

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

|                             |  |                                  |          |
|-----------------------------|--|----------------------------------|----------|
| <b>BILL #:</b>              | HB 7001 (CS/SB 692)  | <b>FINAL HOUSE FLOOR ACTION:</b> |          |
| <b>SPONSOR(S):</b>          | Community & Military Affairs<br>Subcommittee; Diaz (Community<br>Affairs; Bennett) | 104 Y's                          | 13 N's   |
| <b>COMPANION<br/>BILLS:</b> | CS/SB 692  | <b>GOVERNOR'S ACTION:</b>        | Approved |

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**SUMMARY ANALYSIS**

House Bill 7001 passed the House on March 7, 2012, as CS/SB 692, as amended. The Senate concurred with the House amendment to the Senate Bill, and passed the bill as amended on March 8, 2012.

The purpose of ch. 165, F.S., the "Formation of Municipalities Act," is to provide standards, direction and procedures for the formation of municipalities in this state and the provision of municipal services 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.

In order to establish a new municipality, the Legislature must pass a special act creating the city's charter, upon determination that the statutory standards for incorporation have been met. A feasibility study of a municipal incorporation must be completed and submitted to the Legislature 90 days before the first day of its regular session.

This bill amends ch. 165, F.S., to change the deadline for submission of a feasibility study to the first Monday after September 1. The bill also removes several obsolete definitions from the Act, adds specificity to a feasibility study requirement, and conforms a cross-reference. Additionally, the bill provides a new procedure for conversion of certain special districts into municipalities.

There is no fiscal impact associated with this bill.

The bill was approved by the Governor on April 20, 2012, ch. 2012-121, Laws of Florida. The effective date of the bill is July 1, 2012.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Present Situation**

##### The Formation of Local Governments Act

Chapter 165, F.S., the "Formation of Local Governments Act" was created pursuant to ch. 74-192, L.O.F. The purpose of this legislation was to provide general law standards, direction and procedures for the formation and dissolution of municipalities and special districts in the state.

The Legislature subsequently enacted the "Uniform Special District Accountability Act of 1989," ch. 189, F.S., to provide general provisions for the definition, creation and operation of special districts. This legislation, ch. 89-169, L.O.F., changed the title for ch. 165, F.S., to the "Formation of Municipalities Act," and simultaneously removed provisions for special districts from this law. The chapter currently is limited to procedures for municipal incorporation.

The stated purpose of the Act is to provide standards, direction and procedures for the formation of municipalities in this state, and the provision of municipal services 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.<sup>1</sup> Section 165.081, F.S., provides that any special law enacted pursuant to ch. 165, F.S., is reviewable by certiorari if the appeal is brought before the effective date of the incorporation.

Pursuant to s. 165.041(1)(b), F.S., a feasibility study must be completed and submitted to the Legislature 90 days before the first day of the regular session during which the bill proposing the incorporation would be enacted. The feasibility study is a survey of the proposed area to be incorporated, and is commissioned and paid for by the parties interested in the incorporation effort. The purpose of the study is to enable the Legislature to determine whether or not the area: meets the statutory requirements for incorporation, and is financially feasible. The feasibility study is required to contain the following elements:

- The general location of territory subject to a boundary change and a map of the area that identifies the proposed change.
- The major reasons for proposing the boundary change.

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<sup>1</sup> 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.

- The characteristics of the area, including:
  - 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 area;
  - a general statement of present land use characteristics of the area; and
  - a description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.
- A list of all public agencies, such as local governments, school districts and special districts, whose current boundaries fall within the boundary of the proposed municipality.
- 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.
- A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such services.
- The names and addresses of three officers or persons submitting the proposal.
- Evidence of fiscal capacity and an organizational plan that, at a minimum, includes:
  - existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate; and
  - a five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance and budgets.
- 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.
- Evaluation of the alternatives available to the area to address its policy concerns.
- Evidence that the proposed municipality meets the standards for incorporation of s.165.061, F.S. These standards require that the new municipality meet the following conditions in the area proposed for incorporation:
  - It must be compact, contiguous and amenable to separate municipal government.
  - 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.
  - 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.
  - 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.
  - 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.

- In accordance with s. 10, Art. I of the State Constitution,<sup>2</sup> the plan for incorporation must honor existing solid-waste contracts in the affected geographic area subject to incorporation.

In counties that have adopted a municipal overlay for municipal incorporation pursuant to s. 163.3217, F.S., such information also is submitted to the Legislature in conjunction with any proposed municipal incorporation.

In the past, these feasibility studies have been provided to a number of state governmental entities—including the Office of the Governor, the Department of Revenue, the Office of Economic and Demographic Research, the Department of Community Affairs, and the Legislative Committee on Intergovernmental Relations—for a critical assessment to assist the Legislature in its findings. Two of the primary evaluators utilized by the Legislature—the Legislative Committee on Intergovernmental Relations and the Department of Community Affairs (DCA)—were recently abolished,<sup>3</sup> although many of the DCA functions have been transferred to other state agencies.

### Special Districts

The “Uniform Special District Accountability Act of 1989,” ch. 189 F.S., defines the term “special district” to mean:

a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers.....The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17,<sup>4</sup> a municipal service taxing or benefit unit as specified in s. 125.01,<sup>5</sup> or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.<sup>6</sup>

A “dependent special district” means a special district that meets at least one of the following criteria:

- The membership of its governing body is identical to that of the governing body of a single county or a single municipality.
- All members of its governing body are appointed by the governing body of a single county or a single municipality.
- During their unexpired terms, members of the special district’s governing body are subject to removal at will by the governing body of a single county or a single municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.

An “independent special district” means a special district that is not a dependent special district as defined, above. A district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality.

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<sup>2</sup> ARTICLE I, SECTION 10: Prohibited laws.—No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

<sup>3</sup> The Legislative Committee on Intergovernmental Relations, a joint committee, was not funded in the FY 2010 – 2011 General Appropriations Act, and ceased operations on June 30, 2010. The Department of Community Affairs was abolished pursuant to ch. 2011-142, L.O.F.

<sup>4</sup> This section creates special improvement districts within the reservations set aside for the Seminole and Miccosukee Tribes.

<sup>5</sup> Section 125.01 (q), F.S., provides that the governing body of a county has the authority to establish, and subsequently merge or abolish, municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided fire protection; law enforcement; beach erosion control; recreation service and facilities; water; alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems; streets; sidewalks; street lighting; garbage and trash collection and disposal; waste and sewage collection and disposal; drainage; transportation; indigent health care services; mental health care services; and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only.

<sup>6</sup> Section 189.403, F.S.

As of March 2012, there are 992 active independent special districts and 627 active dependent special districts in this state.<sup>7</sup>

## Effect of Changes

This bill amends ch. 165, F.S., the “Formation of Municipalities Act,” to change the deadline for submission of a feasibility study to the Legislature from 90 days before the first day of regular session to the first Monday after September 1. The earlier submission date required by the bill will assure adequate time for review of these studies.

The bill also deletes the following definitions from ch. 165, F.S., which are no longer applicable, as the terms previously were removed by various amendments to the Act, or were never used in the Act:

- “unit of local government,”
- “local general purpose government,”
- “service delivery,” and
- “sufficiency of petition.”

The bill also changes the requirement in a feasibility study for “the general location of territory” to “the location of territory,” indicating a greater need for specificity, and deletes a cross reference to the deleted definition of “unit of local government,” which is currently found at s. 257.171, F.S.

Additionally, the bill provides a new procedure for conversion of certain special districts into municipalities. This procedure allows the qualified electors of an independent special district to commence a municipal conversion proceeding by filing a petition with the governing body of a district that meets all of these criteria:

- It was created by special act of the Legislature.
- It is designated as an improvement district and created pursuant to ch. 298, F.S., or is designated as a stewardship district and created pursuant to s. 189.404, F.S.
- Its governing board is elected.
- Its governing board agrees to the conversion.
- It provides at least four of the following municipal services: water, sewer, solid waste, drainage, roads, transportation, public works, fire and rescue, street lighting, parks and recreation, or library or cultural facilities.
- No portion of the district is located within the jurisdictional limits of a municipality.

The petition must include signatures of at least 40 percent of the district’s qualified electors, and must be submitted no later than one year after the start of the proceeding.

The petition must be filed with the governing body of the district, and submitted to the supervisor of elections. Upon the verification by the supervisor of elections that 40 percent of the qualified electors have petitioned for municipal conversion, the governing body of the district is required to meet within 30

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<sup>7</sup> <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/criteria.cfm>, last visited March 12, 2012.

business days to prepare, and approve by resolution, a proposed elector-initiated combined conversion and incorporation plan. The proposed plan must include:

- The name of the independent special district to be converted to a municipality.
- The name of the municipality to be created.
- A conversion schedule.
- Certification by a licensed surveyor that the boundaries of the proposed municipality do not overlap with any other municipal boundary, and are contained within a single county.
- The rights, duties and obligations of the municipality, and a feasibility study that contains the requirements under s. 165.041(1)(b), F.S.,<sup>8</sup> except that the provisions of s. 165.061(1)(b)-(d), F.S.,<sup>9</sup> do not apply if the buildout of the land use allowed under the current county-approved comprehensive plan and zoning designations will meet the population and density requirements of s. 165.061(1)(b) and (c), F.S.
- The territorial boundaries of the proposed municipality.
- The governmental organization of the proposed municipality and independent special district as concerns elected and appointed officials and public employees, along with a transitional plan and schedule for elections and appointments of officials.
- An accounting of the district's assets, including, but not limited to, real and personal property, and the current value of the property.
- An accounting of the district's liabilities and indebtedness, bonded and otherwise, and the current value of the liabilities and indebtedness.
- Terms for addressing the ownership and obligations related to existing assets, liabilities, and indebtedness of the district, jointly, separately, or in defined proportions.
- Terms for the common administration and uniform enforcement of existing laws within the proposed municipality.
- An estimated date for final payment of any bonded indebtedness of the independent special district, and if maintained by the district after incorporation, the estimated date of automatic dissolution of the independent special district.
- The time and place for a public hearing on the proposed incorporation.
- The effective date of the proposed incorporation.

The resolution endorsing the municipal incorporation plan must be approved by a majority vote of the district's governing body, and adopted at least 60 business days before any general or special election on the proposed plan. Within five business days after the district approves the plan, its governing body must display a copy and a descriptive summary of the plan in at least three public places within the district (or all district public places, if there are fewer than three). This information also must be displayed on the district's website, if it has one, and be published in a newspaper at least once for four

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<sup>8</sup> See, pages two and three of this analysis.

<sup>9</sup> See, page three of this analysis. Section 165.061(1)(b), F.S., relates to populations requirements; (c) relates to density requirements; and (d) requires a minimum distance of at least two miles from existing cities, in absence of an extraordinary natural boundary

successive weeks. The governing body also is required to schedule one or more noticed, public hearings on the proposed plan.

After the final public hearing, the governing body of the district may amend the plan, if the amended version complies with notice and public hearing requirements, and must approve a final version of the plan within 60 business days. The supervisor of elections is required to schedule a date for a referendum after it is notified by the governing body of the resolution's adoption.

If the incorporation plan is approved by a majority of the votes cast, the district is required to notify the Special District Information Program in the Department of Economic Opportunity, and the local general-purpose governments in which any part of the district is situated.

If the referendum fails, the conversion process may not be initiated again for two years. The effective date of the incorporation is as provided in the conversion and incorporation plan, and is not contingent upon an act of the Legislature.

This process, while very limited in its potential for application, could allow certain special districts to convert to municipalities without legislative review, or oversight, as is currently required by general law for all municipal incorporation, except in Miami-Dade County. At present, the Legislature provides for a review of a proposed municipality's feasibility plan in order to ascertain if a proposed entity will be fiscally and operationally viable.

The proposed municipal conversion process also does not require any notice to any neighboring cities, or the respective county, although the creation of the new community will likely have a negative fiscal impact on these local governments.

The effective date of the bill is July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

A municipal conversion of a special district will result in a new city that is constitutionally-authorized to levy ad valorem taxes of up to 10 mills.<sup>10</sup> Municipalities also may raise revenues via various other mechanisms such as special assessments, impact fees, user fees or service charges, licenses and permits, public service taxes, and communication services taxes. This additional local government may fiscally impact other area local governments in numerous ways. For example, counties may no longer be able to assess certain taxes and fees within the incorporated area, and state-shared revenue sources, to the extent that these funds are distributed proportionally, may decrease for the county and existing municipalities.<sup>11</sup>

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<sup>10</sup> See, Section 9 (b), Art. VII, of the State Constitution.

<sup>11</sup> Specifically, a newly created municipality will impact the amount of funds that existing municipalities receive in the two major state shared revenue programs: Local Government Half-Cent Sales Tax and the Municipal Revenue Sharing. The county government

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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within which the new municipality is formed will realize fiscal impacts in two state shared revenue programs: Local Government Half-Cent Sales Tax and County Revenue Sharing.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

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