

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1297

Town of Grant-Valkaria, Brevard County

SPONSOR(S): Poppell

TIED BILLS:

IDEN./SIM. BILLS: SB 1914

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Nelson	Hamby
2) Finance & Tax Committee			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1297 provides a charter for the Town of Grant-Valkaria in Brevard County. This charter provides for:

- the creation and establishment of the town, and the amendment of the charter;
- corporate boundaries, powers of the town, and a town council-administrator form of government;
- a town council and its powers and duties, compensation, membership and meetings;
- a mayor and vice mayor, their powers and duties, and the filling of vacancies;
- ordinances, and restrictions on the use of eminent domain;
- a town administrator and his or her powers and duties, appointment, qualifications, compensation, removal and absence;
- the establishment of departments, offices and agencies and their administration under the direction of the town administrator; a personnel system; and a town attorney;
- land use, development and environmental planning;
- accounting procedures; the fiscal year; an annual audit; availability of financial records; public deposits; requirements for purchase or sale of real property; an annual budget; the levy of taxes; a prohibition on the issuance of certain bonds or entering into certain types of contracts; emergency appropriations;
- town elections;
- appointment and removal of town administrative officers and employees;
- regulation of campaign financing;
- a long-range plan, and a five-year financial plan;
- emergency operations;
- transitional provisions, including an interim council, sources of revenue and continuity of services.

The bill provides that the act takes effect only upon its approval by a majority vote of qualified electors residing within the corporate limits of the proposed city.

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.

According to the Economic Impact Statement, the projected cost of funding the town government and municipal services of Grant-Valkaria will be \$1,641,575 for FY 06-07 and \$1,777,937 for FY 07-08. Anticipated sources of funding are projected to be \$1,796,298 in FY 06-07 and \$1,891,519 in FY 07-08.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

If incorporation of the proposed municipality is approved, it will create an additional local government entity.

B. EFFECT OF PROPOSED CHANGES:

Background/Municipal Incorporation

Constitutional Provisions

Section 2, Art. VII of the State Constitution provides that municipalities¹ may be established or abolished and their charters amended pursuant to general or special law. Municipalities are constitutionally granted all governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and 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 be elected.

Statutory Provisions

Florida law governing the formation and dissolution of municipal governments is found in ch. 165, F.S., 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 so as to:

- allow orderly patterns of urban growth and land use;
- assure adequate quality and quantity of local public services;
- ensure financial integrity of municipalities;
- eliminate or reduce avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions; and
- promote equity in the financing of municipal services.

Under ch.165, F.S., there is only one way to establish a city government where no such government exists: the Legislature must pass a special act creating the city's charter, upon determination that the standards provided in that chapter have been met.²

Requirements and Standards for Municipal Incorporation

Submittal of a feasibility study and a local bill that proposes the local government charter is required for consideration of incorporation. In addition, the new municipality must meet the following conditions in the area proposed for incorporation pursuant to s. 165.061(1), F.S.:

1. It must be compact, contiguous and amenable to separate municipal government.

¹ A municipality is a local government entity, 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."

² An exception to this rule exists in Miami-Dade County where the county has been granted the exclusive power to create cities through the State Constitution and its home rule powers. See, s. 165.022, F.S., and s. 6(e), Art. VIII of the State Constitution. Adopted in 1957, the Miami-Dade Home Rule Charter provides for the creation of new municipalities at section 5.05.

2. It 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 persons in counties with a population of more than 75,000.
3. It 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.
4. It must be a minimum distance of at least two miles from the boundaries of an existing municipality within the county or have an extraordinary natural boundary that requires separate municipal government.
5. It must have 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.
6. In accordance with s. 10, Art. I of the State Constitution, the plan for incorporation must honor existing solid-waste contracts in the affected geographic area subject to incorporation.

Feasibility Study

The feasibility study is a survey 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. The feasibility study must be completed and submitted to the Legislature at least 90³ days prior to the first day of the regular legislative session during which the municipal charter would be enacted.

In 1999, the Legislature revised s.165.041, F.S., by adding new, detailed requirements for the preparation of the required feasibility study for any area requesting incorporation. Specifically, the study must include:

1. The general location of territory subject to a boundary change and a map of the area that identifies the proposed change.
2. The major reasons for proposing the boundary change.
3. 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.
4. A list of all public agencies, such as local governments, school districts and special districts, whose current boundaries fall within the boundary of the territory proposed for the change or reorganization.
5. A list of current services being provided within the proposed incorporation area, including, but not limited to, water, sewer, solid waste, transportation, public works, law enforcement, fire and rescue, zoning, street lighting, parks and recreation, and library and cultural facilities, and the estimated costs for each service.
6. A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such services.
7. The names and addresses of three officers or persons submitting the proposal.
8. 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; and

³ Section 165.041(1)(b), F.S.

- a five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance and budgets.
9. Data and analysis to support the conclusion that incorporation is necessary and financially feasible, including population projections and population density calculations and an explanation concerning methodologies used for such analysis.
 10. Evaluation of the alternatives available to the area to address its policy concerns.
 11. Evidence that the proposed municipality meets the standards for incorporation of s.165.061, F.S.

Section 165,081, F.S., provides that any special law enacted pursuant to ch. 165, F.S., is reviewable by certiori if the appeal is brought before the effective date of the incorporation.

Formation Activity In Florida

Municipal Incorporations and Mergers

From 1972 to the present, 25 municipalities have been incorporated, with 17 municipalities 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, West Park and Weston). During this time, one municipality 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, Sunny Isles Beach, Miami Lakes, Palmetto Bay, Doral and Cutler Bay were created under the charter provisions of Miami-Dade County's Charter. The following table indicates recent municipal incorporations by year, county and enabling law.

YEAR	MUNICIPALITY	COUNTY	ENABLING LAW
1973	LAKE MARY	Seminole County	ch. 73-522, L.O.F.
1974	SANIBEL	Lee County	ch. 74-606, L.O.F.
1983	JACOB CITY	Jackson County	ch. 83-434, L.O.F. ch. 84-456, L.O.F.
1984	DESTIN	Okaloosa County	ch. 84-422, L.O.F. ch. 85-471, L.O.F.
1986	MIDWAY	Gadsden County	ch. 86-471, L.O.F.
1991	KEY BISCAYNE	Miami-Dade County	by authority of the Miami-Dade County Charter
1993	DEBARY	Volusia County	ch. 93-351, L.O.F. ch. 93-363, L.O.F.
1995	AVENTURA	Miami-Dade County	by authority of the Miami-Dade County Charter
1995	PINECREST	Miami-Dade County	by authority of the Miami-Dade County Charter
1995	FT. MYERS BEACH	Lee County	ch. 95-494, L.O.F.
1995	DELTONA	Volusia County	ch. 95-498, L.O.F.

1995	WELLINGTON	Palm Beach County	ch. 95-496, L.O.F.
1996	WESTON	Broward County	ch. 96-472, L.O.F.
1997	ISLAMORADA	Monroe County	ch. 97-348, L.O.F.
1997	MARCO ISLAND	Collier County	ch. 97-367, L.O.F.
1997	SUNNY ISLES BEACH	Miami-Dade County	by authority of the Miami-Dade County Charter
1999	BONITA SPRINGS	Lee County	ch. 99-428, L.O.F.
1999	MARATHON	Monroe County	ch. 99-427, L.O.F.
1999	PALM COAST	Flagler County	ch. 99-448, L.O.F.
2000	SOUTHWEST RANCHES	Broward County	ch. 2000-475, L.O.F.
2000	MIAMI LAKES	Miami-Dade County	by authority of the Miami-Dade County Charter
2002	PALMETTO BAY	Miami-Dade County	by authority of the Miami-Dade County Charter
2003	DORAL	Miami-Dade County	by authority of the Miami-Dade County Charter
2003	MIAMI GARDENS	Miami-Dade County	by authority of the Miami-Dade County Charter
2004	WEST PARK	Broward	ch. 2004-454, L.O.F.
2005	CUTLER BAY	Miami-Dade County	by authority of the Miami-Dade County Charter

Failed Attempts at Municipal Incorporation

Over the years, a number of incorporation attempts have failed. Since 1980, Floridians have rejected the formation of municipal governments by voting down the incorporation efforts of:

- A city in the Halifax area of Volusia County (1985)
(ch. 85-504, L.O.F.)
- The City of Fort Myers Beach (1982/1986)
(chs. 82-295 and 86-413, L.O.F.)
- The City of Spring Hill (1986)
(ch. 86-463, L.O.F.)
- The City of Deltona Lakes (1987)
(ch. 87-449, L.O.F.)
- The City of Deltona (1990)

(ch. 90-410, L.O.F.)

- The City of Marco Island (1980/1982/1986/1990/1993)
(chs. 80-541, 82-330, 86-434, 90-457 and 93-384, L.O.F.)
- The City of Port LaBelle (1994)
(ch. 94-480, L.O.F.)
- The City of Destin (1995)
(by authority of the Miami-Dade County Charter)
- The City of Ponte Vedra (1998)
(ch. 98-534, L.O.F.)
- The Village of Key Largo (1999)
(ch. 99-430, L.O.F.)
- The City of Southport (1999)
(ch. 99-444, L.O.F.)
- The Village of the Lower Keys (2000)
(ch. 2000-383, L.O.F.)
- The Village of Paradise Islands (2000)
(ch. 2000-382, L.O.F.)

Municipal Mergers

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

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

Municipal Dissolutions

During the last several decades, numerous cities have been dissolved:

- Bithlo in Orange County by authority of the Secretary of State in January 1977;
- Bayview in Bay County by ch. 77-501, L.O.F.;
- Munson Island in Monroe County by ch. 81-438, L.O.F.;
- Painters Hill in Flagler County by ch. 81-453, L.O.F.;
- Hacienda Village in Broward County by ch. 84-420, L.O.F.;
- Pennsuco in Miami-Dade County under authority of the Miami-Dade County Charter;
- Golfview in Palm Beach County by ch. 97-329, L.O.F.; and
- North Key Largo by ch. 2003-318, L.O.F.

Town of Grant-Valkaria

The communities of Grant and Valkaria are located in the southeastern quadrant of Brevard County. Originally settled as fishing villages, Grant and Valkaria have been identifiable as independent

communities since the late 19th century. The contiguous communities are bounded by the Town of Malabar on the north, the Indian River Lagoon on the east, the City of Palm Bay to the west, and the unincorporated community of Micco to the south.

In November of 2004, in response to growing concerns over encroaching development and annexations of large tracks of adjacent properties, groups of Grant and Valkaria residents began exploring the options available to preserve their community. Among the alternatives considered were petitioning for annexation to an adjoining municipality, establishing a "Preservation District," seeking designation as a special district, or investigating the possibility of municipal incorporation.⁴

A feasibility study on the creation of the town, as required by ch. 165, F.S., was submitted to the Florida House of Representatives on December 5, 2005. This study and the charter were reviewed by the Legislative Committee on Intergovernmental Relations, Office of Economic & Demographic Research, Department of Revenue and Department of Community Affairs.⁵

Effect of Proposed Changes

Proposed Charter

HB 1297 provides a proposed charter for the Town of Grant-Valkaria:

Section 1: Town of Grant-Valkaria; charter; creation; powers; construction; form of government; boundaries; intergovernmental relations.

- (1) CHARTER; CREATION: Provides for the charter of the Town of Grant-Valkaria, and creates and establishes the town.
- (2) POWERS OF THE TOWN: Provides that the town retain claim to all power and legal rights granted to municipalities under the Constitution and laws of the State of Florida.
- (3) CONSTRUCTION: Provides for the liberal construction of the powers of the town.
- (4) FORM OF GOVERNMENT: Provides that the town shall have a town council-administrator form of government.
- (5) CORPORATE BOUNDARIES: Provides a legal description for the town.
- (6) INTERGOVERNMENTAL RELATIONS: Provides that the town may participate by contract or otherwise with any governmental entity of the state, or any other state, in the performance of any activity that one or more of such entities has the authority to undertake.

Section 2: Town council; mayor; vice mayor; ordinances; eminent domain.

- (1) TOWN COUNCIL: Provides that the town council shall consist of six council members and one mayor, for a total of seven members, all of whom are elected at large; provides that four or more members of the town council will constitute a majority, and five or more members of the town council will constitute a supermajority; provides that a majority of the town council shall constitute a quorum; provides that all powers of the town shall be vested in the elected town council, except as otherwise provided by law or the charter.
- (2) MAYOR: Provides that the mayor shall preside at meetings of the town council, and be a regular voting member of the town council; provides that the mayor shall be recognized as the head of town government for all ceremonial purposes, for purposes of military law, and for service of process and execution of town council authorized contracts, deeds and other documents.
- (3) VICE MAYOR: Provides that the vice mayor shall act as mayor in the absence of the mayor; provides that the vice mayor shall be elected from among council members for a term of one year or until his or her successor is elected; provides that a council member shall not serve consecutive terms as vice mayor unless no other council member is willing to serve as vice mayor.
- (4) VACANCIES: Provides that the office of a town council member will become vacant upon the incumbent's death, resignation or removal from office in any manner authorized by law or by forfeiture of his or her office; provides that a town council member shall forfeit his or her seat if he or she ceases

⁴ See, the Grant/Valkaria Incorporation Feasibility Study as presented to the Brevard County Commission on November 2, 2005.

⁵ These reviews are on file with the Local Government Council.

to maintain a permanent residence in the town or otherwise ceases to be a qualified elector of the town; provides that any member of the town council shall be subject to forfeiture of his or her office if absent without good cause from any three consecutive regular meetings of the council or any four regular meetings of the council within any 12-month period; provides that the town council shall be the sole judge of the qualifications of its members.

(5) FILLING OF VACANCIES: Provides that a vacancy on the town council shall be filled by a majority vote of the remaining members of the town council, unless at the time of the vacancy there are fewer than six months remaining before the next regular election, in which case the town council shall have the discretion to leave the seat vacant until the election; provides that in the event that all the members of the town council are removed by death, disability, recall, forfeiture of office, resignation or any combination thereof, the Governor shall appoint an interim town council; provides that the interim town council shall call a special election within not fewer than 60 days or more than 90 days after such appointment; provides that if there are fewer than six months remaining in the unexpired terms, the interim town council appointed by the Governor shall serve out the unexpired terms.

(6) COMPENSATION; REIMBURSEMENT FOR EXPENSES: Provides that council members shall serve as town volunteers and not be compensated; provides that council members shall receive reimbursement for council-approved expenses in accordance with applicable law, or as may be otherwise provided by ordinance, for authorized travel and per diem expenses incurred in the performance of their official duties; provides that an ordinance establishing, increasing or decreasing reimbursement for expenses of the council members may be adopted at any time.

(7) INVESTIGATIONS: Provides that the town council may make investigations into the affairs of the town and the conduct of any town department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence.

(8) MEETINGS: Provides that the town council shall hold a minimum of 11 monthly meetings in each fiscal year at such times and places as the town council may prescribe by rule; provides that special meetings may be held on the call of the mayor or four or more members and, whenever feasible, upon no less than 24 hours' notice to each member; provides that except as otherwise provided by general law, all meetings shall be public; provides that the town council shall determine its own rules and order of business and procedure or use the latest edition of Robert's Rules of Order; provides that the town council shall provide for keeping a journal of its proceedings; provides that such journal shall be a public record except as otherwise provided by general law; provides that all town council votes shall be recorded in the journal; provides that no action of the town council, except as otherwise provided in the charter, shall be valid or binding unless adopted by a majority decision; provides that except as otherwise provided in the charter, all land use and quasi-judicial items shall require a supermajority decision.

(9) ORDINANCES: Provides that acts which accomplish the following (in addition to other acts required by law or by specific provision of the charter) must be ordinances:

- adopt or amend an administrative code or establish, alter, or abolish any town department, office or agency;
- regulate land use and development;
- levy taxes;
- grant, renew or extend a franchise;
- regulate the rate charged by a public utility for its services;
- authorize the borrowing of money;
- convey or lease, or authorize the conveyance or lease of, any lands of the town;
- provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- amend or repeal any ordinance previously adopted; or
- adopt, with or without amendment, ordinances proposed under the initiative power.

(10) EMINENT DOMAIN: Provides that the town council may not exercise its powers of eminent domain or condemnation to acquire property for private development purposes, regardless of the public good such eminent domain or condemnation might support.

(11) ORDINANCES IN GENERAL: Provides that every proposed ordinance shall be introduced in writing and in the form required for final adoption; provides that no ordinance shall contain more than one subject, which shall be clearly expressed in its title; provides for ordinances that repeal or amend an existing ordinance or part of the town code; provides that any member of the town council at any

regular or special meeting of the town council may introduce an ordinance; provides other procedural rules for ordinances; provides that except as otherwise provided in the charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein; provides for the adoption and repeal of emergency ordinances; provides that the town council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance; provides that the town clerk shall authenticate by signing and recording in full in a properly indexed document kept for that purpose all ordinances and resolutions adopted by the town council; provides that within three years after adoption of the charter and at least every 10 years thereafter, the town council shall provide for the preparation of a general codification of all town ordinances and resolutions having the force and effect of law; provides for the publication and distribution of town ordinances.

Section 3: Town administrator.

(1) APPOINTMENT; QUALIFICATIONS; COMPENSATION: Provides that the town council, by majority vote, shall appoint a town administrator for an indefinite term and set his or her compensation; provides for qualifications and residency; provides that the town administrator is responsible to the town council.

(2) REMOVAL: Provides that the town council may request the resignation of the town administrator; provides that the town council may suspend and remove the town administrator.

(3) ABSENCE OR DISABILITY: Provides that to perform his or her duties during a temporary absence or disability, the town administrator may designate, by letter filed with the town clerk, an interim town administrator: provides in the event of failure or inability of the town administrator to make such designation, or should the person so designated by the town administrator be unsatisfactory to the town council, that the town council may by resolution appoint an interim town administrator.

(4) POWERS AND DUTIES: Provides that the town administrator shall be the chief executive officer of the town; provides that the town administrator shall:

- hire or fill existing positions, suspend or remove town employees, and may serve as town clerk;
- direct and supervise the administration of all departments and offices, but not town boards or agencies, except as otherwise directed by the town council or provided by the charter;
- attend all town council meetings;
- ensure that all laws, provisions of the charter, and acts of the town council, subject to enforcement by the town administrator or by officers subject to the town administrator's direction and supervision, are faithfully executed;
- prepare and submit the annual budget and capital program to the town council and implement the final budget approved by the town council to achieve the goals of the town;
- submit to the town council, and make available to the public, a complete report on the financial and administrative activities of the town as of the end of each fiscal year;
- prepare such other reports as the town council may require concerning the operations of town departments, offices, boards and agencies;
- keep the town council fully advised as to the financial condition and current and future needs of the town;
- assist the town council in developing long-term goals for the town and strategies to implement these goals;
- make recommendations to the town council concerning the affairs of the town and facilitate the work of the town council in developing policy;
- provide staff support services for the mayor and council members;
- encourage and provide staff support for regional and intergovernmental cooperation;
- promote partnerships among the town council, staff and citizens in developing public policy and building a sense of community; and
- perform all such other duties as are specified in the charter or that may be required by the town council.

(5) BOND: Provides that the town administrator and, where applicable, an interim town administrator shall furnish a security bond to be approved by the town council, in such amount as the town

council may specify, such bond to be conditioned on the faithful performance of his or her duties; provides that the premium of the bond shall be paid by the town.

Section 4: Departments, offices, and agencies; town attorney; land use.

(1) CREATION OF DEPARTMENTS, OFFICES, AND AGENCIES: Provides that the town council may establish town departments, offices and agencies and prescribe their functions.

(2) DIRECTION BY TOWN ADMINISTRATOR: Provides that all departments, offices and agencies under the direction and supervision of the town administrator shall be administered by an officer appointed by and subject to the direction and supervision of the town administrator; provides that with the consent of the town council, the town administrator may serve as the head of one or more such departments, offices or agencies or may appoint one person as the head of two or more of them.

(3) PERSONNEL SYSTEM: Provides that all appointments and promotions of town officers and employees shall be made primarily on the basis of merit or other evidence of competence; provides that consistent with all applicable federal and state laws, the town council shall provide by ordinance for the establishment, regulation and maintenance of a merit system governing personnel policies necessary to effective administration of the employees of the town's departments, offices and agencies.

(4) TOWN ATTORNEY: Provides that the town council shall appoint the town attorney by an affirmative vote of a majority of the town council; provides that the town council shall establish a contract term for the town attorney that includes scheduled reviews; provides that the town attorney shall report to the town council to serve as chief legal adviser to the town council, the town administrator, and all town departments, offices and agencies; provides that compensation and benefits of the town attorney shall be set by the town council; provides that the town attorney shall be a member in good standing of The Florida Bar; provides that the town council may remove the town attorney at any time by an affirmative vote of a majority of the town council; provides that the town attorney shall take office immediately on appointment, and that the terms and conditions of his or her appointment shall be reduced to a written contract; provides that the town council shall have the authority to engage such additional legal counsel as it deems advisable and necessary.

(5) LAND USE, DEVELOPMENT AND ENVIRONMENTAL PLANNING: Provides that, consistent with all applicable federal and state laws with respect to land use, development and environmental planning, the town council shall:

- designate an agency or agencies to carry out the planning function and such decision-making responsibilities as may be specified by ordinance or in section 9;
- adopt a comprehensive plan and determine to what extent zoning and other land use control ordinances must be consistent with the plan;
- determine to what extent the comprehensive plan and zoning and other land use ordinances must be consistent with regional plans; and
- adopt development regulations, to be specified by ordinance, to implement the plan.

Provides that the designated agency, the town administrator and the town council shall seek to act in cooperation with other jurisdictions and organizations in their region to promote integrated approaches to regional issues.

Section 5: Finances.

(1) ACCOUNTING PROCEDURES: Provides that the town administrator shall prescribe and require, except as may be prescribed and required by law, the use of plain and uniform systems of keeping books of accounts by all town departments, officers or employees who are charged with the receipt or disbursements of any of the funds of the town or who may be authorized to purchase materials and supplies or to employ labor for the town.

(2) FISCAL YEAR: Provides that the fiscal year of the town shall begin with the first day of October in each year and end on the last day of September of the following year, as set forth in s.166.241, F.S.

(3) ANNUAL AUDIT: Provides that the town council shall retain a certified public accountant to be the independent auditor of accounts of the town; provides that it shall be the duty of the auditor to audit the accounts of the town and all its officers whose duty involves the collection, custody and payment of moneys to or by the town; provides that the auditor shall, on or before April 15 of each year, make and deliver a detailed report of any and all accounts, records and books from the previous fiscal year examined and audited by him or her.

- (4) PUBLIC FINANCIAL RECORDS: Provides that the town administrator shall regularly make available as public records at a suitable location all major revenues and expenditures of the town for a given fiscal year; provides that this information shall be made available, at a minimum, quarterly.
- (5) PUBLIC DEPOSITS: Provides that all public deposits shall be made in qualified public depositories and secured as provided by state law.
- (6) PURCHASE, SALE, AND LEASE OF REAL PROPERTY: Provides that all purchases or sales of real property by the town or leases of town-owned property are subject to public notice and hearing before action is taken by the town council; provides that such action shall require a supermajority vote of the town council; provides that the public notice shall be of the same extent and nature as that required by general law for rezoning.
- (7) ANNUAL BUDGET: Provides for submission of annual budget; provides that on or before July 15 of each year, the town administrator shall submit a budget in accordance with state law; provides that the town council shall adopt a budget for the ensuing fiscal year by resolution on or before September 30 of each year; provides that the town council shall not authorize or allow to be authorized a budget that exceeds the reasonably expected revenue for the ensuing fiscal year; provides that if at any time during the fiscal year it appears probable to the town administrator that the revenues available will be insufficient to meet the amount appropriated in the budget, the town administrator shall report to the town council without delay; provides that the town council shall then take action to prevent or minimize any deficit and for that purpose may, by resolution, reduce one or more appropriations; provides that the town administrator shall have full authority to transfer unencumbered funds between different programs within a department, office or agency; provides that the town administrator shall not have the authority to transfer funds between departments, offices or agencies; provides that the town council may, by resolution, transfer or otherwise allocate or reallocate part or all of any unencumbered balance within a department, office or agency to any other department, office or agency; provides that copies of the budget as adopted shall be public record and shall be made available to the public at a suitable location in the town.
- (8) TAXATION AND REVENUE: Provides that all property, real or personal, in the town not expressly exempt by state law shall be subject to taxation by the town within the limits set forth by the State Constitution and general law; provides that the town council shall have the right to raise, by taxation on the taxable property within the corporate limits of the town and on licenses, such amounts as may be necessary to carry on the government of the town, within the limits set forth by the State Constitution and general law; provides that the town council shall have the right to levy such additional taxes, within the limits set forth by the State Constitution and general law, as may be necessary to pay the interest on, and to provide a sinking fund for the ultimate redemption of, the outstanding bonds of the town as may from time to time be issued in accordance with law and to pay any lawful judgment that the town may be compelled to satisfy; provides that unless authorized by the electors of the town at a duly held referendum election, the town council shall not authorize or allow to be authorized the issuance of revenue bonds or enter into lease-purchase contracts or any other unfunded multiyear contracts for the purchase of real property or the construction of capital improvements the repayment of which extends beyond the end of any fiscal year.
- (9) EMERGENCY APPROPRIATIONS: Provides that to address a public emergency affecting life, health, property or the public peace, the town council may make emergency appropriations; provides that such appropriations may be made by emergency ordinance in accordance with the provisions of section 2; provides that to the extent that there are no available unappropriated revenues or a sufficient fund balance to meet such appropriations, the town council may by such emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid or refinanced as long-term debt not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.

Section 6: Town elections.

- (1) CONDUCT OF ELECTIONS: Provides that the provisions of the general election laws of the state shall apply to all elections held under the charter; provides that the town council may, by ordinance, make all regulations it considers needful or desirable, not inconsistent with the charter, for the conduct of municipal elections and for the prevention of fraud therein; provides that nothing in the charter shall preclude the town council from authorizing the administration of town elections by the county supervisor

of elections; provides that regular town elections shall be held every two years beginning on November 7, 2006, coincident with county, state and national elections; provides that poll workers and clerks of elections, if required, shall be appointed by the Brevard County Supervisor of Elections; provides for special elections; provides that any person who is a resident of the town, is qualified as an elector of the state, and is registered to vote in the manner prescribed by law shall be an elector of the town; provides for nonpartisan elections.

(2) COMMENCEMENT OF TERMS: Provides that the term of office of any elected official shall commence two weeks after the election.

(3) OATH OF OFFICE: Provides for an oath of office.

(4) METHOD OF ELECTING COUNCIL MEMBERS: Provides that the ballot for the general election shall contain the names of all qualified candidates for council members and the number of seats up for election; provides that the ballot shall instruct electors to cast one vote for each open council seat; provides that the candidates who receive the largest number of votes shall be the duly elected council members and shall be designated as holding a specific council seat number; provides that council seat numbers shall be assigned such that the lowest seat number available is given to the candidate who receives the largest number of votes.

(5) METHOD OF ELECTING THE MAYOR: Provides that if the mayor's term is expiring, the ballot for the general election shall contain the names of all qualified candidates for mayor and shall instruct electors to cast one vote for mayor; provides that the candidate for mayor receiving the largest number of votes shall be the duly elected mayor.

(6) TIE VOTES: Provides that in the event of a tie for the office of council member or mayor, the winner shall be determined by lot.

(7) CANDIDATE FORUMS: Provides that the town shall sponsor and budget for a minimum of three candidate forums; provides that each candidate for mayor or council seat shall participate in a minimum of two candidate forums.

(8) QUALIFYING OF CANDIDATES FOR OFFICE OF COUNCIL MEMBER OR MAYOR: Provides that only electors of the town who have resided in the town for the two years preceding the date of filing for candidacy shall be eligible to hold the office of council member or mayor; provides that candidates for council member or mayor shall qualify for election by the filing of a written notice of candidacy with the clerk of the town at such time and in such manner as may be prescribed by ordinance, plus payment of any fees required by general law as a qualifying fee; provides that the candidate shall submit a qualifying statement, as prescribed by ordinance, with the signatures of at least one percent of the total number of electors at the last general election, and pay any required filing fee; provides for a qualifying period of not be less than 45 days and not more than 60 days prior to the election.

(9) INITIATIVE, CITIZEN REFERENDUM, AND RECALL: Provides that the electors of the town shall have power to propose ordinances to the town council; provides that such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes, or salaries of town employees; provides that if the town council fails to adopt the proposed ordinance or a modification thereof, the electors shall have the power to adopt or reject it at a town election; provides that the electors of the town shall have the power to require reconsideration by the town council of any adopted ordinance; provides that the electors of the town shall have the power to remove from office any elected official of the town in accordance with general law.

(10) INITIATIVE AND REFERENDUM PROCEEDINGS: Provides that any five electors may commence initiative or referendum proceedings by filing with the town clerk an affidavit stating that they will constitute the petitioners' committee, stating that they will be responsible for circulating the petition and filing it in proper form, stating their names and addresses, specifying the address to which all notices to the petitioners' committee are to be sent, and setting out in full the proposed initiative ordinance or the proposed amendment or repeal action relating to an existing ordinance.

(11) RESULTS OF INITIATIVE OR REFERENDUM: Provides that if a majority of the electors voting in a referendum on a proposed initiative ordinance votes in favor of such ordinance, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances adopted by the town council; provides that if a majority of the electors voting in a referendum on a request to repeal an existing ordinance votes in favor of repeal, the ordinance shall be considered repealed upon certification of the election results.

Section 7: General provisions.

- (1) CONDUCT OF OFFICIALS IN OFFICE: Provides that all town council members, town officials and town employees shall be subject to the code of ethics for public officers and employees set forth in part III of ch.112, F.S., as required by law; provides that the use of public office for private gain is prohibited and for the town council to implement this prohibition by ordinance.
- (2) PROHIBITIONS: Provides that except where authorized by law, neither the mayor nor any council member shall hold any other elected public office during the term for which the mayor or council member is elected; provides that no elected town official shall hold any appointive town office or town employment while in office; provides that no former elected town official shall hold any compensated appointive town office or town employment until 12 months after the expiration of his or her term.
- (3) APPOINTMENTS AND REMOVALS: Provides that neither the council members nor the mayor shall in any manner control or demand the appointment or removal of any town administrative officer or employee whom the town administrator or any subordinate of the town administrator is empowered to appoint.
- (4) INTERFERENCE WITH ADMINISTRATION: Provides that except for the purpose of inquiries and investigations, the town council and its members shall deal with the town officers and employees who are subject to the direction of the town administrator solely through the town administrator, and neither the town council nor its members shall give orders to any such officer or employee either publicly or privately.
- (5) CAMPAIGN FINANCE: Provides that the town council shall adopt ordinances to protect the ability of citizens to be informed of financing used in campaigns for local office; provide that the town council may adopt ordinances that limit contributions, time limits on fundraising, and public financing.
- (6) LONG-RANGE PLAN: Provides that the town council shall meet to discuss long-range goals and objectives that, when achieved, will sustain town operations and continued quality of life for inhabitants of the town.
- (7) FIVE-YEAR FINANCIAL PLAN: Provides that in accordance with the five-year goals and objectives established in the long-range plan by the town council, the town council shall prepare a five-year financial plan.
- (8) EMERGENCY OPERATIONS: Provides that the town council shall establish an emergency preparedness plan, and review it annually.
- 9) DISSOLUTION: Provides that the charter of the town may not be revoked except in accordance with the dissolution procedures of ch. 165, F. S.

Section 8: Charter amendment.

- (1) PROCEDURE TO AMEND THE CHARTER: Provides that the town council may, by ordinance, propose amendments to the charter; provides that upon approval of the initiating ordinance by majority of the town council, the proposed amendment shall be placed on the ballot at the next regularly scheduled election, unless the amendment calls for placement on the ballot at a special election; provides that the electors of the town may propose amendments to the charter by petition signed by 20 percent of the registered electors as of the last general election.
- (2) CHARTER REVIEW: Provides that the charter shall be reviewed no later than three years from the date the town was established; provides that after the initial review, the charter be reviewed no more than once every 10 years.
- (3) RESULTS OF ELECTION: Provides that if a majority of the electors voting on the proposed amendment passes the item, it shall be considered adopted upon certification of the election results; provides that the town council shall have the amendment incorporated into the charter and file the revised charter with the Department of State.

Section 9: Land use, zoning, and development.

- (1) RURAL CHARACTER OF TOWN: Provides for maintaining the existing rural character of the town.
- (2) LAND USE, ZONING AND DEVELOPMENT REQUIREMENTS: Provides that in order to preserve and promote the existing rural elements, it is incumbent upon all future development to:
 - continue the use of private wells as sources of potable water and the use of private septic recycling;
 - promote and preserve public lands and parks for community enjoyment;
 - protect and promote the wildlife and the wildlife habitat that coexist within the town; and

- preserve the natural view and existing scenic highway designation of U.S. Highway 1 through careful management of development along and within these natural assets.

Provides that the land development regulations and ordinances of the town shall uphold and enforce the goals and overall spirit of this section; provides that all zoning in effect at the time of incorporation shall remain unchanged after incorporation (i.e., "grandfathered in"); provides that all present county zoning classifications and land use designation terminology shall continue in effect until the town is established and the town's long-range comprehensive plan and future land use map are completed and adopted; provides that a new long-range comprehensive plan and future land use map shall be completed and adopted within one year after incorporation.

(3) PROPOSED CHANGE; PRIOR NOTICE; VOTE REQUIRED: Provides that prior to voting on a proposed increase in development intensity, including, but not limited to, density levels, building heights and traffic impacts, the town council shall notify all property owners inside the town whose property is within 1,500 feet of the proposed change; provides that an affirmative vote of six or more members of the town council shall be required to enact any such proposed change.

Section 10: Transition.

(1) CREATION AND ESTABLISHMENT OF THE TOWN: Provide for the purpose of the assessment and collection of ad valorem taxes, the town is hereby created and established effective when approved by the electors at the August 1, 2006, special election and filed with the Secretary of State in the manner prescribed by law; provides that as a first act of home rule and to ensure community participation, residents will have the opportunity to select their town name.

(2) TEMPORAL NATURE OF TRANSITION SECTIONS OF CHARTER: Provides that each of the following subsections of this section shall automatically, and without further vote or act of the electors of the town, become ineffective and no longer a part of the charter at such time as the implementation of such subsection has been accomplished.

(3) FIRST TRANSITION PERIOD; CHARTER ACCEPTANCE TO FIRST ELECTION: Provides that since upon approval of the charter a governmental unit equivalent to the town does not exist to provide people with positions accredited to effect a transition, an interim council committed to the charter and the transition to town government shall be identified and authorized; provides that based on prior commitment to and involvement in the incorporation process, the Grant-Valkaria Preservation Committee-Steering Committee is recognized as the appropriate body to select a five member interim council; provides that such positions shall be voluntary and receive no compensation; provides that powers of the interim council shall include:

- preparing and adopting temporary regulations that are applicable only to the first town council election and designed to ensure its proper conduct, to prevent fraud, and to provide for recount of ballots in cases of doubt or fraud;
- providing a method for certification of candidates for the first town council election;
- scheduling the three community candidate forums as described in section 6 in preparation for the first town council election;
- coordinating with the Brevard County Supervisor of Elections with regard to the first town council election and to effect the timely receipt by the interim council of the official certification results for the town council election;
- scheduling the first town council meeting;
- enacting emergency ordinances as may be warranted to protect public safety;
- identifying and managing funds;
- filing applicable forms and requests for revenue sharing and other funding sources; and
- disbursing funds for the purpose of conducting town business to include the funding of the first election of the town council.

Provides that until otherwise modified or replaced by the charter or the council, all codes, ordinances and resolutions of Brevard County in effect on the day of adoption of the charter shall, to the extent applicable to the town, remain in force and effect as municipal codes, ordinances and resolutions of the town; provides that until otherwise determined by the council, said codes, ordinances and resolutions shall be applied, interpreted and implemented by the town in a manner consistent with established policies of Brevard County on the date of the adoption of the charter.

(4) FIRST ELECTION; TERMS OF COUNCIL MEMBERS AND MAYOR: Provides that for the first election, only electors who have resided within the proposed town boundaries for the two years

preceding the date of the first election shall be eligible to hold the office of council member or mayor; provides that at the first election under the charter, all six council members and the mayor shall be elected; provides that the three council candidates receiving the greatest number of votes shall be duly elected council members and shall be designated as holding seats 1, 3 and 5, respectively; provides that the three council candidates receiving the next greatest number of votes shall be duly elected council members and shall be designated as holding seats 2, 4 and 6, respectively; provides that the candidate for mayor receiving the greatest number of votes shall be the duly elected mayor; provides that notwithstanding the date of the first election, the terms of the mayor and council seats 1, 3 and 5 shall end two weeks after the general election in 2010, and the terms of council seats 2, 4 and 6 shall end two weeks after the general election in 2008; provides that division of council seats into four-year and two-year terms is required in order to allow staggered terms of office.

(5) INITIAL EXPENSES: Provides that the initial expenses of the town council, including the expense of recruiting a town administrator, shall be paid by the town on vouchers signed by the mayor; provides that the town council, in order to provide moneys for the expenses and support of the town, shall have the power to borrow money, if necessary, for the operation of town government until such time as a budget is adopted and revenues accrue in accordance with the provisions of the charter; provides that the amount borrowed shall be in accordance with and shall not exceed the projected revenues of the incorporation feasibility study for the town for fiscal year 2006-2007.

(6) TRANSITIONAL ORDINANCES AND RESOLUTIONS: Provides that the town council shall adopt ordinances and resolutions required to effect the transition; provides that ordinances adopted within 60 days after the first regular council meeting may be passed as emergency ordinances.

(7) REVENUE SOURCE TRANSITION: Provides that until otherwise modified by the council, all municipal taxes and fees imposed within the town boundaries by the county as the municipal government for unincorporated Brevard County, which taxes and fees are in effect on the date of adoption of the charter, shall continue at the same rate and on the same conditions as if those taxes and fees had been adopted and assessed by the town.

(8) TRANSITION CONTINUITY OF SERVICES: Provides that to ensure that there is no discontinuity in the provision, level or quality of municipal service delivery to the proposed town, and until such time as the town may enter into interlocal agreements with Brevard County regarding the provision of municipal services, all municipal services currently provided by Brevard County will continue to be provided by Brevard County at the service levels existing at the time of municipal incorporation; provides that all federal, state, grant and other funding sources existing prior to the time the town is incorporated shall continue to be applied in the manner and at the level anticipated and projected by the Brevard County budget prior to the incorporation of the town; provides that the future cost and level of municipal service delivery provided to the town by Brevard County beyond fiscal year 2006-2007 shall be negotiated and determined through interlocal agreement between the town and appropriate representatives of Brevard County.

(9) STATE-SHARED REVENUES: Provides that the town shall be entitled to participate in all shared revenue programs of the state, effective immediately on the date of incorporation; provides that the provisions of s. 218.23, F.S., shall be waived for the purpose of eligibility to receive revenue-sharing funds from the date of incorporation through the end of state fiscal year 2005-2006; provides that the provisions of s. 218.26(3), F.S., shall be waived for state fiscal year 2005-2006, and the apportionment factors for the municipalities and counties shall be recalculated pursuant to s. 218.245, F.S.; provides that the initial population estimates for calculating eligibility for shared revenues shall be determined by the University of Florida Bureau of Economic and Business Research as of the effective date of the charter; provides that should the Bureau be unable to provide an appropriate population estimate, the initial population for calculating eligibility for shared revenues shall be established at the level of 3,907 as projected in the incorporation feasibility study.

(10) GAS TAX REVENUES: Provides that notwithstanding the requirements of s. 336.025, F.S., to the contrary, the town shall be entitled to receive local option gas tax revenues beginning the first day of the month following the charter referendum; provides that these revenues shall be distributed to the town as a fully eligible incorporated municipality of Brevard County in accordance with the distribution formula initially established and adopted on October 18, 1988, as part of the "Brevard County Local Option Gasoline Tax Revenue Distribution, Interlocal Agreement" and as amended by the Board of County Commissioners of Brevard County through Ordinance No. 99-40 as ratified on October 12, 1999, extending the Local Option Gas Tax Interlocal Agreement through August 31, 2021.

(11) SHARED REVENUES: Provides that Brevard County shall distribute to the town, from taxes, franchise fees, and ad valorem taxes, revenues collected within the municipal boundaries of the town; provides that this calculation shall be based upon a population projection of 3,907 residents for the town as estimated for the feasibility study in anticipation of the year 2008 census.

Section 11: Severability. Provides that if any section or part of a section of the charter is held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of the charter nor the context in which such section or partial section so held invalid may appear, except to the extent that an entire section or a partial section may be inseparably connected in meaning and effect with the section or partial section to which such holding shall directly apply.

Section 12: Provides that the act shall only take effect upon approval by a majority vote of those qualified electors of the area voting in a referendum to be called by the Brevard County Supervisor of Elections on or before August 1, 2006, except for this section, which takes effect upon becoming a law.

Charter Review

Provisions within the Charter meet the statutory requirement for proposed charters in regards to prescribing the form of government and clearly defining the responsibilities for legislative and executive functions in accordance with s. 165.061(1)(e), F.S. As noted in the following comments, certain provisions may conflict with general law while other provisions may simply require clarification.⁶

Section 1(6): This subsection authorizes Grant-Valkaria to enter into contracts or agreements with other governmental agencies. Such authority is provided in s. 163.01, F.S., "The Interlocal Cooperation Act of 1969." As such, this subsection is redundant and could be deleted.

Section 2(1)(a): Subsection (a) calls for a six-member council, and one mayor, to be elected at-large. An at-large election scheme may be vulnerable to legal challenge under the 1965 U.S. Voting Rights Act, depending upon the area's demographics.⁷

Section 2(1)(b): Subsection (b) authorizes the council to establish procedures to compel attendance at meetings of absent members in a manner and subject to penalties prescribed by rules adopted by the council. This provision is vague and may be inconsistent with provisions in subsection 2(4) regarding vacancies, forfeiture of office and excused absences. In addition, the term "compel" requires clarification to ensure the action does not conflict with civil and criminal law.

Section 2(3): This subsection establishes the position of the vice mayor and sets the term at one year, "unless no other council member is willing to serve as vice mayor." This phrase is vague and should be deleted. Alternatively, term limits could be removed and the vice mayor would serve at the pleasure of the council.

Section 2(8): Subsection (a) provides for regular monthly council meetings. A provision providing for advance public notice should be included.

Section 2(8): Subsection (c) provides that all land use and quasi-judicial items be approved by a supermajority, defined as five or more members, decision of the council. Such a provision may be overly restrictive and could result in a situation where a minority imposes its will over the majority.

Section 2(11): Subsection (d) authorizes the adoption of emergency ordinances by majority vote. It may be appropriate to clarify, pursuant to s. 166.041(3)(b), F.S., that emergency ordinances require a two-thirds vote by the commission, and that zoning ordinances cannot be enacted as emergency ordinances.

⁶ Selected comments are based on the Legislative Committee on Intergovernmental Relations' analysis.

⁷ A summary of the relevant sections of the Act is provided at the end of this analysis.

Section 2(11): Subsection (h) provides that ordinances and other documents be made available to the public “at reasonable prices” as fixed by the council. It may be appropriate to include the phrase “in accordance with or provided by general law.”

Section 3(1): This subsection provides for the appointment of a town administrator and notes that the administrator is “continuously responsible to the town council, the elected representatives of the people.” It may be appropriate to further clarify that the administrator is responsible to the council, as the governing body, and avoid confusion that the administrator may be responsible to individual council members.

Section 3(3): This subsection provides for the appointment of an interim town administrator during the temporary absence or disability of the town administrator. The term disability should be defined or deleted.

Section 3(4): This subsection provides for the powers and duties of the town administrator. It may be appropriate to clarify how the administrator’s responsibilities differ from those duties of the mayor provided for in Section 2(2).

Section 3(4): Subsections (k) and (m) require the administrator to “provide staff support services to mayor and council members” and “promote partnerships...,” respectively. These provisions are overly vague and require clarification or deletion.

Section 4(3): Subsection (a) calls for a personnel system under which all personnel appointments and promotions are made “primarily” on the basis of merit and competency. It may be appropriate to either define or delete the qualifier “primarily” in order to avoid misinterpretation.

Section 5(7): Subsection (c)3 authorizes the transfer or reallocation of unencumbered funds. It may be appropriate to include a provision that such transfers should be in accordance with general law.

Sections 6(8) and 10(4): These subsections include a two-year residency requirement for council member and mayoral candidates. Such a provision may be vulnerable to legal challenge.

Section 6(10): Subsection (a) provides that five electors may commence initiative or referendum proceedings and have the proposal placed on the agenda of the next council meeting. It may be appropriate to increase the number of electors required to have a proposal placed before the council. This subsection also allows the proposal to be submitted to referendum by petition if the council fails to consider or act for reasons that “fail to satisfy” its sponsors. Such a phrase is vague and should be clarified.

Section 7(8): This section provides for an emergency preparedness plan. It may be appropriate to require that the plan be prepared in accordance with general law and in cooperation and coordination with such plans established by Brevard County government.

Section 8(1): Subsection (b) calls for a charter amendment to be placed on a ballot at the next regularly scheduled “ballot” or at a special “ballot.” It may be appropriate to replace this term with the term “elections.”

Section 8(2): This subsection provides for the establishment of a charter review commission. It may be appropriate to clarify that a sitting council member is ineligible to serve on the commission.

Section 9(1): This subsection defines the term “rural” as it pertains to land use zoning and development. Subsection (a) includes the terms “low development intensity” and “abundance” of agricultural lands as elements of “rural.” These terms are vague and should be defined or otherwise clarified. Similarly, subsection (d) includes the terms “predominant and viable wildlife...” which requires clarification.

Section 9(2): Subsection (a) includes the requirement to continue the use of private septic recycling as a condition of future development in order to protect the rural elements of the town. The Study reported that the community will pursue eco-friendly industries in order to utilize its existing natural resources as a basis for its future economy. This requirement may restrict the type of development necessary to promote nature-based tourism. For example, certain tourist related facilities such as restaurants, hotels and hostels are not permitted to operate on septic systems.

Section 9(3): This subsection requires an affirmative vote of six or more members for the approval of certain types of developments. Such a voting requirement is greater than a supermajority (five or more votes) and as such may be overly restrictive. In addition, the types of development and development impacts are vague and require clarification.

Section 10(3): Subsection (b) provides for an interim council to be selected by the “Grant-Valkaria Preservation Committee Steering Committee.” It may be appropriate to prohibit a member of the Steering Committee from serving as a member on the interim council.

Section 10(3): Subsection (e) provides for the election of council members. It is unclear what election responsibilities reside with the interim council and what responsibilities are assumed by the Brevard County Office of the Supervisor of Elections.

Section 10(9): This subsection authorizes Grant-Valkaria to participate in all shared revenue programs of the state. This should be revised to limit participation to all programs appropriate to municipalities. This subsection also waives state revenue sharing eligibility requirements in s. 218.23, F.S., until FY 2005-06. This waiver should be limited to only those eligibility requirements pertaining to financial reporting and audits and extend the waiver until FY 2008-09

Section 10: This section should include a provision honoring existing solid-waste contracts within the boundaries of Grant-Valkaria for a period of five years or the remainder of the contract term, whichever is less, in accordance with s. 165.061(1)(f), F.S., and provided for in the Study.

Feasibility Study

With regard to the requirements and standards for municipal incorporation provided by s. 165.061(1), F.S., the reviewers concluded that:⁸

The area proposed for the Town of Grant-Valkaria is contiguous and compact. According to the information provided by the Brevard County Department of Planning and Zoning and as reported in the Study (pages 1-4 and 13-14), the area being considered for incorporation is compact and contiguous as required by s. 165.061(1)(a), F.S.

The proposed Town of Grant –Valkaria does not meet the minimum population requirement for incorporation (5,000 persons). Section 165.061(1), F.S., establishes population requirements for the incorporation of new municipalities. In counties with a population of 75,000 or less, the municipality must have at least 1,500 persons and in larger counties, the municipality must have at least 5,000 persons. The latest official population estimate for Brevard County placed its population at 531,970 (official 4/1/2005 estimate from Bureau of Economic and Business Research, University of Florida) so a new municipality would be required to have a minimum population of 5,000. The feasibility study indicated that the area proposed for incorporation has a population of 3,907. The Office of Economic and Demographic Research analysis of census data for the blocks contained within the proposed boundaries of the Town of Grant-Valkaria indicated a 2000 population of about 3,300. Assuming that this area has grown since the 2000 Census at the same rate of growth as the entire unincorporated portion of Brevard County would suggest that the area now has approximately 3,700 persons.

⁸ These responses are based on the review of Ruskin feasibility study reviews by the Office of Economic and Demographic Research and the Legislative Committee on Intergovernmental Relations.

The proposed Town of Grant-Valkaria does not meet the required density of 1.5 persons per acre. A population density requirement of 1.5 persons per acre is specified by s. 165.061(1)(c), F.S. According to the feasibility study, the area being proposed for incorporation encompasses 16,626 acres implying a population density of .23 persons per acre. Alternatively, the statute provides that the area have extraordinary conditions requiring the establishment of a municipal incorporation with less existing density. The Study (pages 1-9 and 17-18) suggests that the following circumstances: 1) extensive designation of Environmental Endangered Lands and government owned conservation properties reduce the area available for residential use to less than 9,000 acres in Grant-Valkaria; and 2) its historical character as a rural residential and fishing hamlet, serve to meet this statutory condition. The Study provides additional information substantiating the historic identity of the community. In addition, the Study notes that the resident population will soon increase as a result of current residential developments totaling 800 homes within Grant-Valkaria's boundaries.

The proposed Town of Grant-Valkaria does not meet the minimum distance requirement. Pursuant to s. 165.061(1)(d), F.S., an area proposed for incorporation must be at least two miles from the boundaries of an existing municipality in the county or have an extraordinary natural boundary which requires separate municipal government. As noted in the feasibility study, the area proposed for incorporation is bordered by the town of Malabar on the north and the town of Palm Bay on the west. The study also notes that Grant-Valkaria is an identifiable cohesive community, with qualities, characteristics and attributes that differentiate its lands and residents from adjacent municipalities. While these characteristics may serve as reasons for pursuing incorporation, it is unclear how they might be considered as an extraordinary natural boundary, which requires a separate municipal government.

With regard to whether the Feasibility Study itself contained the required elements of such a study:

- **The Study (pages 1-3) meets the requirement that it provide the general location for the proposed municipality.** The Study (page 4) includes maps of the area proposed for incorporation, and as such, meets this requirement. (s. 165.041(b)1., F.S.)
- **The Study (pages 1-9) meets the requirement that it provide reasons for pursuing incorporation.** The Study provides that two major reasons for incorporation are to ensure the preservation of the historical characteristics as a rural fishing community from overdevelopment and to assume control over its future land uses. The Study proposes, however, that Brevard County government would continue providing many essential services. Thus, it is unclear how the Grant-Valkaria would preserve the environmental and historic character of their community if Brevard County government retains authority for these quality of life functions. (s. 165.041(b)2., F.S.)
- **The Study meets the requirement that it include a list of current land use designations applied to the area as currently contained in the county comprehensive plan.** (s. 165.041(b)3.a., F.S.)
- **The Study meets the requirement that it include a list of current zoning designations.** (s. 165.041(b)3.b., F.S.)
- **The Study meets the requirement that it include a general statement of present land use characteristics of the area.** (s. 165.041(b)3.c., F.S.)
- **The Study appears to meet the requirement to describe proposed development.** (s. 165.041(b)3.d., F.S.)
- **The Study appears to identify all local public agencies with boundaries lying within the territory proposed for incorporation.** (s. 165.041(b)4., F.S.)

- **The Study appears to identify all current public service providers for the services identified in s. 165.041(1)(b)5., F.S., and cost estimates for each of those services.**
- **The Study appears to meet the requirement that it identify proposed services (pages 29-32) and estimated costs for these services.** However, costs associated with each of the majority of basic services, which are currently provided by Brevard County government through existing municipal service taxing units (MSTUs), are reported as millage rates. Upon incorporation, Grant-Valkaria will cease to participate in these MSTUs and instead, enter into an interlocal agreement with Brevard County for provision of those services in an amount equal to that generated at these millage rates. It should be noted that total estimates for these “municipal” services are presented in the FY 2006-07 budget as \$1,405,250 (page 49), although the amount generated by total millage is estimated at \$1,488,774 for FY 2006-07 (page 48). The Study includes a letter of agreement, signed December 6, 2005, by the Brevard County Administrator, which provides that the county is willing to enter into contract to provide services to Grant-Valkaria were it to incorporate. (s. 165.041(b)6., F.S.)
- **The Study meets the requirement that it include the name and address of three persons submitting the proposal.** (s. 165.041(b)., F.S.)
- **The Study appears to meet the requirement that it provide evidence of the fiscal capacity for the area proposed for incorporation with the following caveats:** The Study addresses basic tax bases and revenue sources available to a municipality and provides revenue estimates for some of them. Other revenue sources available to municipalities, however, are not identified. These and other revenue sources included in the Study require some clarification. **The Study does include a five-year operational plan and budget.** The revenue totals include funds projected from sources for which the proposed municipality may not be eligible to receive as noted above.
- **The Study appears to address the requirement that it provide data and analysis to support the conclusions that incorporation is necessary and financially feasible, including population projections and population density calculations.** Concerns regarding methodology used in the analysis and estimated revenues are addressed elsewhere in this analysis. (s. 165.041(b)9., F.S.) (s. 165.041(b)8., F.S.)
- **The Study meets the requirement for evaluating alternatives available to the area regarding the policy concerns.** (s. 165.041(b)10., F.S.)
- Pursuant to s. 165.061(1)(f), F.S., the plan for incorporation must honor existing solid-waste contracts in the affected geographic area subject to incorporation for five years or the remainder of the contract term, whichever is less. The Study (page 29) meets this criterion.

Review of the Financial Elements of the Proposed Incorporation

- **Revenue Sharing:** Section 10(11) of proposed charter provides that the town shall be entitled to participate in all state shared revenue programs effective on the date of incorporation. That date is determined in Section 10(1)(a) to be the day the referendum results are filed with the Secretary of State, presumably soon after 8/1/06. Section 218.21(3), F.S., requires in order to be eligible for revenue sharing, a municipality “must have held an election for its legislative body pursuant to law and established such a legislative body, which meets pursuant to law.” The Charter provides in Section 10(3)(b) that the Grant-Valkaria Steering Committee will “identify” five electors as the interim town council. No date certain is stated for the election of the town council. Thus, revenue sharing cannot occur until after that election. **It is recommended that the charter language be amended to state a date certain for the election of the town council. It is further recommended that the charter language be amended to state that the initial date for revenue sharing participation be the first day of a month occurring after the first meeting of the council.**

Section 10(11) provides that the provisions of ss. 218.23 and 218.26(3), F.S., be waived through the end of the state fiscal year 2005-2006. Since the charter provides that Grant-Valkaria will be incorporated soon after 8/1/06, the town will not complete its first full local fiscal year (10/1/06-9/30/07) until after the end of the state fiscal year 2007-2008, ending June 30, 2008. **It is recommended that the waiver of ss. 218.23 and 218.26(3), F.S., in the charter be extended through the state fiscal year 2007-2008.**⁹

- **Gas Tax Revenues:** Section 336.025(4)(b), F.S., provides that newly incorporated municipalities will not receive fuel tax distributions until the beginning of the first full local fiscal year following incorporation, which in the instance of Grant-Valkaria would be 10/1/07. Section 10(10) of the charter provides for a waiver of s. 336.025, F.S. regarding the entitlement to receive local option gas tax revenue.

Section 336.025(4)(b), F.S., requires that gas tax distributions to newly incorporated municipalities are to be in accord with the default lane-mile formula unless provided otherwise by the local law providing for the incorporation. Section 10(10) of the charter provides that the distribution be in accord with the October 18, 1998 “Brevard County Local Option Gasoline Tax Revenue Distribution, Interlocal Agreement” as amended. It appears that even with the incorporation of Grant-Valkaria, the existing interlocal will continue to represent the agreement of the majority of the incorporated population of Brevard County. Thus, the distribution as set forth in that current interlocal will determine the distribution to Grant-Valkaria.

- **Local Communications Services Tax (CST)**

The draft charter does not address the CST. The feasibility study on page 48 includes the CST as revenue, but there is no explanation of the source of this tax—whether it is a share of the CST currently imposed by Brevard County or whether it is a CST imposed by Grant-Valkaria or some combination. Pursuant to s. 202.21, F.S., local communications services taxes imposed under s. 202.19, F.S., are effective with respect to taxable services dated on or after January 1. A municipality adopting, changing or repealing this tax must notify the Department of Revenue by September 1, prior to the January 1 effective date. Thus, if Grant-Valkaria meets the September 1 deadline in 2006 or 2007, then participation in this revenue source could commence January 1, 2007, or January 1, 2008, respectively. **The charter language also could be amended to provide for a sharing of the CST imposed by Brevard County within the boundaries of Grant-Valkaria, beginning with the date of incorporation, April 1, 2007, through December 31 of some future year. The proportion could be based on the population of Grant-Valkaria compared to unincorporated population of Brevard County before the incorporation of Grant Valkaria.**

- **Discretionary Sales Surtax:** Currently, Brevard County does not impose a discretionary sales surtax.

The Legislative Committee on Intergovernmental Relations has noted that several major revenue sources available to municipalities are not identified or discussed in the Study. These include the following: 1) pursuant to s. 166.231(1), F.S., municipalities are authorized to levy,

⁹ The Legislative Committee on Intergovernmental Relations has noted that in order to be eligible to participate in State Shared Revenue programs, a municipality is required to meet certain criteria. These requirements include, among others, certain financial and audit reports and a minimum local taxing effort equal to the amount that would be generated by three mills of ad valorem property taxes. The Study presents the 2005 taxable value of property within Grant-Valkaria at \$338,569,800. Based on this projected taxable value, the three-mill equivalency for Grant-Valkaria is equal to approximately \$1,015,709. The Study budget meets this requirement using revenues currently generated through five MSTUs which collectively generate an estimated \$1,567,130 in ad valorem tax revenue. SSR estimates provided in the Study (pages 34, 35 and 48) are less than those estimates calculated by the Office of Research and Analysis, Florida Department of Revenue. The Study provides no estimate for Grant-Valkaria’s Municipal Revenue Sharing distribution, but does estimate its One-Half Cent Sales Tax distribution at \$233,036. The Office of Research and Analysis estimated Grant-Valkaria’s FY 2005-06 Municipal Revenue Sharing and One-Half Cent Sales Tax distributions at \$75,236 and \$232,761, respectively. The Office of Research and Analysis’ estimated revenue from these two programs is approximately \$74,000 more than that proposed in the Study.

by ordinance, a public service tax on the purchase of electricity, metered natural gas, liquefied petroleum gas, manufactured gas and water service; and 2) Grant-Valkaria is authorized to impose impact fees to offset costs associated with new infrastructure that will be needed to service current and proposed new developments. Furthermore, occupational license fees are not identified or discussed as source of revenues in the Study. However, the Study does note that only revenues sources sufficient to demonstrate feasibility are provided in the five-year budget.

- Comparison with “Similarly Sized” Municipalities:** The Legislative Committee on Intergovernmental Relations compared the revenue and expenditure estimates for the proposed municipality of Grant-Valkaria with “similarly sized” municipalities in Florida. The 10 comparison municipalities are similar to Grant-Valkaria’s population of 3,907 residents, and are presented below. All comparison municipalities reported FY 2002-03 total expenditures greater than those projected for Grant-Valkaria. The estimated expenditures projected for Grant-Valkaria (\$1,641,575) are approximately one-third of the “average” reported expenditures for the 10 comparison municipalities (\$5,459,610). Two additional issues should be noted in this comparison. First, the projected expenditures for Grant-Valkaria do not include expenditures associated with costs for services that Brevard County may continue to provide to the residents of Grant-Valkaria under the current county tax structure. If included, such costs would increase the proposed expenditures and somewhat reduce the expenditure differential between Grant-Valkaria and the comparison municipalities. The second issue regarding the proposed expenditures is that the fiscal data for the 10 comparison municipalities reflects total reported revenues and expenditures for FY 2002-03, while the fiscal estimates for Grant-Valkaria are those projected for FY 2006-07. It can be assumed that total expenditures and revenues for these 10 municipalities will have increased during this time period, and as a result, increased the gap between their “average” reported expenditures and those projected for Grant-Valkaria.

**Comparison of Total Revenues and Expenditures
for 10 Municipalities with Populations Similar to the Population Estimate for the
Proposed Municipality of Grant-Valkaria¹⁰**

Municipality	2003 Pop. Est.¹¹	Revenues	Expenditures
Grant-Valkaria	3,907	\$1,796,298	\$1,641,575
Mascotte	3,469	\$2,845,059	\$2,903,845
Belleview	3,612	\$3,455,758	\$3,520,443
Newberry	3,757	\$6,003,054	\$5,526,577
Wildwood	3,948	\$7,422,792	\$8,827,097
Chattahoochee	3,966	\$5,267,155	\$5,631,029
Lake Alfred	3,981	\$4,318,627	\$4,782,587
Highland Beach	3,994	\$8,818,450	\$8,167,232

¹⁰ FY 2002-2003 reported revenues and expenditures by the 10 comparison municipalities and projected 2006 revenue and expenditure estimate for Grant-Valkaria contained within the Grant-Valkaria Incorporation Feasibility Study.

Mary Esther	4,078	\$4,022,239	\$4,234,558
South Bay	4,087	\$3,412,227	\$4,504,393
Bellaire	4,100	\$6,812,457	\$6,498,340
AVERAGE	3,899	\$5,237,781	\$5,459,610

¹¹ 2003 population counts for comparison municipalities reported by the Bureau of Economic and Business Research, University of Florida. Population estimates for Grant-Valkaria for calendar year 2005 contained within the Grant-Valkaria Incorporation Feasibility Study.

Sources: Florida LCIR using fiscal data submitted by municipalities to the Department of Financial Services; Florida Estimates of Population 2003, Bureau of Economic and Business Research, University of Florida, 2004; information contained within the Grant-Valkaria Incorporation Feasibility Study.

- Distribution of SSR and Impacts on Existing Local Governments:** The LCIR also analyzed the amount of SSR monies that Grant-Valkaria would have received in FY 2005-06 and the impact on SSR distributions to Brevard County government and municipalities for that year. While the statutory requirements for a feasibility study do not include identifying fiscal impacts to neighboring units of local government, such information is useful for a local government as it plans for the next budget cycle. A newly created municipality will impact the amount of funds that existing municipalities receive in the two major SSR programs: Local Government Half-Cent Sales Tax and the Municipal Revenue Sharing (MRS). The county government within which the new municipality is formed will realize fiscal impacts in two SSR programs: Local Government Half-Cent Sales Tax and County Revenue Sharing. The Office of Research and Analysis, Department of Revenue, prepared SSR estimates for the proposed Town of Grant-Valkaria and estimates on the impact from such incorporation to SSR distribution to other units of local government within Brevard County. As noted, if Grant-Valkaria had incorporated in 2005, Brevard County government would have realized a reduction in FY 2005-06 SSR distributions totaling an estimated \$216,527. The extent to which revenue reductions are offset by reductions in services is not known. Municipalities within the county would realize estimated SSR reductions ranging from a low of \$162 (Melbourne Village) to a high of \$20,729 (Palm Bay).

C. SECTION DIRECTORY:

Section 1: Creates the Town of Grant-Valkaria; provides for a charter, powers, form of government, boundaries and intergovernmental relations.

Section 2: Provides for town council, mayor, vice mayor, ordinances and eminent domain.

Section 3: Provides for town administrator.

Section 4: Provides for departments, offices, agencies, a town attorney and land use.

Section 5: Provides for finances.

Section 6: Provides for town elections.

Section 7: Provides general provisions.

Section 8: Provides for charter amendments.

Section 9: Provides for land use, zoning and development.

Section 10: Provides for transition.

Section 11: Provides for severability.

Section 12: Provides for a referendum.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 17, 2005.

WHERE? *Florida Today*, a daily newspaper published in Brevard County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? On or before August 1, 2006.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

According to the Economic Impact Statement, the projected cost of funding the town government and municipal services of Grant-Valkaria will be \$1,641,575 for FY 06-07 and \$1,777,937 for FY 07-08. Anticipated sources of funding are projected to be \$1,796,298 in FY 06-07 and \$1,891,519 in FY 07-08.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

Department of Community Affairs

Based on Brevard County's Comprehensive Plan, the subject area for incorporation consists of a variety of land use classifications, including residential use, commercial use, industrial use, parks and recreational uses, agriculture use, public-quasi public uses (i.e., governmental, institutional and educational), as well as a rights-of-way, and transportation, communication and utilities. There are some existing vacant lands within the proposed jurisdictional boundaries. Much of the public-quasi public and single-family residential land uses are dispersed throughout the area.

Pursuant to ch.163, F.S., a new incorporated community is required to prepare a comprehensive plan within three years of incorporation. Until the new city adopts its own comprehensive plan, the land use designations and applicable goals, objectives and policies adopted by Brevard County for the area would apply. Once the city adopts its comprehensive plan, it is possible that the city may proceed with future annexations south of the proposed area. Approximate cost of a new comprehensive plan for a city of this size is \$100,000. Pursuant to s. 163.3202(1), F.S., within one year of an adopted comprehensive plan, a new municipality must adopt land development regulations. Approximate cost of new land development regulations for a city of this size is \$200,000. In addition, new cities typically become responsible for providing and maintaining certain types of infrastructure and services.

Exemptions to General Law

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.

The bill may create exemptions to the following general laws:

- s. 165.061(1)(b), F.S., regarding minimum population requirements;
- s. 165.061(1)(c), F.S., regarding density requirements;
- s. 165.061(1)(d), F.S., regarding minimum distance requirements;
- ss. 218.23 and 218.26(3), F.S., regarding state revenue sharing eligibility requirements; and
- s. 336.025, F.S., regarding the entitlement to receive local option gas tax revenue.

Summary of the Voting Rights Act of 1965

The Voting Rights Act of 1965 protects every American against racial discrimination in voting. This law also protects the voting rights of many people who have limited English skills. It stands for the principle that everyone's vote is equal, and that neither race nor language should shut anyone out of the political process. The Voting Rights Act is located in the United States Code at 42 U.S.C. 1973 to 1973aa-6.

The Voting Rights Act is not limited to discrimination that excludes minority voters from the polls. Section 2 of the Act (42 U.S.C. 1973) makes it illegal for any state or local government to use election processes that are not equally open to minority voters, or that give minority voters less opportunity than other voters to participate in the political process and elect representatives of their choice to public office. In particular, Section 2 makes it illegal for state and local governments to "dilute" the votes of racial minority groups, that is, to have an election system that makes minority voters' votes less effective than those of other voters. One of many forms of minority vote dilution is the drawing of district lines that divide minority communities in such a way as to prevent them from putting enough votes together to elect representatives of their choice to public office. **Depending on the circumstances, dilution also can result from at-large voting for governmental bodies.** When coupled with a long-standing pattern of racial discrimination in the community, these and other election schemes can deny minority voters a fair chance to elect their preferred candidates.

Additionally, Section 5 of the Voting Rights Act (42 U.S.C. 1973c) requires state and local governments in certain parts of the country to get federal approval (known as "preclearance") before implementing any changes they want to make in their voting procedures; anything from moving a polling place to changing district lines in the county. Under Section 5, a covered state, county or local government entity must demonstrate to federal authorities that the voting change in question (1) does not have a racially discriminatory purpose; and (2) will not make minority voters worse off than they were prior to the change (i.e., the change will not be "retrogressive"). Section 5 applies to all or parts of the following states: Alabama, Alaska, Arizona, California, **Florida**, Georgia, Louisiana, Michigan, Mississippi, New Hampshire, New York, North Carolina, South Carolina, South Dakota, Texas, and Virginia.

Anyone aggrieved by minority vote dilution can bring a federal lawsuit. If the court decides that the effect of an election system, in combination with all the local circumstances, is to make minority votes less effective than white votes, it can order a change in the election system. For example, courts have ordered states and localities to adopt districting plans to replace at-large voting, or to redraw their election district lines in a way that gives minority voters the same opportunity as other voters to elect representatives of their choice.

This information was obtained from the U.S. Department of Justice's website at <http://www.usdoj.gov/crt/voting/misc/faq.htm#faq02>. (03/24/06).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.