

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/CS/HB 1373 Lee County  
**SPONSOR(S):** Local & Federal Affairs Committee; Rodrigues  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	15 Y, 0 N, As CS	Dougherty	Rojas
2) State Affairs Committee	15 Y, 0 N, As CS	Moore	Camechis

### SUMMARY ANALYSIS

The bill provides a charter for the Village of Estero. This charter provides for the following:

- Corporate name; purpose of the charter; creation and establishment of the Village of Estero;
- Powers of the village; council-manager form of government;
- Corporate boundaries;
- Village council, mayor, and vice mayor; powers and duties, composition, eligibility, terms, compensation, council meetings, vacancies, forfeitures, judge of qualifications, and investigations;
- Administration by a village manager, village attorney, and village clerk;
- Departments; personnel; planning;
- Ordinances and resolutions;
- Financial management, including budget administration and amendment; capital program; public records; annual audits; shortfalls;
- Nominations and qualifications; nonpartisan elections; boundaries of seven council districts;
- Powers of initiative and referendum;
- Code of ethics; amendments to the charter; severability; and
- Referendum election; initial council election; transition provisions; eligibility for state-shared revenues; local revenue sources; local option gas tax revenues; contractual services and facilities, including existing solid waste contracts; independent special districts; and elimination of transitional elements from charter.

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

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

According to the Economic Impact Statement, the projected cost of funding the village government and municipal services will be \$3,033,065 for Fiscal Year 2014-2015 and \$5,538,130 for Fiscal Year 2015-2016. Anticipated sources of combined local and state funding are projected to be \$4,747,750 for Fiscal Year 2014-2015 and \$8,310,301 for Fiscal Year 2015-2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Municipal Incorporation Provisions of Law

###### *Constitutional Provisions*

The Florida Constitution provides that municipalities<sup>1</sup> 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 necessary to conduct municipal government, perform municipal functions, and render municipal services. Additionally, municipalities are constitutionally authorized to exercise any power for municipal purposes except when expressly prohibited by general or special law. The power to tax can be granted only by general law. The legislative body of a municipal government is constitutionally required to be elected.

###### *Municipal Home Rule Powers Act<sup>2</sup>*

The Municipal Home Rule Powers Act (Powers Act) acknowledges the constitutional grant of municipal powers and authorizations. However, s. 166.021(4), F.S., provides that nothing in the Powers Act may be construed to permit any change in a special law or municipal charter without approval by referendum<sup>3</sup> if the change affects any of the following:

- The exercise of extraterritorial powers;
- An area that includes lands within and without a municipality;
- The creation or existence of a municipality;
- The terms of elected officers and their manner of election, except for the selection of election dates and qualifying periods for candidates and for changes in terms necessitated by change in election dates;
- The distribution of powers among elected officers;
- Matters prescribed by charter relating to appointive boards;
- Any change in form of government; or
- Any rights of municipal employees.

###### *Formation of Municipalities Act<sup>4</sup>*

Florida law governing the formation and dissolution of municipal governments is found in the Formation of Municipalities Act (Formation Act). The stated purpose of the Formation Act is to provide standards, direction, and procedures for the incorporation, merger, and dissolution of municipalities so as to achieve the following:

- Orderly patterns of urban growth and land use;
- Adequate quality and quantity of local public services;
- Financial integrity of municipalities;
- The elimination or reduction of avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions; and
- Equity in the financing of municipal services.

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<sup>1</sup> Article VIII, Sec. 2 of the Florida Constitution. 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.”

<sup>2</sup> Chapter 166, F.S.

<sup>3</sup> As provided in s. 166.031, F.S.

<sup>4</sup> Chapter 165, F.S.

Under the Formation Act, the only way to establish a municipal government where no such government exists is for the Legislature to adopt the municipal charter by special act upon determination that the appropriate standards have been met.<sup>5</sup>

### Physical Requirements for Municipal Incorporation<sup>6</sup>

The area proposed for incorporation must meet the following conditions in order to be eligible for incorporation:

- Be compact, contiguous, and amenable to separate municipal government.
- 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.
- 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.
- Have a minimum distance of at least two miles from the boundaries of an existing municipality within the county. Alternatively, it must have an extraordinary natural boundary that requires separate municipal governments.
- Have a proposed municipal charter that prescribes the form of government and clearly defines the responsibility for legislative and executive functions, and does not prohibit the legislative body from exercising its power to levy any tax authorized by the Florida Constitution or general law.
- Have a plan for incorporation honoring existing contracts for solid waste collection services in the affected areas for the shorter of five years or the remainder of the contract term.<sup>7</sup>

### Procedural Requirements for Municipal Incorporation

#### *Special Act*

A special act is a law that applies to a limited geographic area. A proposed special act is filed by a member of the Legislature in the form of a local bill. For incorporation purposes, the special act must include a proposed municipal charter that prescribes the form of government and clearly defines the legislative and executive functions of city government. The special act may not prohibit or limit tax levies otherwise authorized by law.

Special acts must meet the constitutional requirement<sup>8</sup> that notice of intent to file a proposed special act be published in the manner provided by general law<sup>9</sup> or that the act be conditioned to become effective only upon approval by qualified electors. The Legislature has required special acts creating municipal incorporations to be subject to a referendum. A bill proposing creation of a municipality will be reviewed based on standards for municipal incorporation established in s. 165.061, F.S.

#### *Local Bill Process*

In addition, as a local bill, a proposed municipal incorporation must meet the House of Representatives' Local Bill Policy, which provides that no local bill may be considered by the Local & Federal Affairs Committee – or other House committees or subcommittees – prior to the receipt of an original Economic Impact Statement and a Local Bill Certification Form.<sup>10</sup> The Economic Impact Statement should assess the cost of implementation, state who will bear such cost, and identify who will benefit

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<sup>5</sup> An exception to this rule exists in Miami-Dade County where the board of county commissioners has been granted the exclusive power to create cities through the Florida 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.

<sup>6</sup> Section 165.061, F.S.

<sup>7</sup> In accordance with s. 10, Art. I of the Florida Constitution.

<sup>8</sup> Article III, Sec. 10 of the Florida Constitution.

<sup>9</sup> Section 11.02, F.S., specifies that the publication of notice must occur one time, at least 30 days prior to introduction of the local bill.

<sup>10</sup> Florida House of Representatives, Local & Federal Affairs Committee, Local Bill Policies and Procedures Manual (Tallahassee, Florida: The Florida House of Representatives, published annually) and Florida House of Representatives, Bill Drafting Service, Drafting Local Legislation in Florida (Tallahassee, Florida: The Florida House of Representatives, 1998).

from the passage of the special act. The Local Bill Certification Form certifies that the bill cannot be accomplished locally, a public hearing has been held, all statutory and constitutional requirements have been met, and a majority of the local legislative delegation approves the bill.

### *Feasibility Study*

Submission of a feasibility study and a local bill that proposes the local government charter is required for consideration of incorporation. 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 (1) the area meets the statutory requirements for incorporation, and (2) incorporation is financially feasible. The feasibility study must be completed and submitted to the Legislature no later than the first Monday after September 1 of the year before the regular legislative session during which the municipal charter would be enacted.<sup>11</sup>

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:

- The general location of territory subject to a boundary change and a map of the area that identifies the proposed change.
- The major reasons for proposing the boundary change.
- The following characteristics of the area:
  - A list of the current land use designations applied to the subject area in the county comprehensive plan.
  - A list of the current county zoning designations applied to the subject area.
  - A general statement of present land use characteristics of the area.
  - A description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.
- A list of all public agencies, such as local governments, school districts, and special districts, whose current boundaries fall within the boundary of the territory proposed for the change or reorganization.
- 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 current service.
- A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such proposed services.
- The names and addresses of three officers or persons submitting the proposal.
- Evidence of fiscal capacity and an organizational plan that, at a minimum, includes:
  - Existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate.
  - A 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 in s. 165.061, F.S.

In counties that have adopted a municipal overlay for municipal incorporation,<sup>12</sup> such information must also be submitted to the Legislature. This information should be used to evaluate the feasibility of a proposed municipal incorporation in the geographic area.

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<sup>11</sup> Section 165.041(1)(b), F.S. For any proposed incorporations to be considered during the 2014 Legislative Session, this deadline fell on September 2, 2013.

<sup>12</sup> Pursuant to s. 163.3217, F.S.

## Municipal Formation Activity in Florida

### *Successful Municipal Incorporations*

From 1972 to date, 28 municipalities have been established, with 19 municipalities created by special act (Bonita Springs, DeBary, Deltona, Destin, Fort Myers Beach, Grant-Valkaria, Islamorada, Jacob City, Lake Mary, Loxahatchee Groves, 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 Aventura, Cutler Bay, Doral, Key Biscayne, Miami Gardens, Miami Lakes, Palmetto Bay, Pinecrest, and Sunny Isles Beach were created under the 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	chs. 83-434 and 84-456, L.O.F.
1984	Destin	Okaloosa County	chs. 84-422 and 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	chs. 93-351 and 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	Fort 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 Ranges	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 County	ch. 2004-454, L.O.F.
2005	Cutler Bay	Miami-Dade County	by authority of the Miami-Dade County Charter
2006	Loxahatchee Groves	Palm Beach County	ch. 2006-328, L.O.F.
2006	Grant-Valkaria	Brevard County	ch. 2006-348, L.O.F.

*Failed Attempts at Municipal Incorporation*

Since 1980, Floridians have rejected the formation of municipal governments by voting down the incorporation efforts of 14 proposed municipalities. The following table indicates these failed attempts at municipal incorporations by year, county, and failed enabling law:

YEAR	MUNICIPALITY	COUNTY	ENABLING LAW
1985	A city in the Halifax area	Volusia County	ch. 85-504, L.O.F.
1982/1986	The City of Fort Myers Beach	Lee County	chs. 82-295 and 86-413, L.O.F.
1986	The City of Spring Hill	Hernando County	ch. 86-463, L.O.F.
1987	The City of Deltona Lakes	Volusia County	ch. 87-449, L.O.F.
1990	The City of Deltona	Volusia County	ch. 90-410, L.O.F.
1980/1982/ 1986/1990/1993	The City of Marco Island	Collier County	chs. 80-541, 82-330, 86-434, 90-457 and 93-384, L.O.F.
1994	The City of Port LaBelle	Glades and Hendry Counties	ch. 94-480, L.O.F.
1995	The City of Destin	Miami-Dade County	by authority of the Miami-Dade County Charter
1998	The City of Ponte Vedra Beach	St. Johns County	ch. 98-534, L.O.F.

1999	The Village of Key Largo	Monroe County	ch. 99-430, L.O.F.
1999	The City of Southport	Bay County	ch. 99-444, L.O.F.
2000	The Village of the Lower Keys	Monroe County	ch. 2000-383, L.O.F.
2000	The Village of Paradise Islands	Monroe County	ch. 2000-382, L.O.F.
2006	The City of Southport	Bay County	ch. 2006-329, L.O.F.

### The Proposed Village of Estero

The residential community of Estero is located in Lee County between the cities of Fort Myers to the north and Bonita Springs to the south. It is approximately 30 square miles, with the developed community existing between ecologically sensitive land to the east, and Estero Bay to the west. It is composed of several gated communities, destination retail, historic areas, older neighborhoods, and mobile home parks. The driving economic force is a mix of retail, business, construction, and tourism. The community has most of the necessary infrastructure (water, sewer, roads, and parks) in place. The 2010 census set the Estero population at 25,112 permanent residents, while the seasonal population grows to an excess of 37,000 people.

In response to growing concerns over annexation efforts by Bonita Springs, the Estero Council of Community Leaders (ECCL) initiated incorporation measures in June 2013.

#### *Annexation Conflict with Bonita Springs*

The charter of Bonita Springs forbids the city from annexing any part of Estero for the first five years of incorporation. As that provision expired on December 31, 2004, Bonita Springs initiated annexation efforts in late 2004. Estero residents rejected the annexation, which would have included a destination shopping complex and several affluent, gated communities.

In 2007, Bonita Springs and Estero community leaders agreed that there would be no further annexation efforts unless both parties agreed. This agreement was honored until June 19, 2013, when the Bonita Springs City Council adopted a series of motions to implement annexation procedures, despite ECCL's urging otherwise. This annexation effort included two gated communities and 130 acres of conservation lands. Nine days later, ECCL responded by scheduling a resolution for incorporation so as to prevent the annexation efforts of Bonita Springs. The resolution was adopted on July 12, 2013.

On February 25, 2014, Bonita Springs held a referendum vote on annexation of a contiguous section of unincorporated Lee County, part of the Pelican Landing community. The referendum failed by a margin of 54 votes, with 286 residents voting against annexation and 232 in favor.<sup>13</sup> These residents will now be able to vote on the incorporation of Estero should this bill be enacted.

To support their incorporation efforts, ECCL is soliciting donations for their Defense and Planning Fund, which will be used to finance the goal of a November 2014 referendum. ECCL estimates that it will cost \$90,000 in legal, consulting, and surveyor fees, and printing and electronic communications costs. ECCL's website notes that as "the ECCL's revenue from annual membership dues is less than

<sup>13</sup> "Annexation Election Results February 25, 2014," Lee County Supervisor of Elections, available at <http://leeelections.com/bonannex14.html>.

\$12,000, additional community financial support is critical. Therefore, the ECCL is requesting donations from local communities, civic and business organizations and individuals.”<sup>14</sup>

### Feasibility Study Deficiencies and Addenda

The Legislature received the Estero proposed incorporation feasibility study on August 30, 2013, as required by ch. 165, F.S., with the proposed charter. This study and charter were reviewed by the Department of Revenue (DOR), Department of Economic Opportunity (DEO), Office of Economic and Demographic Research (EDR), and the Local & Federal Affairs Committee. Much of the information is poorly analyzed and discussed so as to make the study’s compliance with statutory requirements questionable.

The August 30<sup>th</sup>, timely submitted study contained several notable deficiencies, including lacking the following:

- A constitutionally required provision honoring existing solid waste contracts;<sup>15</sup>
- An itemized list of current and proposed services accompanied by the estimated costs of each (ss. 165.041(1)(b)5 and 165.041(1)(b)6, F.S.);
- Evidence of fiscal capacity including existing tax base (s. 165.041(1)(b)8a, F.S.);
- A clear five-year operational plan (s. 165.041(1)(b)8b, F.S.); and
- Data analysis showing that incorporation is necessary and financially feasible, including the projected population density calculations and methodology (s. 165.041(1)(b)9, F.S.).

Additionally, the proposed boundaries in the original study were altered before the Lee County Delegation voted to allow the incorporation to continue. Therefore, the study submitted by the deadline is no longer accurate. Although an addendum to the study has been provided, updating the study after the submission deadline is not provided for statutorily.

On December 9, 2013, committee staff received an addendum to the study, dated November 20, 2013. This addendum updated the study to reflect the removal of an approximately one square mile neighborhood from the proposed boundaries. This neighborhood, Eldorado Acres, resisted incorporation and so the delegation removed the area from the proposed boundaries. As Eldorado Acres is not located on the periphery of the proposed boundaries, its elimination created an enclave.<sup>16</sup>

On March 3, 2014, committee staff received a second addendum to the study, dated February 26. This addendum addressed two of the abovementioned deficiencies by providing the costs and estimated costs of current and proposed services. The study preparers were notified of all deficiencies at once, but only this one was addressed.

### Feasibility Study Agency Review

#### *The Department of Revenue Review*

The DOR submitted their analysis of the feasibility study and proposed charter in a memorandum dated January 23, 2014.

Regarding revenue sharing, the DOR noted that the charter documents entitled the village to immediate participation upon the date of incorporation.<sup>17</sup> This is problematic for two reasons. First, such early participation conflicts with the statutory definition of “municipality” in s. 218.21(3), F.S., which requires that a revenue-sharing eligible municipality already have elected and established its legislative body. The Estero legislative body will not be in place until the Council’s first meeting, scheduled for March 17,

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<sup>14</sup> Estero Today, Estero Council of Community Leaders: Contribute to the Cause, available at <http://esterotoday.com/about-eccl/contribute-to-the-cause/>.

<sup>15</sup> This issue was corrected as existing solid waste contracts were provided for by the strike-all amendment adopted by the Local & Federal Affairs Committee on March 27, 2014. See “IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES,” below.

<sup>16</sup> Creation of the enclave was avoided by the strike-all amendment adopted by the Local & Federal Affairs Committee on March 27, 2014. See “IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES,” below.

<sup>17</sup> These issues were corrected by the strike-all amendment adopted by the Local & Federal Affairs Committee on March 27, 2014. See “IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES,” below.



2015. Therefore, although revenue sharing can start to accrue upon incorporation, the funds cannot be distributed until after the March election.

Second, the study provides for the beginning date of revenue sharing participation to be December 31, 2014. Since revenue sharing distributions are calculated by the month, starting participation on the last day of the month will unnecessarily complicate the calculations. Distributions to all counties and municipalities would have to be calculated for December 1 through 30 without Estero, and then recalculated for December 31 with Estero. The DOR recommends that the first day of revenue sharing participation be April 1, 2015 (the first day of the first month after the initial Council meeting) or the first of any month thereafter.<sup>18</sup>

Regarding the half-cent sales tax, the DOR notes that the village must meet the requirements for revenue sharing<sup>19</sup> and all the criteria for incorporation,<sup>20</sup> including population density and minimum buffer distance.

Regarding the local communications services tax, the DOR notes that the village will not be eligible to impose this tax until January 1, 2016, although the study mistakenly includes such tax revenues for 2015. In order to begin on January 1, 2016, before September 1, 2015, the village must (1) adopt such an ordinance and (2) notify the DOR of its intent to collect the tax and provide updated service addresses and boundaries. Additionally, the DOR suggests that the charter be amended to include whether this revenue is to be shared by Lee County and the village, as well as a method to allocate such revenue prior to the effective date if the village is imposing the tax. The DOR review did not consider the addenda.

#### *Department of Economic Opportunity*

The DEO submitted their analysis of the feasibility study and proposed charter in a memorandum dated January 22, 2014. Regarding the statutory requirements for incorporation of ch. 165, F.S., the DEO noted that the study did not sufficiently address the proposed services and their estimated costs;<sup>21</sup> did not include a density calculation for the projected population;<sup>22</sup> and did not provide evidence that the proposed municipality meets s. 165.061, F.S., requirements.<sup>23</sup> The DEO review did not consider the addenda.

#### *Office of Economic and Demographic Research*

The EDR submitted their analysis of the feasibility study and proposed charter in a memorandum dated January 31, 2014. The EDR noted that the village does not meet the minimum distance requirements. Discussing the proposed expenditures presented in the study, the EDR commented that the reasonableness for the following expenses is difficult to ascertain: contract for general government services with Lee County or private sector vendors; local elections; and one-time capital equipment. Given the lack of specificity for some of the proposed expenditures, the likelihood of a positive bottom line is difficult to substantiate; however, the amount set aside for the proposed reserve should cover any shortfall. Comparing the village's revenues and expenditures on a per capita basis to those of nearby municipalities, the village's first year's revenues and expenditures are well below the others as would be expected given the village's limited scope of operations. For how long these revenues and expenditures remain low would be the responsibility of the governing body. The EDR did take the first addendum into consideration for their review.

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<sup>18</sup> This recommendation was included in the strike-all amendment adopted by the Local & Federal Affairs Committee on March 27, 2014. See "IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES," below.

<sup>19</sup> Section 218.63(1), F.S., pursuant to s. 218.23, F.S.

<sup>20</sup> Pursuant to s. 165.061, F.S.

<sup>21</sup> Pursuant to s. 165.041(1)(b)6, F.S.

<sup>22</sup> Pursuant to s. 165.041(1)(b)9, F.S.

<sup>23</sup> Pursuant to s. 165.041(1)(b)11, F.S. Specifically, the study did not meet the minimum density requirement or minimum distance requirement, and did not address the solid waste contracts. These issues were corrected by the strike-all amendment adopted by the Local & Federal Affairs Committee on March 27, 2014. See "IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES," below.

## Proposed Charter Review

The proposed charter for the Village of Estero is included in CS/HB 1373, and provides as described in **Effect of Proposed Changes:** Proposed Charter below.

### *Noncompliance with the Formation of Municipalities Act<sup>24</sup>*

The area proposed for the Village of Estero fails two of the six statutory requirements of an area proposed for incorporation,<sup>25</sup> described below. These deficiencies will require a legislative waiver in order for the bill to proceed.

- **Population density** – Areas to be incorporated must have (1) an average population density of at least 1.5 persons per acre, or (2) extraordinary conditions so as to allow an exception. The area originally proposed for incorporation has an average population density of 1.4 persons per acre.<sup>26</sup> The density must be recalculated once the final proposed boundaries are known and all annexation efforts have been initiated. Then it will be determined if a waiver of s. 165.061(1)(c), F.S., is required.
- **Municipal buffer** – Areas to be incorporated must have a minimum distance of at least two miles from the boundaries of an existing municipality within the county or an extraordinary natural boundary that requires separate municipal governments. A compliant buffer would start at Williams Road and include the Coconut Point mall, the future Hertz global corporate headquarters, and The Brooks residential communities. No extraordinary natural boundaries exist. Approximately 1/3 of the originally proposed village does not meet the buffer requirement as four miles of that southern boundary are adjacent to the Bonita Springs corporate boundary. The buffer must be reexamined once the final proposed boundaries are known and all of the annexation efforts have been initiated. However, it is very likely that the buffer will not be met by the final boundaries and therefore a waiver of s. 165.061(1)(d), F.S., will be required.

The proposed charter is compliant with the other four requirements for municipal incorporation provided by s. 165.061(1), F.S., relating to population and the charter.

## Review of Financial Elements

### *State-Shared Revenue*

Section 12(8) of the proposed charter entitles the village to participate in all Florida revenue sharing programs effective April 1, 2015. Additionally, the charter waives the provisions of s. 218.23(1), F.S., for the purpose of conducting audits and financial reporting through Fiscal Year 2014-2015. These include financial reporting, providing for an annual audit, levying certain taxes, certifying certain law enforcement and firefighter employee qualifications, and providing for dependent special districts audits.

The Economic Impact Statement estimates that state-shared revenue sources will provide \$1,777,799 in Fiscal Year 2014-2015 and \$2,370,399 in Fiscal Year 2015-2016.

If the village participates in state shared revenues, the other Lee County municipalities will receive reduced amounts of these funds. According to the Economic Impact Statement, successful incorporation of the village would result in the following losses in annual revenues: Lee County, \$1,614,416; Bonita Springs, \$80,091; Cape Coral, \$250,391; Fort Myers, \$103,836; and Fort Myers Beach, \$9,632.

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<sup>24</sup> Chapter 165, F.S.

<sup>25</sup> Section 165.061, F.S.

<sup>26</sup> However, 5,699 acres within the originally proposed boundaries are classified as wetlands and will never support any type of development. If the wetlands are taken into consideration, the population density is 1.99 persons per acre of the originally proposed boundaries.

## Local Revenue Sources

Section 12(9) of the proposed charter entitles the village to all local revenue sources available. This includes the local communications services tax.<sup>27</sup> The Economic Impact Statement estimates that local revenue sources will generate \$2,969,951 in Fiscal Year 2014-2015 and \$5,939,902 in Fiscal Year 2015-2016. This includes ad valorem property taxes, franchise fees, and the local communications services taxes.

Section 12(10) of the proposed charter entitles the village to local option gas tax revenues beginning October 1, 2015, if such an interlocal agreement is executed before June 1, 2015. If it is not executed before that date, the distributions will follow the lane mile formula.<sup>28</sup>

## Comparison to Lee County Municipalities

Table 1. Total Revenues and Expenditures of the Proposed Village of Estero and Existing Lee County Municipalities<sup>29</sup>

<b>Municipality</b>	<b>2013 Estimated Population</b>	<b>Total Revenues</b>	<b>Total Expenditures</b>
Bonita Springs	45,229	\$49,197,093	\$46,359,148
Cape Coral	161,069	\$397,469,156	\$353,976,294
Fort Myers	67,081	\$278,957,147	\$256,263,630
Fort Myers Beach	6,323	\$10,402,094	\$9,057,599
Sanibel	6,497	\$47,690,629	\$42,876,929
<i>Estero (Proposed)</i>	<i>26,344</i>	<i>\$8,309,965</i>	<i>\$5,184,130</i>

## Comparison to Similarly-Populated Municipalities

The EDR compared the revenue and expenditure estimates of the village with “similarly-populated” municipalities in Florida and with the other Lee County municipalities. The revenues and expenditures of the comparison municipalities reflect those reported in Annual Financial Reports for the local fiscal year that ended in 2012 (most recent data available), as submitted to the Florida Department of Financial Services.

Table 2. Total Revenues and Expenditures of the Proposed Village of Estero and Similarly-Populated Municipalities<sup>30</sup>

<b>Municipality</b>	<b>2013 Estimated Population</b>	<b>Total Revenues</b>	<b>Total Expenditures</b>
Clermont	30,201	\$45,041,859	\$39,089,178
Miami Lakes	29,978	\$24,216,788	\$26,838,580
DeLand	28,436	\$61,789,679	\$47,274,089
Winter Park	28,184	\$155,167,771	\$140,188,720
Casselberry	27,057	\$46,686,420	\$39,397,683

<sup>27</sup> Section 202.19, F.S.

<sup>28</sup> Section 336.025(4)(b)1., F.S.

<sup>29</sup> Figures provided by the Office of Economic and Demographic Research.

<sup>30</sup> Figures provided by the Office of Economic and Demographic Research.

<i>Estero (Proposed)</i> <sup>31</sup>	26,344	\$8,309,965	\$5,184,130
Parkland	25,576	\$25,543,178	\$24,153,250
Rockledge	25,309	\$28,278,134	\$24,297,048
Temple Terrace	25,307	\$51,413,839	\$47,148,955
Key West	24,583	\$138,805,413	\$113,815,844
Tarpon Springs	23,935	\$54,071,892	\$42,916,257
AVERAGE	26,810	\$58,120,449	\$50,027,612

## Effect of Proposed Changes

### Proposed Charter

The bill provides a proposed charter for the Village of Estero as follows:

#### **Section 1. Corporate name; charter; creation.**

(1) CORPORATE NAME: Provides that the municipality will be known as the Village of Estero.

(2) CHARTER PURPOSE: Provides that the act, together with future amendments, is the charter of the Village of Estero; provides that it is in the best interests of public health, safety, and welfare of the residents of the area to form a separate municipality; provides that it is intended that the charter and incorporation will serve to preserve and protect the characteristics of the community; provides that it is the intent of the charter and incorporation to secure benefits of self-determination, and affirm the values of representative democracy, citizen participation, strong community leadership, professional management, and regional cooperation; provides that it is the intent of the charter and incorporation to maintain a financially secure and sustainable government and responsible manage the village's debt obligations without causing the state to incur any liability.

(3) CREATION: Provides that the act will take effect upon a majority referendum vote of qualified electors residing in the proposed boundaries on November 4, 2014; provides that for the purposes of ad valorem taxes, the village is created effective December 31, 2014.

#### **Section 2. Powers of the village; form of government.**

(1) MUNICIPAL POWERS: Provides that the village will have all available governmental, corporate, and proprietary powers of a municipal government under the Florida Constitution and laws of this state; provides that it is the intention of the electors of the village that the village will have the broadest exercise of home rule allowed under the Florida Constitution and laws of the state; provides that the charter and powers of the village will be construed liberally in favor of the village.

(2) CONSTRUCTION: Provides that the village powers under the charter will be construed liberally in favor of the village and specific mention of particular powers does not limit the general powers granted in the charter.

(3) FORM OF GOVERNMENT: Provides that the village will have a council-manager form of government; provides that the council will consist of seven members elected by the village at large from seven districts; provides that the council will be the governing body of the village and will appoint a village manager to be the chief administrative officer.

(4) INTERGOVERNMENTAL RELATIONS: Authorizes the village to participate with any governmental entity of Florida, any other state, or the United States in any activity that one or more of such entities has the authority to undertake.

<sup>31</sup> Estero's proposed revenues and expenditures are from the Development of Revenue Analysis (pp. 21-34) and the Development of Expenditure Analysis (pp. 35-39) sections of the study dated August 26, 2013. Although the study prorates the projected first year (Fiscal Year 2015) revenue and expenditure amounts to reflect the assumption that Estero becomes a legal entity as of December 31, 2014, the revenue and expenditure amounts listed here reflect full fiscal year totals in order to compare with the other municipalities listed in this table.

**Section 3. Boundaries:** Provides the legal description of the village's boundaries.

**Section 4. Council.**

(1) **GENERAL POWERS AND DUTIES:** Provides that all powers of the village will be vested in the council, except as otherwise provided by law or the charter, and the council will provide for the exercise and performance of all duties and obligations permitted by or imposed on the village by law.

(2) **COMPOSITION; ELIGIBILITY; TERMS.**

(a) **Composition:** Provides that there will be a village council composed of seven council members; provides that each council member will be elected at large by one of seven districts.

(b) **Eligibility:** Provides that each village council member candidate must be a qualified elector of the village and must have been a village resident for at least 1 year; provides that each council member must reside in the district the member represents for the duration of his or her term.

(c) **Terms:** Provides a 4-year term of office for council members; provides that no council member may serve more than two consecutive terms; provides that a former council member may requalify after 1 year out of office; provides that partial terms will not be counted for term limits.

(3) **MAYOR; VICE MAYOR**

(a) **Mayor:** Provides that at the first regularly scheduled meeting after the village's regular election, a majority vote of the council will elect from its membership a mayor; provides that the mayor will serve as chairperson during council meetings and as the head of municipal government for executing legal documents as required by ordinance; provides that the mayor will serve as the village's ceremonial head.

(b) **Vice mayor:** Provides that at the first regularly scheduled meeting after the village's regular election, a majority vote of the council will elect from its membership a vice mayor; provides that the vice mayor will serve as mayor during the absence or disability of the mayor; provides that the vice mayor will serve as interim mayor if a vacancy of the mayor occurs until the next regularly scheduled election.

(4) **COMPENSATION:** Provides that the salary of each council member, except for the mayor, will be \$6,000 per year, payable in equal monthly installments; provides that the salary of the mayor will be \$9,000 per year, payable in equal monthly installments; provides that an ordinance changing council compensation may be adopted at any time, but such change will not go into effect until after the next regular municipal election; provides that the council may reimburse actual expenses incurred by its members, including the mayor, while performing official duties.

(5) **COUNCIL MEETINGS:** Requires the council to schedule a minimum of 12 regular meetings each year; allows the mayor or a majority of the council members to call special meetings if at least a 24-hour notice is provided to each council member; provides that, except as authorized by law, all meetings will be open to the public; provides that four council members will constitute a quorum for the conduct of business; provides that no action may be taken except to adjourn unless a quorum is present; requires all council members present to vote on all matters before the council unless a member or village attorney determines there is a conflict of interest.

(6) **PROHIBITIONS:** Prohibits the council, or any individual member of the council, from attempting to dictate the employment or removal of any employee other than the village manager, village attorney, and village clerk; allows the council to make inquiries of village employees, but no individual member of the council may give orders to any village officer or employee; provides that recommendations for improvements in village government operations must be submitted by the village manager; allows council members to discuss or recommend improvements to the village manager; allows the council to direct the village manager to implement specific recommendations for such improvement; prohibits a present or former elected village official from holding any compensated appointive office or employment with the village until 1 year after leaving office; prohibits the council from adopting any compensation plan for municipal employees or officers that incurs unfunded liabilities; prohibits the council from adopting a defined benefit plan and allows only a defined contribution plan; prohibits village officers and employees from participating in the Florida Retirement System.

(7) **VACANCIES; FORFEITURE OF OFFICE; FILLING OF VACANCIES.**

(a) **Vacancies:** Provides that a council, mayor, or vice mayor vacancy will occur upon the incumbent's death, inability to fulfill the duties of the office, moving of residence outside the

district, resignation, appointment to another public office, judicially determined incompetence, or removal or forfeiture of office.

(b) Forfeiture of office: Allows a member of the council to forfeit the office if the member: lacks at any time during the term any prescribed qualification, violates any express prohibition of the charter, is convicted of a felony or misdemeanor involving the office, violates any standard of conduct or code of ethics established by law for public officials, or has been suspended from office by the Governor unless subsequently reinstated, or misses three consecutive regularly scheduled council meetings unexcused; provides that if any of these events occur, a hearing must be conducted at the next regularly scheduled meeting during which a majority vote may declare the office forfeited.

(c) Filling of vacancies: Provides that if a council vacancy occurs, except for the position of mayor, within 60 days a majority vote of the remaining council members must appoint a replacement from the same district; provides that if the remainder of the term is 28 months or less, the appointee will serve the rest of the term; provides that if the remainder of the term is more than 28 months, the appointee will serve until the next regularly scheduled election, at which time the balance of the term for the seat will be filled pursuant to section 9; provides that if four or more council vacancies occur at one time, within 60 days, the remaining council members must, by a majority vote, appoint a person from the same district to fill such vacancies until the next regularly scheduled village election, at which time the balance of the terms must be filled pursuant to section 9.

(8) JUDGE OF QUALIFICATIONS: Provides that the council will be the sole judge of the qualifications of its members and must hear all questions relating to forfeiture of a council member's office; authorizes the council to set additional written standards of conduct for its members and provide penalties, including forfeiture of office; provides that in order to exercise these powers, the council may subpoena witnesses, administer oaths, and require the production of evidence; provides that a member charged with conduct constituting grounds for forfeiture is entitled to a public hearing on demand, and notice of such hearing must be published in a newspaper of general circulation in the village at least 7 days before the hearing; provides that the burden of establishing good cause for absences will be on the council member in question; provides that any council member may move to establish good cause for his or her absence; prohibits a council member whose qualifications are in question or who is otherwise subject to forfeiture of his or her office from voting on such matters.

(9) INVESTIGATIONS: Authorizes the council to investigate into village affairs and the conduct of any village department, office, or agency; provides that for this purpose the council may subpoena witnesses, administer oaths, take testimony, and require the production of evidence; provides that failure or refusal to obey a lawful order issued in the exercise of these powers by the council is a misdemeanor punishable by fines or imprisonment as provided by law; requires the council to act on any such findings as it may determine to be in the best interest of the village.

## **Section 5. Administration.**

### **(1) VILLAGE MANAGER**

(a) Appointment and qualifications: Requires the council to appoint a village manager based primarily on executive and administrative qualifications; provides the village manager will serve at the pleasure of the council for a fixed compensation.

(b) Removal: Provides that the village manager may be suspended by a council majority vote resolution containing the reasons for suspension and proposed removal; requires a copy of such resolution to be immediately served upon the village manager; provides that the village manager has 5 days to reply in writing and request a public hearing that must occur at least 5 days but not more than 30 days after the request; provides that after the requested hearing and full consideration, a majority vote of the council may adopt a final resolution of removal; provides that the village manager will receive full salary until the effective date of a final resolution of removal.

(c) Residency: Provides that the village manager need not be a resident of the village at the time of appointment or service.

(d) Powers and duties of the village manager: Provides that the village manager will appoint, suspend, demote, or dismiss any village employee under the village manager's jurisdiction, and may: delegate these powers to any department head for subordinates in that department, direct and supervise all departments except the village attorney, attend all council meetings unless

excused and discuss but not vote, ensure that all laws and council acts subject to enforcement are faithfully executed, perform other specified duties, submit the annual budget, budget message, and capital program to the council, fully advise council on the financial condition and future needs of the village, make recommendations, promptly communicate with the council any reasonable expectation of any significant expenditure deviations from the budget, appoint a village clerk with council consent, and designate a qualified village employee to act as village manager during any temporary absence or incapacity; authorizes the council to revoke such designation at any time and appoint another qualified person, other than a currently seated council member, to serve until the village manager returns.

(2) VILLAGE ATTORNEY: Provides for a village attorney who must be a member of The Florida Bar in good standing, be appointed by the council, and serve as the chief legal advisor to the council and village administrators, departments, and agencies; requires the village attorney to attend all council meetings unless excused and perform such professional duties as may be required by law or by the council in the furtherance of law; provides for the removal of the village attorney for any reason by a council majority vote.

(3) VILLAGE CLERK: Provides for a village clerk to be appointed by the village manager with the council's consent; provides the village clerk will serve at the pleasure of the village manager; provides that the village clerk's duties include noticing council meetings, keeping the journal and minutes of the council and its committees for public record, recording all ordinances and resolutions passed by the council, serving as custodian of the village seal, administering oaths, and performing other duties assigned by the village manager.

### **Section 6. Departments; personnel; planning.**

(1) DEPARTMENTS; BOARDS; AGENCIES: Authorizes the council to establish or terminate such departments, boards, or agencies as it determines necessary for the efficient administrative operation of the village; requires such departments, boards, or agencies to be determined by ordinance.

(2) PERSONNEL: Requires the council to provide by ordinance for the establishment, regulation, and maintenance of a system governing personnel policies.

(3) PLANNING: Requires the village to designate an agency or agencies to execute the planning functions; requires the village to adopt a comprehensive plan consistent with zoning and other land use control ordinances; provides that the Lee County Comprehensive Plan will serve as the initial comprehensive plan until the village adopts its own comprehensive plan pursuant to chapter 163, F.S.; requires the village to adopt zoning and development regulations to implement the plan.

### **Section 7. Ordinances and resolutions.**

(1) DEFINITIONS: Provides definitions for "ordinance" and "resolution."

(2) ADOPTION OF ORDINANCES: Provides that the procedure for adoption of ordinances and resolutions will be as provided in s. 166.041, F.S.

(3) EMERGENCY ORDINANCES: Authorizes the council to adopt emergency ordinances to meet a public emergency affecting life, health, property, or the public peace; prohibits emergency ordinances from levying taxes, manipulating a franchise, regulating any utility rate, or authorizing the borrowing of money; prohibits an emergency ordinance or resolution from establishing or amending the actual zoning map designation or changing the list of permitted, conditional, or prohibited uses within a zoning category; requires an emergency ordinance to be plainly designated as such and to describe the emergency in clear and specific terms; provides that an emergency ordinance will become effective upon adoption and automatically stand repealed as of the 61st day after the date on which it was adopted, but may be reenacted by these procedures if the emergency continues or by regular procedures.

### **Section 8. Financial management.**

(1) Fiscal Year: Provides that the village fiscal year will begin on the first day of October and end on the last day of September of each year.

(2) Submission of the Budget and the Budget Message: Requires the village manager to submit to the council a budget on or before July 15<sup>th</sup> of each year; requires the budget to outline the financial policies, describe the important features of the budget, indicate any major changes from the current year in financial policy with the reasons for such changes, summarize the village's debt position, and include such other material as the village manager deems necessary.

- (3) Budget: Requires the budget to provide a complete financial plan of all village funds and activities for the ensuing fiscal year; requires the budget to begin with a clear general summary of its contents; requires the budget to show in detail all estimated revenue, indicating the proposed property tax levy, and all proposed expenditures for the ensuing fiscal year; requires the budget to show comparative figures for actual and estimated revenue and expenditures of the current fiscal year and actual revenue and expenditures of the preceding fiscal year; requires the budget to indicate in separate sections: (a) proposed goals and expenditures for the current operations during the ensuing fiscal year, methods of financing, and methods to measure outcomes; (b) proposed longer-term goals and capital expenditures during the ensuing fiscal year, the proposed method of financing each, and the methods to measure outcomes; (c) proposed goals, anticipated revenue and expenses, and profit and loss for the ensuing year for each utility or other enterprise fund or internal service fund, and methods to measure outcomes; provides that for any fund, the total of proposed expenditures may not exceed the total of estimated revenue plus carried forward fund balances exclusive of required reserves.
- (4) VILLAGE COUNCIL ACTION ON BUDGET: Requires the council to adopt the budget by resolution on or before September 30<sup>th</sup> of each year; provides that if the council fails to adopt a budget by this date, the budget proposed by the village manager must go into effect.
- (5) ADMINISTRATION OF BUDGET: Requires the council to provide, by ordinance, the procedures for administering the budget.
- (6) BUDGET AMENDMENTS AFTER ADOPTION.
- (a) Supplemental appropriations: Provides for supplemental appropriations if there are revenues in excess of budget estimates.
- (b) Emergency appropriations: Provides that if needed for a public emergency affecting life, health, property, or the public peace, the council may make emergency appropriations and may issue renewable emergency notes to the extent of the shortage.
- (c) Reductions in appropriations: Provides that if it appears probable that the revenues or fund balances will be insufficient to finance the expenditures then the village manager must report to the council, which must then take further action as it deems necessary; provides for transfer of unencumbered appropriations.
- (d) Transfer of appropriations: Authorizes the village manager to transfer funds among programs within a department, fund, service, strategy, or organizational unit and must timely report in writing to the council;
- (e) Limitation; effective date: Provides for the limitation that no debt service appropriation may be reduced or transferred, and no appropriations may be reduced below any amount required by law, or by more than the unencumbered balance; provides that the authorized supplemental and emergency appropriations and reduction of transfer of appropriations may be made effective immediately upon adoption.
- (7) CAPITAL PROGRAM; COUNCIL ACTION ON CAPITAL PROGRAM; PUBLIC RECORDS.
- (a) Capital program: Requires the village manager to prepare and submit to the council a 5-year capital program to include cost estimates, time schedules, methods of financing, and estimated annual costs of operation and maintenance for such capital improvements; requires this capital program to be revised and extended each year depending on which capital improvements are still pending or in process of construction or acquisition.
- (b) Council action on capital program: Requires the council to publish in a newspapers of general circulation within the village a summary of the capital program and a notice of at least two public hearings on the capital program; requires the council, by resolution, to adopt the capital program with or without amendments after the public hearings and on or before August 15th of the then-current fiscal year.
- (c) Public records: Requires the budget, capital program, and appropriation and revenue ordinances to be public records and available to the public at suitable and published access places in the village, and requires them to be available for purchase at a reasonable price.
- (8) ANNUAL INDEPENDENT AUDIT: Requires the council to obtain an independent audit of all village accounts annually or more often; provides that such audits must be made by a certified public accountant or a firm of such accountants who have no personal interest (excluding residency) in the fiscal affairs of the village or any of its officers.
- (9) SHORTFALLS: Specifies that the state is not liable for financial shortfalls of the village.

## **Section 9. Nominations and elections.**



(1) NONPARTISAN ELECTIONS; ELECTORS; QUALIFYING.

(a) Nonpartisan elections: Requires all elections to be conducted on a nonpartisan basis without designation of political party affiliation.

(b) Electors: Provides that any resident of the village, who has qualified as an elector of this state, and who registers as prescribed by law is an elector of the village.

(c) Qualifying: Requires each candidate for village council to be a qualified elector of the village who resides in the village for at least 1 year before the beginning of the qualifying period for the office sought; requires an elector of the village who wishes to run for village council to qualify with the Supervisor of Elections of Lee County for the initial election and thereafter requires candidates to qualify with the village clerk by providing proof of voter registration, current address, or 1 year's residency; requires the qualifying period for candidates for village council to begin at noon on the second Monday in January of odd-numbered years and end at noon on the Friday immediately after.

(2) ELECTIONS.

(a) Adoption of Florida Election Code: Requires all elections to be conducted in accordance with the Florida Election Code, chs. 97-106, F.S., except as otherwise provided in the charter; authorizes the council to adopt, by ordinance, such election procedures as are necessary and as provided by the Florida Election Code.

(b) At-large elections: Provides that the regular election of council members beginning in 2017 will be the first Tuesday in March on each odd-numbered year; provides that electors may vote for one candidate from each of the seven council districts, and the candidate in each district receiving the highest number of votes in the village at-large election will be elected to such council district; provides that the term of office for an elected council member begins on the second Tuesday after the council election and ends on the Monday immediately before commencement of the following term.

(c) Village canvassing board: Requires the canvassing board to consist of the mayor or council member designated by the mayor, the village clerk, and the Supervisor of Elections of Lee County who must canvass the results; requires the election results to be publicly announced after the election.

(3) COUNCIL DISTRICTS; REDISTRICTING: Requires there to be seven village council districts as roughly equal in permanent population as practicable according to the population figures available; provides the boundaries and approximate acreage of each district; provides that in 2015, and in odd-numbered years after each decennial U.S. Census thereafter, the council may redivide the village into seven districts as roughly equal in permanent population as practical.

(4) RECALL: Requires the qualified voters to have the power to remove an elected official for unethical or illegal conduct or actions resulting in the endangerment of the public health and safety, malfeasance of office, or dereliction of duties; provides that to recall a council member, at least 25 percent of the total number of electors registered to vote in the last regular village election within the district must sign a petition to recall, the signatures must be certified by the Supervisor of Elections of Lee County, and a special recall election must be held no later than 90 days after such certification as provided for by the Florida Election Code.

**Section 10. Initiative and referendum:** Provides that initiative and referendum powers are reserved to the qualified registered voters, and state election laws of the state must govern the exercise of such powers.

**Section 11. General provisions.**

(1) CODE OF ETHICS: Requires the officers and employees of the village to be independent and impartial and prohibits their offices from being used for private gain other than the remuneration provided by law or by ordinances; provides that it is village policy that its officers and employees are agents of the people and hold their positions for the benefit of the public and so must adhere to the standards of conduct as set forth in part III of ch. 112, F.S.

(2) AMENDMENTS TO CHARTER.

(a) Amendments: Provides that the charter may be amended in accordance with the Municipal Home Rules Powers Act, ch. 166, F.S., or as otherwise provided by general law; provides that the council may, by ordinance, or the qualified registered voters of the village may, by petition signed by the less of 10 percent or 5,000 electors registered to vote in the last regular village

election, submit a proposed amendment to any part or all of the charter; requires the form, content, and certification of any petition to amend the charter to be established by ordinance.

(b) Election: Requires the council to put the proposed amendment to a vote of the electors at the next village election or at a special election called for such purpose.

(c) Adoption of amendment: Provides that if a majority of the registered voters vote in favor of a proposed charter amendment, the amendment must become effective at the time fixed in the amendment, if provided, or 30 days after the amendment is adopted.

(3) SEVERABILITY: Provides that a finding that any charter provision or application thereof is invalid, the invalidity will not affect other provisions or applications that can be given effect without the invalid provisions or application; provides that the charter provisions are severable.

## **Section 12. Referendum election; transition.**

(1) REFERENDUM ELECTION: Provides that the referendum election called for by the charter will be held on November 4, 2014; provides the question to be placed on the ballot is "Shall the Village of Estero and its charter be created?"; provides that an affirmative answer by a majority will cause the charter to take effect as provided; requires the referendum to be conducted by the Supervisor of Elections of Lee County in accordance with the Florida Election Code at the expense of Lee County.

(2) INITIAL ELECTION OF COUNCIL: Provides that after charter adoption, the Supervisor of Elections of Lee County must call an election on March 3, 2015, of seven village council members; requires the election to be conducted by the Supervisor of Elections of Lee County in accordance with the Florida Election Code at the expense of Lee County; requires applicants for candidacy to qualify with the Supervisor of Elections of Lee County between noon on the second Monday in January and noon on the Friday immediately following; requires the county canvassing board to certify the results of the initial elections; provides that the four council members receiving the highest number of votes will serve 4-year terms and the other three council members will serve 2-year terms; provides that if reelected these 2-year term members will serve an additional 4-year term, which will constitute two terms for term limit purposes.

(3) SCHEDULE.

(a) First election of council members: Provides that at the time of its adoption, this charter will be in effect to the extent necessary to conduct the first election of members of the village council.

(b) Time of taking full effect: Provides that the charter will be in full effect for all purposes on and after the date of the first meeting of the newly elected village council.

(c) First council meeting: Requires the newly elected members of the village council to meet on March 17, 2015. Authorizes the initial council to enter into contracts, arrange for the hiring of legal counsel, begin recruiting applicants for village manager, provide for necessary village offices and facilities, and do such other things as it deems necessary and appropriate for the village.

(4) FIRST-YEAR EXPENSES: Provides that the council will have the power to borrow money necessary for the operation of municipal government until a budget is adopted and revenues are raised.

(5) TRANSITIONAL ORDINANCES AND RESOLUTIONS: Provides that all applicable county ordinances in place at the time of referendum passage, unless specifically referenced in the charter, will remain in place until and unless rescinded by action of the council; provides that a county ordinance, rule, or regulation conflicting with that of the village will not be effective to the extent of such conflict; provides that any existing Lee County ordinances, rules, and regulations, as of November 4, 2014, may not be changed nor any variance be granted if that would affect the village unless the council approves; requires the council to adopt ordinances and resolutions required for the transition; provides that ordinances adopted within 90 days after the first council meeting may be passed as emergency ordinances, except the transitional ordinances may not be effective for longer than 90 days after adoption unless readopted.

(6) TRANSITIONAL COMPREHENSIVE PLAN: Provides that until the village adopts a comprehensive plan, the Lee County Comprehensive Plan will remain in effect; provides that all planning functions, duties, and authority will thereafter be vested in the council.

(7) TRANSITIONAL LAND DEVELOPMENT REGULATIONS: Provides that to implement the transitional comprehensive land use plan, the village must adopt land use development regulations ordinances; provides that until the village adopts the ordinances, the comprehensive land use plan and land use development regulations of Lee County will remain in effect as the village's transitional regulations and

plan; provides that until the village adopts the ordinances, all powers and duties of the Lee County Department of Community Development, the Lee County Hearing Examiner, and Board of County Commissioners of Lee County, as set forth in these transitional regulations, will be vested in the council until such time as the council delegates all powers and duties; provides that until the village adopts the ordinances, subsequent to the adoption of a local comprehensive land use plan, the council is fully empowered to amend, supersede, enforce, or repeal the transitional regulations; provides that until the village adopts the ordinances, subsequent to the commencement of the village's corporate existence, an amendment of the comprehensive land use plan or land use development regulations enacted by the Board of County Commissioners of Lee County will not be an amendment of the village's transitional plan or regulations or otherwise take effect within the village's municipal boundaries.

(8) STATE-SHARED REVENUES: Provides that the village will be entitled to participate in all revenue sharing programs of the state effective April 1, 2015; provides that the provisions of s. 218.23(1), F.S. will be waived for the purposes of conducting audits and financial reporting through the end of Fiscal Year 2014-2015.; provides that for ad valorem taxation compliance with s. 218.23(1), F.S., the millage levied by special districts may be used for an indefinite period of time; requires the initial revised population estimates for eligibility to be determined by the University of Florida Bureau of Economic and Business Research (Bureau) or the Lee County Department of Community Development if the Bureau is unable.

(9) LOCAL REVENUE SOURCES: Provides that the village will be entitled to receive all local revenue sources available pursuant to general law, including the local communications services tax; provides that the current local communications services tax rate will continue through December 31, 2015; provides an allocation method for these revenues between the village and Lee County.

(10) LOCAL OPTION GAS TAX REVENUES: Provides that the village will be entitled to receive local option gas tax revenues beginning October 1, 2015, in accordance with an interlocal agreement if executed before June 1, 2015, but if not so executed then the distributions will be in accordance with the lane mile formula contained in s. 336.025(4)(b)1, F.S.

(11) CONTRACTUAL SERVICES AND FACILITIES: Provides that contractual services for police, emergency management, public works, parks and recreation, planning and zoning, building inspection, development review, animal control, library services, and solid waste collection may be supplied by a contract between the village and Lee County, special districts, municipalities, or private enterprise until such time as the council establishes such independent services; provides for existing solid-waste contracts; provides for rental or lease of facilities until the village selects more permanent facilities.

(12) INDEPENDENT SPECIAL DISTRICTS: Authorizes the village to merge functions of independent special districts wholly inside the village municipal boundaries only upon dissolution of such districts or upon a council majority vote and special district board majority vote after satisfying all merger or dissolution requirements in the district's enabling legislation and ch. 189, F.S.; requires the council to attempt to maximize benefits to any district with which planning and interlocal agreements are needed through such agreements; authorizes the council to supplement or duplicate services determined to be inadequate.

(13) ELIMINATION OF TRANSITIONAL ELEMENTS FROM THIS CHARTER: Provides that after the transitional phase, the sections of the charter relating to transition may be eliminated from the charter.

**Section 13.** Provides that the bill will take effect only upon its approval by a referendum majority vote of the qualified electors residing within the corporate limits of the proposed Village of Estero; provides that Section 13 and Section 12, subsection (1) will take effect upon the bill becoming a law.

#### B. SECTION DIRECTORY:

Section 1: Creates the Village of Estero; provides corporate name, purpose of the charter.

Section 2: Provides for powers and form of government.

Section 3: Provides boundaries.

Section 4: Provides for village council.

Section 5: Provides for village manager, village attorney, and village clerk.

- Section 6: Provides for departments, personnel, and planning.
- Section 7: Provides for ordinances and resolutions.
- Section 8: Provides for financial management.
- Section 9: Provides for elections.
- Section 10: Provides for initiative and referendum.
- Section 11: Provides general provisions.
- Section 12: Provides for a referendum election and transition.
- Section 13: Provides for a referendum.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN?

WHERE?

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN? November 4, 2014

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

According to the Economic Impact Statement, the projected cost of funding the village government and municipal services will be \$3,033,065 for Fiscal Year 2014-2015 and \$5,538,130 for Fiscal Year 2015-2016. Anticipated sources of combined local and state funding are projected to be \$4,747,750 for Fiscal Year 2014-2015 and \$8,310,301 for Fiscal Year 2015-2016.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

The bill creates an exemption to s. 218.23(1), F.S., regarding state revenue sharing eligibility requirements. Depending on the outcome of the voluntary annexation efforts initiated by Bonita Springs on or before April 1, 2014, the bill also may create exemptions to the following general laws:

- s. 165.061(1)(c), F.S., regarding density requirements; and
- s. 165.061(1)(d), F.S., regarding minimum distance requirements.

#### Summary of the Voting Rights Act of 1965

Section 9(2)(b) of the proposed charter provides for the seven council members to be elected by the village at-large from seven districts. An at-large election scheme may be vulnerable to legal challenge under the 1965 U.S. Voting Rights Act, depending upon the area's demographics.

Section 2<sup>32</sup> of the Voting Rights Act of 1965<sup>33</sup> makes it illegal for any state or local government to use election processes that are not equally open to minority voters, or that give minority voters less opportunity than other voters to participate in the political process and elect representatives of their choice to public office. In particular, Section 2 makes it illegal for state and local governments to "dilute" the votes of racial minority groups; that is, to have an election system that makes minority voters' votes less effective than those of other voters. One of many forms of minority vote dilution is the drawing of district lines that divide minority communities in such a way as to prevent them from putting enough votes together to elect representatives of their choice to public office. **Depending on the circumstances, dilution also can result from at-large voting for governmental bodies.**

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

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 27, 2014, the Local & Federal Affairs Committee adopted a strike-all amendment and passed the bill as a committee substitute. The committee substitute:

- Adds provisions for existing solid waste contracts so as to bring the charter into compliance with the requirements of art. I, s. 10 of the Florida Constitution and s. 165.061(1)(f), F.S.;
- Clarifies that the rate and allocation method of the local communications services tax currently imposed by Lee County will continue within the village;
- Narrows the waiver of s. 218.23(1), F.S., to apply to only audits and financial reporting; and
- Amends the village boundary description so as to prevent the creation of an enclave and remove a portion of land between El Dorado Acres and Bonita Springs.

On April 11, 2014, the State Affairs Committee adopted two amendments and passed the bill as a committee substitute. The amendments:

- Specify that the state is not liable for financial shortfalls of the village;
- Prohibit the village council from adopting a defined benefit compensation plan for village employees or officers and allow only a defined contribution plan; and
- Specify that the Lee County Comprehensive Plan will serve as the village's initial comprehensive plan until the village adopts its own plan.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.

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<sup>32</sup> 42 U.S.C. 1973.

<sup>33</sup> 42 U.S.C. 1973 to 1973aa-6.