

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 951 Palm Beach County

SPONSOR(S): Vana

TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Local Government Council, Nelson, Hamby.

SUMMARY ANALYSIS

HB 951 provides for the creation and establishment of the Town of Loxahatchee Groves in Palm Beach County. The bill provides a charter for the municipality which describes:

- the town boundaries;
a council-manager form of government; municipal powers; the duties of the mayor and vice mayor;
vacancies in office; grounds for forfeiture, suspension and removal; filling of vacancies;
compensation and expenses; standards of conduct in office;
appointment of charter officers, including a town manager and attorney;
meetings; the fiscal year; annual budget and appropriations, and financial audits;
adoption, distribution and recording of technical codes;
nonpartisan elections;
future charter amendments;
a transitional schedule and procedures for the first election; first-year expenses; adoption of transitional ordinances, resolutions, comprehensive plan and local development regulations; an accelerated entitlement to state-shared revenues; gas tax revenues;
continuation of the Palm Beach County Fire Rescue Municipal Service Taxing Unit;
continuation of the Palm Beach County Library District;
dissolution of the Palm Beach County Municipal Service Taxing Unit B;
dissolution of the Palm Beach County Municipal Service Taxing Unit F;
continuation of the Loxahatchee Groves Water Control District and Loxahatchee Groves Park;
the repeal of a restriction on annexation within the Loxahatchee Groves Water Control District;
waivers from certain statutory requirements; and
that the act takes effect only upon a referendum.

According to the Economic Impact Statement, the estimated cost of administration, implementation and enforcement for this bill is \$1,085,673 in FY 07-08, and \$1,171,369 in FY 08-09. There will be an increase in property taxes of 1.5 mils for the incorporated area.

Pursuant to House Rule 5.5(b), a local bill providing an exception 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.

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.

Ensure Lower Taxes

According to the Economic Impact Statement, there will be an increase in property taxes of 1.5 mils for the incorporated area.

B. EFFECT OF PROPOSED CHANGES:

Background

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

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.

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.
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.

³ Section 165.041(1)(b), F.S.

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
 - 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.

HB 951

HB 951 provides for the creation and establishment of the Town of Loxahatchee Groves, contingent upon approval by a majority vote of qualified electors residing within the corporate limits of the proposed city. Loxahatchee Groves is a rural community in Palm Beach County. Its boundaries are established by the Loxahatchee Groves Water Control District, and total 8,148 acres. There are approximately 3,122 residents of the area.

The bill provides that these residents are experiencing certain impacts, such as the destruction of rural habitats and threats to their equestrian, farming and nursery businesses, resulting from urbanization in the surrounding areas. Subsequently, through the incorporation of the town, the residents seek to control the effects of those impacts and to preserve the character of the area.

This proposed incorporation was the subject of HB 1339 in the 2005 Legislative Session. The bill favorably passed the Local Government Council as a Committee Substitute, which died in the Committee on Finance & Tax.

Feasibility Study

A feasibility study on the creation of the Town of Loxahatchee Groves was submitted to the Florida House of Representatives on October 19, 2005. The Local Government Council requested a review of this study from the:

- Legislative Committee on Intergovernmental Relations;
- Office of Economic & Demographic Research;
- Department of Revenue; and
- Department of Community Affairs.

The responses of these reviewers are noted in “Comments” in Section III C. of this analysis.

Town Charter

The proposed charter for the Town of Loxahatchee Groves is included in the bill, and provides as follows:

Section 1: Charter; creation; form of government; boundary and powers.

- (1) Charter; creation:
 - a. Provides that the act, together with future amendments, is the charter for the Town of Loxahatchee Groves, and creates the municipality.
 - b. States that the area includes a compact and contiguous rural community of approximately 3,120 persons.
 - c. Provides that it is in the best interests of the public health, safety and welfare of the residents of the area to form a separate municipality.
 - d. Provides that it is intended that the charter and incorporation will serve to preserve and protect the distinctive rural characteristics of the community.
 - e. Provides that it is the intent of the charter and incorporation to secure the benefits of self-determination, and affirm the values of representative democracy, citizen participation, strong community leadership, professional management and regional cooperation.
- (2) Form of government: Provides that the town will have a “council-manager” form of government.

- (3) Corporate boundaries: Provides a legal description of the town's boundaries. Provides that the town will not annex the area known as "Callery-Judge Groves."
- (4) Municipal powers: Provides that the town will be a body corporate and politic and will have all governmental, corporate and proprietary powers of a municipality under the State Constitution and laws of the state; provides that the charter and powers of the town will be construed liberally in favor of the town; provides a statement of recognition that certain services within the proposed municipal boundaries are provided by independent special districts and by Palm Beach County.

Section 2: Council; mayor and vice mayor.

- (1) Town council: Provides for a five-member town council elected at large who are vested with all legislative and charter powers of the town, unless otherwise provided by the charter.
- (2) The mayor; powers and duties: Provides for the election of a mayor by the council at its first regular meeting after the fourth Tuesday of each March who will serve a one-year term; provides that the mayor will preside at council meetings and be recognized as the head of town government for service of process, ceremonial matters and the signature or execution of ordinances, contracts, deeds, bonds and other instruments, and for purposes of military law; provides that the mayor also will serve as the ceremonial head of the town and the town official designated to represent the town.
- (3) The vice mayor: Provides for the election of a vice mayor by the council at its first regular meeting after the fourth Tuesday of each March who will serve a one-year term; provides that the vice mayor serve as acting mayor during the absence or disability of the mayor; provides that in the absence of the mayor and the vice mayor, the remaining council members will select an acting mayor.

Section 3: Election and terms of office.

- (1) Term of office: Provides that each council member will serve three-year terms; provides that council members will be sworn into office at the first regularly scheduled meeting following their election; provides that each council member will remain in office until his or her successor is elected and assumes the position.
- (2) Seats: Provides that the town council will be divided into five separate council seats, with each qualified elector entitled to vote for one candidate for each seat.
- (3) Qualification: Provides that candidates for council seats must qualify for election in accordance with applicable general law; provides that to qualify for office, each candidate must:
 - file a written notice of candidacy with the town clerk and submit payment of any fees required by general law;
 - be a registered elector in the state;
 - have maintained domicile within the boundaries of the town for a period of one year prior to qualifying for election and, if elected, maintain such residency throughout the term of office; and
 - qualify with the town clerk no sooner than noon on the last Tuesday in January nor later than noon on the first Tuesday in February in the year of the election.
- (4) Vacancies in office; forfeiture; suspension; filling of vacancies: Provides that vacancies in office will occur upon the death of an incumbent, removal from office as authorized by law, resignation, appointment to other public office which creates dual office holding, a judicial determination of incompetence or forfeiture of office; provides that any council member will forfeit his or her office upon determination by the council at a public meeting that the member: lacks any qualification for office, has been convicted of a felony or entered a plea of guilty or nolo contendere, is found to have violated the Code of Ethics for Public Officers and Employees and has been suspended from office by the Governor, or has been absent from three consecutive regular council meetings without good cause; provides that the council will be the sole judge of the qualifications of its members, and that a member whose qualifications are in

question will be entitled to a public hearing; provides that any council member will be suspended from office upon return of an indictment or issuance of any information charging the council member with a felony or any crime arising out of his or her official duties which is a misdemeanor; provides that during suspension, a council member may not perform any official acts or receive any payment; provides that if the suspension is lifted the council member is entitled to full back pay; provides that if any vacancy occurs and the remainder of the member's unexpired term is less than one year and 81 days, the council members will appoint a person by majority vote to fill the term within 30 days; provides that if a vacancy occurs and the remainder of the unexpired term is equal to or exceeds one year and 81 days, the remaining members will appoint a person to fill the vacancy by majority vote until the next regularly scheduled town election; provides that if a vacancy occurs in the office of the mayor and less than 120 days remain in the term of the member that the vice mayor will serve as mayor until a new mayor is elected; provides that if a vacancy occurs in the office of mayor and 120 days or more remain in the term that the vice mayor will serve as mayor until a new council member is elected, and the council elects a new mayor and vice mayor; provides that persons appointed to fill vacant seats meet the required qualifications of that seat; provides that if at any time the full membership of the council is reduced to less than a quorum, the remaining members may appoint additional members by majority vote; provides that in the event that all council members are removed, the Governor shall appoint interim council members who will call a special election not less than 30 days or more than 60 days after such appointment; provides that if there are fewer than six months remaining in the unexpired terms, the interim appointed council will serve out the unexpired terms; provides that council members are entitled to receive reimbursement in accordance with general law for authorized travel and per diem expenses incurred in the performance of their official duties; provides that the council may elect for compensation and an increase in compensation by ordinance, but that any such ordinance will not take effect until the commencement of the terms of council members elected at the next regular election.

Section 4: Administrative.

- (1) Designation of charter officers: Provides that the town manager and attorney are designated as charter officers, and that the office of town attorney may be contracted to an attorney or law firm.
- (2) Appointment; removal; compensation; filling of vacancies: Provides that charter officers are appointed by a majority vote of the full council and serve at their pleasure; provides that charter officers can be removed from office only by a super majority vote of the full council; provides that the compensation of charter officers shall be fixed by the town council by contract; provides that the town council begin the process to fill a vacancy in a charter office within 90 days after such vacancy; provides for the appointment of an acting town manager or attorney during a vacancy; provides that a charter officer may not be a member of or candidate for the town council.
- (3) Town manager: Provides that the town manager will be the chief administrative officer of the town under the direction of the town council, and that he or she be appointed by a resolution approving an employment contract; provides for minimum qualifications for the town manager; provides for the designation of an "acting town manager" to execute the functions of the town manager in his or her absence; provides for the powers and duties of the town manager.
- (4) Town attorney: Provides for a town attorney to be employed under the terms and conditions deemed advisable by the council; provides for the qualifications for the town attorney; provides that the town attorney may appoint assistant town attorneys; provides for functions to be performed by the town attorney.
- (5) Town clerk: Provides for the appointment of a town clerk by the town manager, and provides for his or her duties.
- (6) Expenditure of town funds: Provides that no funds of the town be expended except pursuant to duly approved appropriations, or for the payment of debts authorized by the council and from authorized funds.

- (7) Town boards and agencies: Provides that the council may establish or abolish any boards and agencies as it deems advisable, and appoint members by resolution.

Section 5: Legislative.

- (1) Regular meetings: Provides that the council conduct regular, public meetings at such times and places as it prescribes by resolution.
- (2) Special meetings: Provides that special meetings may be held at the call of the mayor or the request of a majority of council members; provides for at least 72 hours notice of the meeting, unless an emergency exists.
- (3) Commencement: Provides that meetings are to start no earlier than 7 a.m. or later than 10 p.m.
- (4) Rules; order of business: Provides that the council determine its own rules and order of business.
- (5) Quorum: Provides that a majority of the full council constitutes a quorum.
- (6) Validity of action: Provides that actions of the council be adopted by a majority of the full council to be valid.
- (7) Legislative powers: Provides that the legislative powers of the town be vested in the council.
- (8) Departments: Provides that the council may establish departments, offices or agencies by ordinance.
- (9) Code: Provides that the council may adopt any standard code of technical regulations by reference in an ordinance.
- (10) Emergency ordinances: Provides that the council may adopt one or more emergency ordinances in the manner provided by general law to meet a public emergency affecting life, health, property or the public peace; provides that an emergency ordinance may be adopted by the affirmative vote of four council members; provides that emergency ordinances become effective upon adoption; provides that every emergency ordinance is automatically repealed 61 days following its effective date.
- (11) Emergency appropriations: Provides that the council may make emergency appropriations by resolution to meet a public emergency affecting life, health, property or the public peace.
- (12) Recordkeeping: Provides that the council provide for the recording of all minutes or meetings and all ordinances and resolutions adopted by the council.
- (13) Dual office holding: Provides that no elected town official hold any compensated appointive office or employment of the town while in office; provides that former council members may not be employed by the town until a year after leaving office.
- (14) Noninterference by town council: Provides that council members are prohibited from interfering with the performance of the duties of any town employee who is under the supervision of the town manager or attorney, and that such action constitutes malfeasance within the meaning of s. 112.51, F.S.

Section 6: Budget and appropriations.

- (1) Fiscal year: Provides that the town's fiscal year is from October 1-September 30 unless otherwise defined by general law.
- (2) Budget adoption: Provides that the council adopt a budget in accordance with general law, following a minimum of two public hearings; provides that a resolution adopting the budget constitute appropriation of the amounts specified therein as expenditures from the indicated funds.
- (3) Expenditures: Provides that the budget shall not provide for expenditures in an amount greater than the budgeted revenues.

- (4) Appropriations: Provides that if excess revenues become available the council may make supplemental appropriations; provides for remedial action, if revenues appear to be insufficient; provides that no appropriation for debt service may be reduced or transferred.
- (5) Bonds; indebtedness: Provides that the town may borrow money and issue bonds; provides that bonds may be issued pursuant to resolutions adopted by a majority of the council; provides that the town may assume all outstanding indebtedness relating to facilities it acquires from other units of local government.
- (6) Revenue bonds; lease-purchase contracts: Provides that the council shall not authorize the issuance of revenue bonds or enter into lease-purchase contracts or any other unfunded multiyear contracts for the purchase of real property or a capital improvement which would take in excess of 36 months to repay, unless authorized by the electors, or mandated by state or federal governing agencies.
- (7) Annual audit: Requires that the council provide for an independent annual financial audit of all town accounts.

Section 7: Elections.

- (1) Electors: Provides that a town elector is a resident who has qualified as an elector of the state, and registers.
- (2) Nonpartisan elections: Provides that town council member elections be nonpartisan.
- (3) Election dates: Provides that a special election will be held on the second Tuesday in March 2007, and regular elections will be held on the second Tuesday in March of each election year; provides for staggered offices based on the number of votes a member receives when first elected; provides that such town elections are general town elections.
- (4) Runoff Elections: Provides that if no candidate receives a majority of votes, the person receiving the largest number of votes cast will be elected; provides that if two candidates receive an equal number of votes, a runoff election is held on the fourth Tuesday in March.
- (5) Town canvassing board: Provides for a town canvassing board composed of those members of the town council who are not candidates for reelection, and the town clerk.
- (6) Special elections: Provides for special municipal elections to be held in the same manner as regular elections.
- (7) General elections: Provides that the ballot for general elections will contain the names of all qualified candidates for each seat, and that the candidate for each seat receiving the most votes will be elected; provides that no election will be required if there is only one qualified candidate for a seat; provides that if more than one candidate receives an equal and highest number of votes, there will be a runoff election; provides that the candidate receiving the highest number of votes in the runoff election will be elected to the seat; provides that if the runoff election results in a tie, the outcome will be determined by lot; provides that terms of office commence immediately after the election; provides for an oath to be taken by all elected officers; provides that the election laws of the state will apply to all elections; provides that any member of the town council may be removed from office by the town electors following the procedures for recall established by general law.

Section 8: Initiative and referendum.

- (1) Power to initiate and reconsider ordinances: Provides that the electors of the town have the power to propose ordinances to the town council, and to adopt such an ordinance at a town election if the council fails to adopt the ordinance, as long as the ordinance does not apply to the budget, capital program, the levy of taxes or the setting of salaries; provides that the council has the power to call for a referendum by resolution at any time provided that the purpose of the referendum is presented to the town at a public hearing at least 60 days prior to the adoption of the resolution; provides that the electors of the town have the power to require the town council

to reconsider any adopted ordinance as long as the ordinance does not apply to the budget, capital program, the levy of taxes or the setting of salaries.

- (2) Commencement of proceedings: Provides that any 10 electors may commence initiative or referendum proceedings by filing an affidavit with the town clerk, who will issue appropriate petition blanks.
- (3) Petitions: Provides that initiative and referendum petitions must be signed by at least 10 percent of the total number of electors registered to vote in the last regular town election; provides that each signature on a petition be in ink and followed by the printed name and address of the person signing; provides that the circulator of petitions certify the authenticity of signatures; provides that initiative and referendum petitions be filed within 60 days of the date on which proceedings with respect to such initiative or referendum are commenced, and that the submission of signatures be completed no later than 90 days following the date of filing such petition.
- (4) Procedure for filing: Provides that within 20 days after a petition is filed that the town clerk complete a certificate as to its sufficiency or insufficiency; provides that a petition certified insufficient for lack of the required number of valid signatures may be amended once if certain conditions are met; provides that the town council will review insufficient petitions if certain conditions are met.
- (5) Action on petitions: Provides that when a petition is sufficient, the town council will consider the ordinance at issue; provides for the submission of the ordinance to the electors of the town if the council fails to act in a specified number of days; provides for the submission of the ordinance to the electors; provides for the withdrawal of petitions any time prior to the 15th day preceding the day the election is scheduled.
- (6) Results of elections: Provides that, if a majority of the electors vote in favor of an ordinance, it will be considered adopted upon certification of election results; provides that if a majority of the electors vote against an ordinance that it will be considered repealed upon certification of election results.

Section 9: General provisions.

- (1) Severability: Provides for severability of provisions.
- (2) Town personnel system: Provides that all new employments, appointments and promotions of town officers and employees be made pursuant to personnel procedures to be established by the town manager.
- (3) Charitable contributions: Prohibits the town from making any charitable contributions unless authorized by the council.
- (4) Variation of pronouns: Provides for the use of pronouns within the charter.
- (5) Calendar day: Provides that for purposes of the charter, the term "day" means a calendar day.
- (6) Charter review committee: Provides that the town council appoint a charter review committee (consisting of 15 individuals who are not members of the town council) to serve in an advisory capacity to the town council at its first regular meeting in March 2012 and every 10th year thereafter.
- (7) Charter amendments: Provides that the charter may be amended in accordance with general law.
- (8) Initiation by petition: Provides that the electors of the town may propose amendments to the charter by petition.
- (9) Standards of conduct: Provides that all elected officials and employees of the town are subject to the Code of Ethics for Public Officers and Employees; provides that the council will establish its own code of ethics by ordinance no later than six months from the effective date of the corporation; provides that the intent of the subsection is to require more stringent standards than those provided under general law.

- (10) Land use, rezoning: Provides that changes to the town's future land use map or any change to the zoning designation for any parcel within the town shall require the affirmative vote of no less than four members of the town council.

Section 10: Transition schedule.

- (1) Referendum: Provides that the Palm Beach County Commission will hold the referendum election for considering the incorporation of the Town of Loxahatchee Groves on October 10, 2006.
- (2) Initial election of council members; dates: Provides that following the adoption of the charter, the Palm Beach County Commission will call a special election for the election of the town council members to be held on March 13, 2007; provides for, if necessary, a runoff election to be held on March 27, 2007; provides that any individual who wants to run for the council must qualify as a candidate with the Palm Beach County Supervisor of Elections; provides for the Palm Beach County Commission to appoint a canvassing board to certify the results of the election; provides that those individuals who are elected will take office at the initial town meeting to be held at 7 p.m. on March 29, 2007.
- (3) Creation and establishment of the town: Provides that for the purpose of compliance with s. 200.066, F.S., relating to assessment and collection of ad valorem taxes, the town is created effective November 1, 2006, although it will not be operational until March 30, 2007.
- (4) First year expenses: Provides that the town council will have the power to borrow the money necessary for the operation of the town until a budget is adopted and revenues are raised.
- (5) Transitional ordinances and resolutions: Provides that all applicable county ordinances currently in place at the time of passage of the referendum, unless specifically referenced herein, will remain in place until and unless rescinded by action of the town council, except that a county ordinance, rule or regulation which is in conflict with an ordinance, rule or regulation of the town shall not be effective to the extent of such conflict; provides that any existing county ordinances, rules and regulations as of October 12, 2006, shall not be altered, changed, rescinded or added to, nor shall any variance be granted insofar as such action would affect the town without the approval of the town council.
- (6) Temporary emergency ordinances: Requires the town council to adopt transitional ordinances and resolutions; provides that ordinances adopted within 60 days after the first council meeting may be passed as emergency ordinances; provides that these ordinances shall be effective for no longer than 90 days after adoption and thereafter may be readopted, renewed or otherwise continued only in the manner normally prescribed for ordinances.
- (7) Transitional comprehensive plan and land development regulations: Provides that until the town adopts a comprehensive plan, all applicable provisions of the Comprehensive Plan and Land Development Regulations of the county will remain in effect; provides that all planning functions, duties and authority will rest in the town council; provides that the council will be deemed the local planning agency until it establishes a separate local planning agency; provides that after the passage of the act, no amendment of the comprehensive plan or land development regulations enacted by the Palm Beach County Commission will take effect within the town's corporate limits; provides that the owner or assigns of the 97+/- acre property located at the northwest corner of B-Road and Southern Boulevard, commonly known as the "Simon property," have applied for a land use change through the Palm Beach County comprehensive plan amendment process (LGA 2004-00037), and that this parcel and its owners and assigns will remain subject to the county comprehensive plan and approval process until such time as the town adopts its own comprehensive plan; provides that in the event that the town initiates a review and approval process in a timeframe that is faster than presently expected, the owner or assigns of the Simon property may elect to go through the town's zoning approval process.
- (8) State shared revenues: Provides that the town will be entitled to participate in all shared revenue programs of the state available to municipalities effective immediately on the date of incorporation; provides that the provisions of s. 218.23(1), F.S., will be waived for the purpose of

eligibility to receive revenue sharing funds from the date of the incorporation through the state fiscal year 2009-2010; provides that initial population estimates for calculating eligibility for shared revenue be determined by the University of Florida Bureau of Economic and Business Research; provides for the Palm Beach County Planning Division estimate to be used if the bureau is unable to provide an appropriate population estimate; provides that for the purposes of qualifying for revenue sharing, the following revenue sources be considered: municipal service taxing units, fire municipal service taxing units, water control district revenues, occupational license taxes, ad valorem taxes, public utility service taxes, communication services tax and franchise fees.

- (9) Gas tax revenues: Provides that the town will be entitled to receive local gas tax revenues beginning October 1, 2007.
- (10) Waiver: Provides that the provisions of s. 218.23(1), F.S., be waived for the purpose of conducting audits and financial reporting through fiscal year 2007-2008

Section 11: Continuation, merger, and dissolution of existing districts and service providers.

- (1) Palm Beach County Fire Rescue Municipal Service Taxing Unit; continuation: Provides that the Palm Beach County Fire Rescue Municipal Service Taxing Unit, a special taxing district, is authorized to continue in existence within the boundaries of the town until the town adopts an ordinance to the contrary; provides that the town will not establish a fire department without a referendum.
- (2) Law Enforcement: Provides that law enforcement services will be provided by contract with the Palm Beach County Sheriff's Office, or contracted with other law enforcement agencies, until the town adopts an ordinance to the contrary; provides that the town will not establish a police department without a referendum.
- (3) Palm Beach County Library District: Provides that that portion of the Palm Beach County Library District, a dependent district of Palm Beach County that lies within the town, is authorized but not required to continue in existence; provides that, in order to be excluded from the library district, the town must establish a municipal tax-funded library.
- (4) Palm Beach County Municipal Service Taxing Unit B: Provides that the portion of the Palm Beach County Municipal Service Taxing Unit B, a dependent district of Palm Beach County that lies within the boundaries of the town, will cease to exist within the municipal boundaries of the town on October 10, 2006.
- (5) Palm Beach County Municipal Service Taxing Unit F: Provides that the portion of the Palm Beach County Municipal Service Taxing Unit F, a dependent district of Palm Beach County that lies within the boundaries of the town, will cease to exist within the municipal boundaries of the town on October 10, 2006.
- (6) Loxahatchee Groves Water Control District; continuation: Provides that the Loxahatchee Groves Water Control District is authorized to continue in existence.
- (7) Loxahatchee Groves Park: Provides that the Loxahatchee Groves Park will continue to be operated by the Palm Beach County Department of Parks and Recreation; provides that all planned improvements to the park be subject to the approval to the town, but remain the responsibility of Palm Beach County.

Section 12: Repeal.

Provides that section 6 of s. 2 of ch. 99-425, L.O.F., is repealed. Chapter 99-425, L.O.F., is the codification of the Loxahatchee Groves Water Control District, and the section that the incorporators seek to repeal provides that no land within the boundaries of the district, except for certain property which is legally described, may be annexed by any municipality unless the municipality agrees to annex all of the real property composing the district.

Section 13: Waivers.

Provides that waivers to the following thresholds for municipal incorporation established by s. 165.061, F.S., are granted:

- (1) A minimum population of 5,000 as required by s.165.061(1)(b), F.S.;
- (2) A minimum density of 1.5 persons per acre as required by s.165.061(1)(c), F.S.; and
- (3) A minimum distance of two miles from an existing municipality as required by s.165.061(1)(d), F.S.

Section 14: Effective date.

Provides that the act take effect upon approval of a majority of qualified electors residing within the proposed corporate limits of the proposed town voting in a referendum to be called by the Board of County Commissioners of Palm Beach County to be held on October 10, 2006, except that s. 10(1) and this section will take effect upon the act becoming law.

D. SECTION DIRECTORY:

Section 1: Provides for corporate existence; form of government; boundary and powers.

Section 2: Provides for town; mayor and vice mayor.

Section 3: Provides for council members, elections and terms of office.

Section 4: Provides for town manager and attorney; appointment; removal; compensation; filling of vacancies; expenditure of town funds; town boards and agencies.

Section 5: Provides for town council meetings and powers.

Section 6: Provides for town budget and appropriations.

Section 7: Provides for town elections.

Section 8: Provides for initiative petitions and referendum.

Section 9: Provides general provisions.

Section 10: Provides a transition schedule.

Section 11: Provides for continuation, merger and dissolution of existing districts and service providers.

Section 12: Provides for repeal of section 6 of s. 2 of ch. 99-425, L.O.F.

Section 13: Provides for waivers from s. 165.061, F.S.

Section 14: Provides for effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

WHERE?

Note: Section 10 of Art. III, of the State Constitution provides: No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. **Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.**

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? October 10, 2006.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

According to the Economic Impact Statement, the estimated cost of administration, implementation and enforcement for this bill is \$1,085,673 in FY 07-08, and \$1,171,369 in FY 07-09. The anticipated sources of funding are as follows:

| | FY 07-08 | FY 08-09 |
|-------------------------|-----------|-----------|
| State: Revenue Sharing | \$71,915 | \$79,106 |
| Half Cent Sales Tax | \$238,350 | \$250,268 |
| Local: Ad Valorem Taxes | \$505,749 | \$558,853 |

The EIS also states that the incorporation will have little impact on Palm Beach County because current county services will be kept at the same level of service and the area at issue accounts for less than .2 percent of the population of the county. There will be an increase in property taxes of 1.5 mils for the incorporated area.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

See, C. DRAFTING ISSUES OR OTHER COMMENTS, on the following page.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Lines 479 and 482 mention recognition and certification by an "International City Manager Association." This should read "International City/County Management Association."

Lines 1122-1133 of the bill relate to transitional ordinances and resolutions. This section contemplates the rescinding of county ordinances by the town council, and provides that county ordinances will not be effective in the town to the extent of any conflict. This section should be amended to recognize that the Charter of Palm County⁴ provides at Sec. 1.3, Scope of County Ordinances, that municipal

⁴ Section 1(g), Art. VIII of the State Constitution provides: "Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter

ordinances shall prevail over county ordinances to the extent of any conflict, regardless of the time of passage of the municipal ordinances, except that county ordinances shall prevail over conflicting municipal ordinances:

1. In matters relating to the protection of wells and well fields within the parameters set forth in Section 3.3 of the Charter.
2. In matters relating to school, County-owned beaches, district parks and regional parks, solid waste disposal, County law enforcement, and impact fees collected for County road programs and public buildings; and in matters related to County fire-rescue impact fees and County library impact fees in those municipalities whose properties are taxed by the County for library and/or fire-rescue services, respectively.
3. For the adoption and amendment of the countywide land use element adopted in accordance with Article VII of the Charter, "Countywide Planning Council."
4. In matters relating to the establishment of levels of service for collector and arterial roads which are not the responsibility of any municipality, and the restriction of the issuance of development orders which would add traffic to such roads which have traffic exceeding the adopted level of service, provided that such ordinance is adopted and amended by a majority of the Board of County Commissioners.

(Ord. No. 86-28, § 2, 8-26-86; Ord. No. 86-29, § 2, 8-26-86; Ord. No. 86-30, § 2, 9-9-86; Ord. No. 88-21, § 2, 9-20-88; Ord. No. 88-25, § 2, 9-20-88)

Exceptions to General Law

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill may create exemptions to the following general laws:

- 1) Section 171.0413, F.S., which provides for annexation of contiguous, compact unincorporated territory by municipalities subject to specified procedures, in that s. 1(3)(b) of the bill prohibits the town from annexing the area known as Callery-Judge Groves.
- 2) Section 165.061(1)(b), F.S., which requires that a proposed municipality have a minimum population of 5,000 in counties with a population of more than 75,000;
- 3) Section 165.061(1)(c), F.S., which requires that a proposed municipality have a minimum density of 1.5 persons per acre, or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density;
- 4) Section 165.01(1)(d), F.S., which requires that the boundaries of a proposed municipality be a minimum distance of two miles from an existing municipality, or have an extraordinary natural boundary which requires separate municipal government.
- 5) Section 125.01, F.S., which gives counties the authority to prepare and enforce comprehensive plans, and establish and enforce zoning ordinances, in that s. 10 (7)(b) of the act prohibits changes in the land use map or zoning districts within the boundaries of the town once the act becomes law.
- 6) Part II of ch. 163, F.S., which contains the "Local Government Comprehensive Planning and Land Development Regulation Act," in that s.10 (7)(d) of the bill provides that after the passage of the act, no amendment of the comprehensive plan or land development regulations enacted by the Palm Beach County Commission will take effect within the town's corporate limits.
- 7) Section 218.23(1), F.S., which provides eligibility requirements for revenue sharing, that s. 10 (8) of the bill seeks to waive through FY 2009-2010, and s. 10(10) of the bill seeks to waive for the purpose of conducting audits and financial reporting through FY 2007-2008.
- 8) Section 200.066, F.S., which provides that ad valorem taxes of newly created municipalities be initially imposed no earlier than the January 1 subsequent to the creation of the municipality.

may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances."

Feasibility Study Reviews

The Legislative Committee on Intergovernmental Relations (LCIR)

The following includes selected comments from the Legislative Committee on Intergovernmental Relations regarding the proposed incorporation of the Town of Loxahatchee Groves.

The LCIR indicated that its review determined that the proposed incorporation met state standards for municipal incorporations specified in s. 165.061, F.S., (see, "Requirements and Standards for Municipal Incorporation" on page 3 of this analysis) with the following exceptions:

Based on the 2003 estimated population of 3,122 provided in the *Study* (page 1), the area proposed for incorporation does not meet the population requirements found in s. 165.061(1)(b), F.S. The *Study* (pages 2 and 7) report the number of acres proposed for incorporation at 8,148 acres and the estimated population at 3,122. Based on these data, the density of the area proposed for incorporation is 0.38 persons per acre, rather than the .65 persons per acre reported (page 7). The density of Loxahatchee Groves is approximately one-quarter of the required minimum under s. 165.061(1)(c), F.S., of 1.5 persons per acre. **Alternatively, the statutes provide that the area have extraordinary conditions requiring the establishment of a municipal incorporation with less existing density. The *Study* (pages 1 and 7) suggest that the unique rural character of Loxahatchee Groves and its standing as a readily identified community meet this statutory condition. As such, it cannot be ascertained whether the unique characteristics of Loxahatchee Groves serve as extraordinary conditions as required by law. However, Palm Beach County government staff report that the county created ordinances for the Loxahatchee Groves community which recognize its unique and historic nature.**

Information in the *Study* acknowledges that the area to be incorporated does not maintain a distance of at least two miles from a boundary of two existing municipalities, Royal Palm Beach and Wellington, nor does it suggest the presence of any extraordinary natural boundary that requires separate municipal government as required by s. 165.061(1)(d), F.S. The area proposed for incorporation does not meet the minimum two-mile limit requirement. **The *Study* suggests that the aggressive annexation policies of its Royal Palm Beach and Wellington have brought them within the two-mile limit of Loxahatchee Groves and have contributed to its wish to incorporate as a means to protect the community from further expansion by these neighboring municipalities.**

The LCIR indicated that its review determined that the proposed incorporation met state standards for a municipal incorporation feasibility study pursuant to s. 165.041(1)(b), F.S., (see, "Feasibility Study" on pages 3 and 4 of this analysis) with the following exceptions:

The *Study* does not appear to propose any development for the area, rather it supports maintaining current characteristics and opposing higher density developments. As such, it cannot be ascertained whether the *Study* meets the requirement to describe proposed development. The *Study* (page 9) does provide for the formation of a citizen's commission to develop a comprehensive plan that would address this issue.

The *Study* appears to meet the requirement that it identify proposed services (pages 11-13). Based on information contained in the *Study*, and the Study Addendum we cannot ascertain whether it meets the requirement to identify estimated costs for the proposed services. **Supplemental information provided by the Committee to Incorporate Loxahatchee Groves, Inc., Palm Beach County Department of Planning, Zoning, and Building, and the Solid Waste Authority of Palm Beach County indicate some agreement that the county will continue to provide certain services to the residents upon incorporation such as solid waste and recycling, fire and rescue, law enforcement, maintenance of certain roadways, and maintenance of parks and recreation, and continuation of library services. However, it remains unclear how other services including future water utilities, and planning, zoning, permitting, and inspections will be provided. It is**

assumed that such services would develop through interlocal agreements with the Palm Beach County government.

The *Study* appears to meet some but not all elements of the requirement that it provide evidence of the fiscal capacity for the area proposed for incorporation with the following caveats:

The *Study* addresses the majority of tax bases and revenue sources available to a municipality, but provides revenue estimates for only a few of them: ad valorem property tax, Municipal Revenue Sharing Program, the Local Government Half-Cent Sales Tax (pages 12 and 22), and a non-ad valorem assessment to fund the water control district (page 11). The Study Addendum provides revenue estimates for franchise fees and the Communications Service Tax. These and other revenue sources included in the study require some clarification:

- The *Study* notes that Palm Beach County will continue to provide a range of services to the community with revenues from existing taxes. It is somewhat unclear which services are to be provided by Palm Beach County government through existing county millage, under contract, or through interlocal agreement and which services would be provided by Loxahatchee Groves. **As noted above, the supplemental letters provided by The Committee to Incorporate Loxahatchee Groves, Inc., and the Palm Beach County Department of Planning, Zoning, and Building, indicate a willingness for the County to continue providing some services: law enforcement, library, parks and recreation (with certain stipulations), but it is unclear whether it would provide all of the identified services for the amount specified in the *Study* (pages 10-13, Appendices A and D, and the Study Addendum).**
- State shared revenues (SSR) are identified as revenue sources for Loxahatchee Groves. In order to be eligible to participate in these 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 mils of ad valorem property taxes. The Study Addendum projects the 2006 taxable value of property within the Loxahatchee Groves at \$305,127,735. Based on this projected taxable value, the three-mil equivalency for Loxahatchee Groves is equal to approximately \$915,383,205. Current budget projections include an ad valorem tax rate of 1.5 mils. **The requirements regarding financial reports have been temporarily waived in the past until such reports are available. However, the Legislature, in most instances, has required that a proposed incorporation show a minimum local taxing effort in order to qualify for SSR programs. It may be appropriate to credit non-ad valorem assessments from the Loxahatchee Water Control District and/or millage levied by Palm Beach County for other municipal type services toward this three-mil requirement.**
- The *Study* does not identify local option fuel taxes as a revenue source or provide revenue estimates, although the Charter includes a provision that entitles Loxahatchee Groves to receive local option gas tax revenues beginning October 1, 2007. It is unknown whether the county and Loxahatchee Groves have an interlocal agreement proposal for distribution of the fuel tax revenues. Florida Statutes provide a default formula for distribution of fuel tax revenue for newly incorporated municipalities in the absence of such an interlocal agreement.

Consequently, we cannot ascertain whether the *Study* and Study Addendum adequately address these tax bases. However, it appears that revenues for Loxahatchee Groves would exceed those projected in the *Study* and Study Addendum.

The *Study* does include a five-year operational plan and budget (pages 12-15, Appendix A, and Study Addendum). **The revenue totals include funds projected from sources for which the proposed municipality may not be eligible to receive and, as noted above, include provisions for other entities to continue providing services or provide under contract or through interlocal agreement without providing evidence that these entities are willing to provide all such services**

for the amount identified in the budget. In addition, the five-year operational plan in the Study Addendum allocates less than \$52,000 during this five-year period for the development of a comprehensive plan and contract planning services with the county government.

Also, although the *Charter* includes numerous provisions for council member elections, referenda, and initiatives, neither the *Charter* nor the five-year plan specify how such elections will be administered or funded. The Palm Beach County Supervisor of Elections Office has a standard interlocal agreement or fee schedule for conducting municipal elections which would cost approximately \$4,500 - \$6,000 per election for a municipality the size of Loxahatchee Groves. Given this list of concerns, we cannot ascertain whether the requirement for the five-year operational plan and budget is adequately addressed.

As noted above, the *Study* does not provide evidence that the proposed municipality meets the requirements for incorporation pursuant to s. 165.061, F.S. It does acknowledge, however, that certain criteria will need to be waived.

The LCIR also evaluated whether the proposed revenues and expenditures contained in the Study are consistent with revenues and expenditures of municipalities of similar size.

This section of the analysis compared the revenue and expenditure estimates for the proposed municipality of Loxahatchee Groves with "similarly sized" municipalities in Florida. As presented in the following table, all comparison municipalities reported FY 2002-03 total expenditures greater than those projected for Loxahatchee Groves. The estimated expenditures projected for Loxahatchee Groves (\$1,085,673) are approximately one-third of the "average" reported expenditures for the 10 comparison municipalities (\$3,601,695). Two additional issues should be noted in this comparison. First, the projected expenditures for Loxahatchee Groves do not include expenditures associated with the Loxahatchee Groves Water Control District or costs for services that Palm Beach County may continue to provide to the residents of Loxahatchee Groves under the current county tax structure. If included, such costs would increase the proposed expenditures and reduce the expenditure differential between Loxahatchee Groves and the comparison municipalities. Such a budget is presented in the Study Addendum.

The second issue regarding the proposed expenditures is that the fiscal data for the 10 comparison municipalities reflect total reported revenues and expenditures for FY 2002-03, while the fiscal estimates for Loxahatchee Groves 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, the gap has increased between their "average" reported expenditures and those projected for Loxahatchee Groves. However, the ad valorem tax base for Loxahatchee Groves appears sufficient to fund municipal services at the amount equal to the "average" expenditures by the comparison municipalities should it prove necessary to do so.

**Comparison of Total Revenues and Expenditures
for 10 Municipalities with Populations Similar to the Population Estimate for the
Proposed Municipality of Loxahatchee Groves⁵**

| Municipality | 2003 Pop. Est.⁶ | Revenues | Expenditures |
|---------------------|-----------------------------------|--------------------|---------------------|
| Loxahatchee Groves | <u>3,122</u> | \$1,085,673 | \$1,085,673 |
| Hilliard | 2,748 | \$2,470,932 | \$2,500,234 |
| Lake Helen | 2,823 | \$1,823,727 | \$1,772,235 |
| Ponce Inlet | 2,917 | \$6,309,110 | \$6,807,364 |
| Dundee | 2,952 | \$2,890,820 | \$2,746,312 |
| Frostproof | 2,982 | \$3,436,992 | \$3,459,038 |
| Bowling Green | 3,012 | \$1,940,566 | \$1,766,766 |
| Indialantic | 3,030 | \$2,871,773 | \$2,981,874 |
| Madison | 3,079 | \$5,238,747 | \$4,565,907 |
| Port Richey | 3,139 | \$5,984,664 | \$4,790,922 |
| Fruitland Park | 3,265 | \$3,049,623 | \$4,092,063 |
| AVERAGE | 2,995 | \$3,601,695 | \$3,548,272 |

⁵ FY 2002-2003 reported revenues and expenditures by the 10 comparison municipalities and projected 2006 revenue and expenditure estimate for Loxahatchee Groves contained within the Loxahatchee Groves Incorporation Feasibility Study.

⁶ 2003 population counts for comparison municipalities reported by the Bureau of Economic and Business Research, University of Florida. Population estimates for Loxahatchee Groves for calendar year 2003 contained within the Loxahatchee Groves Incorporation Feasibility Study, Appendix A.

Sources: Florida LCIR using fiscal data submitted by municipalities to the Department of Banking and Finance; Florida Estimates of Population 2003, Bureau of Economic and Business Research, University of Florida, 2004; information contained within the Loxahatchee Groves Incorporation Feasibility Study and Study Addendum.

The LCIR also evaluated the distribution of State Shared Revenues (SSR) and impact the incorporation would have on existing local governments.

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 these local governments as they begin to plan for their 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 Tax Research, Florida Department of Revenue, prepared SSR estimates for the proposed Town of Loxahatchee Groves and estimates on the impact from such incorporation to SSR distribution to other units of local government within Palm Beach County. If Loxahatchee had incorporated in 2005, Palm Beach County government would realize a reduction in 2005-06 SSR distributions totaling an estimated \$205,039. 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 \$20 (Cloud Lake) to a high of \$10,451 (West Palm Beach).

Lastly, the LCIR provided the following comments with regard to the proposed charter.

Section 1(3): Subsection (b) prohibits Loxahatchee Groves from annexing certain adjacent property. Including such a provision in a municipal charter is unusual. If there is a need to reassure certain local stakeholders that Loxahatchee Groves will not attempt to annex this adjacent property, such a commitment might better be accomplished in an ordinance or by resolution of the city council.

Section 2(1) and Section 3(1) and (2): These subsections call for a five-member council to be elected at-large and represent the municipality at-large. Such an election scheme may be vulnerable to legal challenge under the 1965 U.S. Voting Rights Act, depending upon the area's demographics.

Section 2(3): Subsection (a) invests the vice-mayor with the same legislative powers and duties as any other council member. It may be appropriate to clarify that the vice-mayor would have the powers and duties of the mayor only when serving as the mayor. Subsection (b) provides that the vice-mayor shall serve as acting mayor during the absence or disability of the mayor. It may be appropriate to define "disability" or remove it.

Section 3(4): Subsection (a) provides for filling of vacancies of council officers and members and reasons why vacancies would occur. It may be appropriate to include disability as a reason.

Section 4(3): Subsection (d) authorizes the council to designate a temporary town manager during the absence or disability of the existing town manager. It would be appropriate to define "disability" in the charter and eliminate possible future confusion on the meaning of the term. Subsection (e) provides the powers and duties of the town manager which include signing of contracts. Such responsibility is also assigned to the mayor in Article 2(2)(b). It may be appropriate to clarify the assignment of responsibilities between the mayor and manager.

Section 5(10): Subsection (b) authorizes the adoption of an emergency ordinance upon the affirmative vote of four council members. Subsection 5(5) defines a quorum as a majority (3) of the full council. This creates a situation where the council may hold an emergency meeting, but not adopt any emergency ordinance. It may be appropriate to lower the threshold for the adoption of an emergency ordinance where only a quorum of council members is present.

Sections 7, 8, and 10: Sections 7 and 8 address council elections and referendum and initiative elections, respectively. It is unclear whether Loxahatchee Groves or the Palm Beach Supervisor of Elections Office is responsible for elections administrations. Section 10 directs Palm Beach County to

hold the incorporation referendum. It may be appropriate for Sections 7 and 8 to clarify how elections will be administered and funded.

Section 10 Subsection (5) nullifies the effect of Palm Beach County ordinances and related actions enacted after passed of the referendum that are in conflict with those of Loxahatchee Groves. Subsection (7)(d) would similarly limit the comprehensive planning authority of Palm Beach County. Palm Beach County is a charter county and, as such, has authority over certain issues within the county, as well as how county government will relate to political subdivisions within the county. As such, it may be appropriate to revisit these provisions.

Section 10(8): This subsection authorizes Loxahatchee Groves to participate in all state shared revenue programs and waives the eligibility requirements in s. 218.23(1), F.S., through FY 2009-10. The requested waiver should be limited to the requirements regarding financial reports and audits which the Legislature has temporarily waived in the past until such reports are available. Also, given that it can take up to three years for the required financial reports and audits to become available, it may be appropriate to grant the waiver only through FY 2008-09.

Section 11(4) and (5): These subsections terminate the portions of the Palm Beach County Municipal Service Taxing Units (MSTUs) B and F, respectively, which lie within the boundaries of Loxahatchee Groves, upon incorporation. The purposes served and functions afforded by these MSTUs are not identified. While it may be appropriate to terminate these MSTUs, impacts, if any, from doing so are unknown.

Section 11(7): This subsection directs Palm Beach County to maintain responsibility for the Loxahatchee Groves Park and requires any proposed improvements to the park to be approved by the "Town of Loxahatchee Groves." It is unknown whether Palm Beach County government has prior policies relevant to the planning, development, and financing responsibilities for county parks or other county facilities. Any such policy may supersede, and/or be in conflict with this provision.

Office of Economic and Demographic Research (EDR)

This Office of Economic and Demographic Research submitted the following:

- The latest official population estimate for Palm Beach County placed its population at 1,265,900 (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 indicates that the 2000 population of the area proposed for the Town of Loxahatchee Groves was 3,021 and EDR's analysis of census data for the blocks contained within the proposed boundaries of Loxahatchee Groves corroborated this figure. The feasibility study assumed that the area's 2004 population was 3,122 and notes that it does not meet the minimum population requirement of 5,000 persons. The study further states that even with a five percent growth rate, the community is unlikely to grow to 5,000 persons during the next decade without compromising its rural identity.
- According to the feasibility study, the area being proposed for incorporation has population density of .65 persons per acre (assuming 8,148 acres). EDR's analysis of Census map data suggests that the area contains approximately 9,103 acres. Using this acreage would indicate that the density in 2000 was more in the range of .37 persons per acre.
- According to the maps provided in the feasibility study, the areas proposed for the Town of Loxahatchee Groves are contiguous and compact.
- The proposed municipality is bordered by two other incorporated places, Wellington to the south and Royal Palm Beach to the east. No extraordinary natural boundary exists which would require separate municipal government.

Department of Revenue

The Department of Revenue provided the following comments:

Revenue Sharing

- Article 10, Section (8) of the draft charter provides that Loxahatchee Groves be entitled to participate in all state shared revenue programs effective on the date of incorporation, 11/1/06. The entitlement to immediate revenue sharing participation upon the date of incorporation poses a problem. It appears that such early participation conflicts with the definition of a “municipality” in s. 218.21(3), F.S., which 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.” In the instance of Loxahatchee Groves, the council will not hold its first meeting until 3/29/07 and therefore Loxahatchee Groves will not be a “municipality” until that date. **It is recommended that the initial date for revenue sharing participation be the first day of the month occurring after the first meeting of the council, i.e., 4/1/07 or the first day of any month thereafter.**
- Article 10, Section (8) of the draft charter also provides that the provisions of s. 218.23(1), F.S., are to be waived from the date of incorporation, 11/1/06, through the state fiscal year 2009-2010. **Loxahatchee Groves will have completed its first full local fiscal year on 9/31/08 and could potentially satisfy the revenue sharing reporting criteria contained in s. 218.23(1), F.S., by 6/30/09, as early as the end of the 2008-2009 state fiscal year.**
- Section 218.23(1)(c), F.S., requires as a condition of revenue sharing eligibility, that a local government impose three mills of ad valorem tax or a three-mill equivalent. The feasibility study on page 12 states that the anticipated millage for Loxahatchee Groves after incorporation is 1.5 mills for the fiscal years 2005-2010. **Neither the draft charter nor the feasibility study specifically mention the three-mil requirement nor state a method from which it is possible to determine whether the three-mill requirement can be satisfied after the state fiscal year 2009-2010.**
- Article 10, Section (8) of the draft charter lists the following revenue sources to be considered for the purposes of qualifying for revenue sharing: municipal service taxing units, fire municipal service taxing units, water control district revenues, occupational license taxes, ad valorem taxes, public utility service taxes, communication services tax and franchise fees. **This should probably be clarified to state that for the purposes of meeting the provisions of s. 218.23(1), F.S., relating to ad valorem taxation, the millage levied by MSTU’s and special districts levied throughout the proposed corporate limits of the city may be used.**

Gas Tax Revenues

- Article 10, Section (9) of the proposed charter states that Loxahatchee Groves shall be entitled to receive local option gas tax revenues beginning 10/1/07. This date complies with s. 336.025(4)(b), F.S., which 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 Loxahatchee Groves is 10/1/07.
- Section 336.025(4)(b), F.S., requires that gas tax distributions to newly incorporated municipalities are to be in accord with the lane-mile formula unless provided otherwise by the special act providing for the incorporation. Since Section (9) of the draft charter is silent regarding any distribution pursuant to an interlocal agreement with Palm Beach County, then gas tax distributions to Loxahatchee Groves will be in accord with the lane-mile formula. Lane-mile data will have to be provided to the Department for use in calculating distributions to Loxahatchee Groves.

Local Communications Services Tax

- Neither the draft charter nor the 8/28/04 Feasibility Study addresses the communications services tax that is currently imposed by Palm Beach County within the unincorporated area of Palm Beach County, including the area within the proposed Town of Loxahatchee Groves. However, the addendum to the feasibility study does indicate Local Communications Services Tax revenues, i.e., \$126,000 for FY 07/08, \$132,300 for FY 08/09, etc. 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 of a year. A municipality adopting, changing or repealing this tax must notify the Department of Revenue by September 1, prior to the January 1 effective date in order to provide sufficient time to notify providers of changes. In the administration of the local communications services tax, the Department maintains an address database for use by the providers. Each local taxing jurisdiction is required to furnish to the Department service addresses and any changes in jurisdictional boundaries. Since the Loxahatchee Groves referendum is to be held on 11/8/05,⁷ providers cannot be notified that the area within the new Town of Loxahatchee will be no longer subject to the tax. Since the Loxahatchee Groves Council will not meet until 3/29/07, Loxahatchee Groves will be unable to impose a municipal communications services tax before calendar year 2008. The charter does not provide for sharing of the local communications services taxes revenues with Loxahatchee until the beginning of calendar year 2008. **The charter language could be amended to provide for a sharing of the CST imposed by Palm Beach County within the boundaries of Loxahatchee, beginning with the date of incorporation, 11/1/06 through December 31 of some future year.** The proportion could be based on the population of Loxahatchee compared to unincorporated population of Palm Beach County before the incorporation of Loxahatchee. If the incorporators intend to levy a communications services tax, it would be necessary for the new city to adopt an ordinance for this tax prior to 9/1/06 to be effective 1/1/07.

Discretionary Sales Surtax

- Currently, Palm Beach County imposes a five percent School Capital Outlay Surtax, effective 1/1/05, with a specified expiration date of 12/30/10. Proceeds of this tax are distributed entirely to the Palm Beach County School Board and will not be available to Loxahatchee Groves.

The Department also prepared revenue sharing estimates for the 2005-2006 state fiscal year which are on file with the Local Government Council.

Department of Community Affairs

The Department of Community Affairs provided the following comments:

Pursuant to ch. 163.3167(4), F.S., a new comprehensive plan must be adopted within three years of incorporation. Approximate cost of a new comprehensive plan for a City of this size is \$100,000. Pursuant to ch. 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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

⁷ It is assumed that this is a typographical error and that the drafter intended the date to read 10/10/06.