

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The law firm, Stenstrom, McIntosh, Colbert, Whigham & Simmons, P.A., representing the District submitted a boundary letter stating the following:

[T]he most recent legal description of the City includes lands that were annexed subsequent to the re-creation of the City in 1943.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor of the bill is submitting one amendment to the bill. The amendment removes an incorrect citation and clarifies that the bill provides for a single, comprehensive charter for the City of Lake Helen and codifies all of the city's ordinances.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

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Terri S. Boggis

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Joan Highsmith-Smith